

DELIBERATIVE AND PRE-DECISIONAL

Chapter 7: Respect for Law Enforcement and the Rule of Law

Introduction

PULL QUOTE: “There is no tougher job in America than serving as a law enforcement officer. This was true in the past, and it is even truer today. As you know better than anyone, the trials our country’s law enforcement officers encounter on a daily basis are complex, difficult, and wide-ranging.”¹ Attorney General William P. Barr

Attorney General William Barr says that being a police officer today is more difficult than it has ever been before: “One reason is the emergence of a deeply troubling attitude towards police in some parts of society. Far from respecting the men and women who put their lives on the line to protect us, it has become common in some quarters to scapegoat and disrespect police officers and disparage the vital role you play in society.”²

With these remarks, Attorney General Barr highlighted the challenge facing many law enforcement agencies across the country. Relations between law enforcement and some communities have been fraught with tension in recent years, and there have also been several deadly, high-profile attacks on police.

There is good news, though. In the Gallup organization’s long-standing Confidence in Institutions survey, law enforcement has consistently ranked high in public confidence. Gallup reports, “Just three institutions—the military (73 percent), small business (68 percent), and the police (53 percent)—have garnered majority levels of confidence in all polls Gallup has conducted on each measure over the past two decades.”³ In the most recent poll conducted, 84 percent of those surveyed stated they had either “a great deal” or “some” confidence in the police.⁴

While it is reassuring that the majority of Americans realize and appreciate the important role of law enforcement in our society, there is significant work to be completed to counter the negative messages that still persist. The stability of a free and civilized society hinges on not only a fair system of justice but, crucially, a justice system that is also perceived as fair. There are a number of ways law enforcement agencies and the community at large can ensure support, respect, and appreciation for the individuals who put their lives on the line to ensure the safety and well-being of the American people.

7.1 Messaging and Branding

Background

With the ever-present nature of social media and the 24/7 news cycle, the public demands information almost immediately. The narrative is set within the first few hours of an event occurring, or perhaps even sooner. If the narrative is negative, then it is often difficult to overcome. Law enforcement professionals must share the facts of an incident, to the extent possible, before the truth about what actually happened becomes irrelevant and lost in the noise

¹ Barr, William. Address at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 2020

² Ibid

³ Gallup’s American Confidence in U.S. Institutions, 2019

⁴ Ibid

DELIBERATIVE AND PRE-DECISIONAL

of other social media posts. Three billion people use social media, and many of those people rely on it as their primary source for news; therefore, the method of messaging by law enforcement is important.⁵

PULL QUOTE: “To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect.”⁶ - Principle number two of Sir Robert Peel’s Nine Policing Principles

While mass media has been the primary method that police agencies have relied on to ensure communities receive public safety messages and alerts, they are no longer the sole method to accomplish those same tasks in today’s world. Mainstream media cannot be the only platform law enforcement uses to connect with the public. Multiple online tools, including an endless array of social media platforms and blogs, enable community members to learn more about the reality of policing and the lives of law enforcement officers.⁷

Additionally, public celebrations like parades, notable civic or historic events, and community festivals are ideal places to both recognize the commitment and dedication of law enforcement personnel and encourage community members to show their support. Annual events such as National Night Out, a celebration of police–community partnerships, and National Police Week, the week when the nation commemorates the sacrifice of America’s fallen law enforcement officers, have also contributed to a positive image.⁸

Current State of the Issue

In today’s society, it is commonplace for law enforcement to be unilaterally labelled in an unflattering way. While all must acknowledge that, as a profession, constant improvement is a necessity, each agency must also make the effort to be part of telling its own story. The agency’s brand is an important part of its overall image, so ensuring that brand confidence is high takes additional work, but will eventually pay great dividends. As an example, over the past several years, isolated, high-profile incidents have reflected negatively on law enforcement and have dominated media coverage.⁹ The private sector has long understood the importance of marketing and branding when molding public perception.¹⁰ More recently, law enforcement agencies have come to realize the value in such efforts, particularly because if they do not tell their own stories, in their own words, and with their own voice, someone else will.

⁵ Kelsey Sunstrum, “How Social Media Affects Our Self-Perception,” Psych Central, July 8, 2018, <https://psychcentral.com/blog/how-social-media-affects-our-self-perception/>

⁶ Sir Robert Peele’s Policing Principles, Law Enforcement Action Partnership, Accessed April 28, 2020, <https://lawenforcementactionpartnership.org/peel-policing-principles/>

⁷ Cordner, Gary, Using the Web to Enhance Community Oriented Policing, Department of Justice Office of Community Oriented Policing Services, April 2013, <https://cops.usdoj.gov/RIC/Publications/cops-w0706-pub.pdf>

⁸ National Night Out. Accessed May 7, 2020. <https://natw.org/>

⁹ U.S. Commission on Civil Rights, Police Use of Force: An Examination of Modern Policing Practices, November 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>

¹⁰ Gronlund, Jay, Basics of Branding: A Practical Guide for Managers, May 15, 2013, <https://hbsp.harvard.edu/product/BEP226-PDF-ENG?itemFindingMethod=Collections>

DELIBERATIVE AND PRE-DECISIONAL

PULL QUOTE: “Now, more than ever, our communities and our country need to hear the messaging and talking points you already deliver at community events, academy graduations, and internally to your staff; only now, with social media you’re able to magnify this message to a broader community of residents and businesses you serve. Our collective absence on social media as law enforcement leaders has allowed the narrative to be told by others. This has to change.”¹¹ - Captain Chris Hsiung, Mountain View Police Department

7.1.1 Law enforcement agencies should have a strong social media presence and a comprehensive public outreach plan to consistently deliver reliable messaging to the public.

When local law enforcement agencies lack a social media presence, it allows a counter-narrative to develop and direct perceptions and attitudes. Law enforcement agencies should use social media to build a narrative that reinforces the work accomplished by the people in law enforcement, including stories that highlight the bravery, compassion, and dedication of their officers and show the people behind the badge. Agencies with limited resources or experience should look for partnership opportunities to share in these efforts (e.g., local government or neighboring agencies or local labor or representative organization).

PULL QUOTE: “Perception matters. The landing page of your website or social media can have a significant impact on the perception of your agency from outsiders. If citizens are already apprehensive of the police, it is best not to feature a SWAT truck on your website’s landing page.”¹² - Mike Phibbs, Officer in Charge of Special Projects, Richmond, Virginia, police department

Police leadership should look through a public lens to consider how well the public understands their agency’s mission and priorities, and then ensure the community’s priorities are reflected in the agency’s core values. According to Chief Doug Shoemaker of the Grand Junction, Colorado, police department, agencies should consider using an all-levels approach for their marketing strategy. Chief Shoemaker explained, “While it is certainly the chief’s job to provide vision and direction, one person cannot reasonably be expected to think of every best practice to better market the agency to the public. Why not gather ideas from others within the organization who may have insights that would be useful in this endeavor?”¹³

7.1.2 Law enforcement agencies must dedicate the appropriate personnel to regularly share positive stories via social media, print and broadcast media, community web sites, and other digital avenues.

Throughout the COVID-19 pandemic, law enforcement officers have stayed on the job, protected our communities, and offered assistance and guidance to anxious citizens. As they have performed these duties, they have put their health and well-being—as well as that of their families—in jeopardy. Law enforcement does not offer a work-from-home option. Agencies

¹¹ Hsiung, Chris. “The Case for Law Enforcement Leaders to be Present On-line: Best Practices for Chiefs and Executive Managers with Social Media Profiles,” *California Police Chief Magazine*, Spring 2019, https://www.policechiefmagazine.org/wp-content/uploads/August2019_WEB.pdf

¹² Phibbs, Mike, “Why Your Department Needs a Brand”, PoliceOne.Com, September 7, 2017, <https://www.policeone.com/chiefs-sheriffs/articles/why-your-police-department-needs-a-brand-siy1LBFgy8tUKUJ6/>

¹³ Shoemaker, Doug. “Finding Your Agency’s Identify: the All-Levels Marketing Approach,” *Police Chief Magazine*, August 2019, <https://www.policechiefmagazine.org/finding-your-agencys-id/>

DELIBERATIVE AND PRE-DECISIONAL

should disseminate appropriate messaging to highlight these and numerous other sacrifices regularly made by officers to remind the public of their tireless efforts and dedication.

To expand messaging efforts, law enforcement agencies should reach out to their national partners, community and business leaders, and labor and representative organizations to serve as third-party advocates. These advocates can routinely share examples of the positive work conducted by law enforcement agencies across the nation.

In addition, agencies should create local or regional partnerships to meet this purpose. Agencies should also partner with their state police chiefs associations to assist in this effort. When practical, appropriate, and applicable, these efforts could be coordinated with the agency's labor or representative organization, which may opt to conduct this type of outreach. Finally, positive demonstrations of support, appreciation, and recognition for police personnel are essential to convey a positive message, driving the police narrative to highlight community-based policing images and messages.

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In April 2020, as communities struggled with the new reality of COVID-19, the Apex, North Carolina, police department creatively used their resources and took to social media to share. A community member asked if police cars could ride through the neighborhood and show off their lights and sirens to the children who were sheltering at home. The department thought it would be a great opportunity for Chase from *Paw Patrol* to tag along. More requests were received after the department posted it on social media, and the department happily obliged. Officers dropped off a police backpack of goodies, snapped a few quick photographs (while practicing social distancing), and continued with the parade.¹⁴



¹⁴ John Letteney, Chief, Apex Police Department. Apex, North Carolina, email communication with the Respect for Law Enforcement and the Rule of Law Working Group, Katherine McQuay, April 24, 2020.

DELIBERATIVE AND PRE-DECISIONAL



Source: Apex, North Carolina, Police Department

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7.1.3 Law enforcement agencies must make certain that their social media technology and strategies are up-to-date and constantly evolving to ensure responsiveness to their community.

People have become accustomed to prompt and efficient responses when communicating electronically, and law enforcement agencies are not exempt. Agencies have a variety of opportunities to engage using various social media platforms. In many ways, social media platforms have become the primary method in which law enforcement interacts with their communities. Social media can be used to quickly and directly disseminate information to the public. As cell phones take the place of home computers, police agencies should tailor social media messaging to mobile platforms. Additionally, a traditional website should be maintained to ensure optimum accessibility, outreach, and engagement opportunities.

[CROSS REFERENCE TECHNOLOGY]

7.1.4 Law enforcement agencies should develop and maintain their relationships with local media outlets through proactive outreach efforts and regular meetings to provide timely information.

Law enforcement agencies should cultivate relationships with their local media to both enhance cooperation and develop positive stories about their work. These crucial relationships ensure the accuracy of the story and allows agencies to correct or expand the narrative when needed. Kevin Sylvester, Chief of Police of the Ossining, New York, police department, believes that strong police and media relationships “have resulted in accurate reporting on crime, as well as credit

DELIBERATIVE AND PRE-DECISIONAL

being given to individual staff members for their good work and dedication to service.”¹⁵

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Local news stations often showcase a regular feature highlighting the work of local law enforcement. In Las Vegas, Fox 5 produces “Behind the Badge.”



Source: <https://twitter.com/fox5vegas/status/1230542631190528002>

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7.1.5 Law enforcement agencies should publicly recognize the efforts of law enforcement officers through technology.

Law enforcement agencies may opt to use current technology to help establish trust within their community. For example, agencies that deploy body-worn cameras understand that such devices effectively demonstrate what officers are confronted with on a daily basis.¹⁶ Those interactions provide a unique perspective to those who may not otherwise support the efforts of law enforcement officers; therefore, they can be an effective tool to promote transparency and public trust. Departments must be judicious in the display or use of body camera footage, and they must be in compliance with all state and local laws before releasing this material.

[CROSS-REFERENCE RECRUITMENT AND TRAINING]

Public recognition efforts should be both frequent and purposeful. Beyond the annual National Police Week recognition for officers who have fallen in the line of duty, law enforcement agencies and the local labor or representative organizations should provide specific examples of heroism, compassion, and dedication by members of their organizations. Recognition is important for those on the front lines, not only for public support, but to reinforce that their work makes a difference to their coworkers.

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Many states offer “Back the Badge” license plates.

¹⁵ Sylvester, Kevin, “Perspectives,” *Police Chief Magazine*, August 2019, <https://www.policechiefmagazine.org/magazine-issues/august-2019/>

¹⁶ Chapman, Brent. “Body-Worn Cameras: What the Evidence Tells Us,” National Institute of Justice. November 14, 2018, <https://nij.ojp.gov/topics/articles/body-worn-cameras-what-evidence-tells-us>

DELIBERATIVE AND PRE-DECISIONAL



Source: <https://mvd.dor.ga.gov/motor/plates/PlateDetails.aspx?pcode=BB>

In Florida, Attorney General Ashley Moody organized and promotes the “Back the Blue” campaign, which honors individuals, businesses, and their efforts to foster positive relationships between law enforcement and the communities they serve.



Source: Florida Attorney General's Office

7.1.6 Law enforcement agencies must create and maintain guidelines or policies regarding the use of personal media accounts.

While employees of a law enforcement agency have the right to express themselves on social media, they should be aware how their posts may affect the image of their agency and the department's ability to effectively maintain the trust of the community it serves. The goal of achieving a proper balance between the department's interests and the First Amendment rights of their staff is paramount. Ideally, these policies should be vetted through both the agency's legal department and the appropriate representative or bargaining organization that represents the

DELIBERATIVE AND PRE-DECISIONAL

affected employees, if applicable. Such an understanding provides for “buy-in” at all levels within the agency and may reduce the chance of potential negative behaviors.

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The International Association of Chiefs of Police has a model policy for social media use:

IACP Law Enforcement Policy Center • Social Media: Concepts and Issues Paper

<https://www.theiacp.org/sites/default/files/2019-05/Social%20Media%20Paper%20-%202019.pdf>¹⁷

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Source: Mountain View Police Department

Mountain View Police Department Policy on Social Media

Department personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of this department for which loyalty and confidentiality are important, impede the performance of duties, impair discipline and harmony among coworkers, or negatively impact the public perception of the department.

As public employees, department personnel are cautioned that speech on and off duty, made pursuant to their official duties, “that is, that owes its existence to the employee's professional duties and responsibilities,” is not protected speech under the First Amendment and may form the basis for discipline if deemed detrimental to the department. Department personnel should assume that their speech and related activity on social media sites will reflect upon their position and this department.”¹⁸

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7.1.7 The Office of Community Oriented Policing Services should regularly collect and disseminate information about the positive work performed by law enforcement officers.

¹⁷ Social Media. International Association of Chiefs of Police. Accessed May 21, 2020.

<https://www.theiacp.org/sites/default/files/2019-05/Social%20Media%20Paper%20-%202019.pdf>

¹⁸ City of Mountain View Policies and Practices. Accessed April 13, 2020.

https://www.mountainview.gov/depts/police/info/policies_and_practices.asp

DELIBERATIVE AND PRE-DECISIONAL

The Department of Justice (DOJ) should maintain a public website with stories about the work accomplished by law enforcement across the nation. Additionally, DOJ executives and staff should highlight this positive work in presentations, blogs, op-eds, and other tools within public forums.

Additionally, agencies should recognize the value of highlighting the work they do when they interact off-duty within their community. Law enforcement officers' work "off the field" creates relationships with residents who otherwise would not have a chance to interact with law enforcement and reflects the character of the members of that agency. These community-oriented activities range from officers volunteering as baseball and football coaches to working with Big Brothers and Big Sisters and the Bigs in Blue program.

[CROSS-REFERENCE JUVENILE JUSTICE]

7.1.8 National law enforcement organizations should collaborate with major media consultants and outlets to develop a positive campaign about law enforcement.

Broadcast, print, and social media often present a skewed portrait of the day-to-day work of officers. More recently, law enforcement-focused reality shows have set the tone and garnered widespread attention and interest in policing; however, they tend to focus on the drama of policing rather than the daily service and community-oriented aspect. National law enforcement membership groups, think-tanks, and other criminal justice-related associations should develop private-public partnerships and create a more accurate and updated portrayal of the profession. The campaign should consider national advertisements, endorsements, and online programming to better accomplish this task.

7.1.9 National law enforcement membership groups and other associations that represent law enforcement should collaborate with businesses and major corporations to promote positive messaging for law enforcement.

National law enforcement agencies are in a unique position to create partnerships with the corporate world. They serve as third-party advocates and promote the positive work of law enforcement. Professional sporting organizations, such as the National Football League, the National Hockey League, or Major League Baseball, could present unique opportunities to reach a target audience. Partnerships beyond athletics should be considered to engage a broader target audience.

[CROSS-REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT]

7.1.10 Law enforcement agencies should establish and maintain strong police foundations.

A police foundation is a nonprofit entity that works to support the needs of a police department through a variety of ways. Police foundations not only raise money to support law enforcement initiatives, they also create and maintain important relationships between law enforcement and the community, generating enthusiasm for local agencies and the work that they do.

PULL QUOTE: "We have created a lot of positive energy for the Department. Once you get people involved, they love it. It's a great relationship building tool for the Department; and people are proud to assist the officers."¹⁹ - Glen Mowrey, Former Deputy Chief of the Charlotte

¹⁹ Glen Mowrey, Charlotte Mecklenburg Police Foundation, in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, April 17, 2020

DELIBERATIVE AND PRE-DECISIONAL

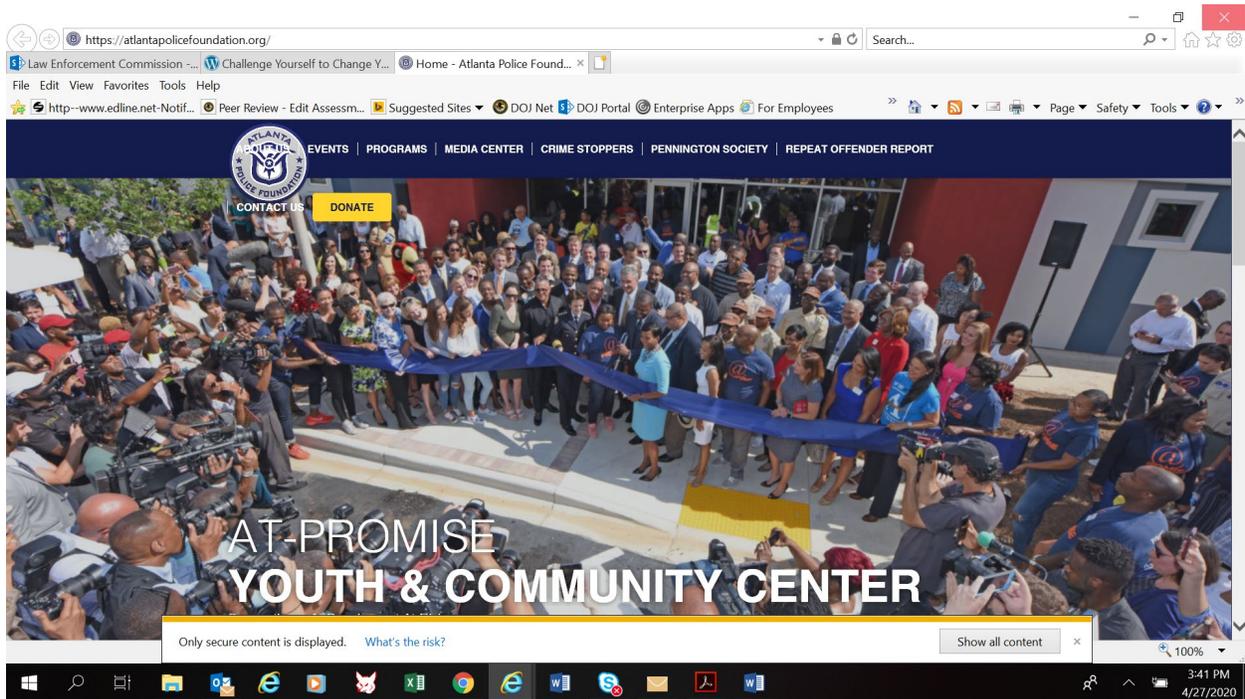
Mecklenburg Police Department; Board Member of the Charlotte Mecklenburg Police Foundation



Charlotte-Mecklenburg
POLICE FOUNDATION

Source: Charlotte-Mecklenburg Police Foundation

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Source: <https://atlantapolicefoundation.org/programs/community-engagement/at-promise/>

The Atlanta Police Foundation sponsored a report on repeat offenders:

<https://atlantapolicefoundation.org/wp-content/uploads/2019/10/AROC-Executive-Summary-100419-004.pdf>

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7.1.11 States should recognize the right of public safety employees to bargain collectively with their employers. Congress should enact legislation encouraging states to recognize the right of public safety employees to bargain collectively with their employers.

DELIBERATIVE AND PRE-DECISIONAL

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Benefits when local governments collectively bargained with their public safety officers include²⁰

- more community services using the same workforce
- increased responsiveness
- greater crime and fire prevention activity
- shared resources and talents for specific needs
- increased coverage to problem areas
- reduced incidents
- better vehicle investments
- better costs for special events
- more equitable pay system
- less confrontational bargaining

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7.2 Building Relationships

Background

Since Sir Robert Peel outlined his policing principles to London Metropolitan police in 1829, law enforcement has long recognized that policing must involve the community to be truly effective.²¹ Law enforcement should work to reduce crime and enhance public safety in conjunction with the work that takes place in the communities they serve (e.g., businesses, faith-based organizations, schools, and others).

PULL QUOTE: “While policing is demanding, it is also uniquely rewarding. It is one of our country’s highest callings, and we are blessed that there are men and women of character willing to serve selflessly so that their fellow citizens can live securely. We owe our officers the support and services they need to work their way through problems.”²² - Attorney General William Barr

At the same time, respect for law enforcement increases when such partnerships are forged. Often, common misperceptions can be overcome through open communication. Once perspectives are realized, both the law enforcement agency and the community benefit. When stereotypes and misunderstandings are worked through, years of false narratives can be

²⁰ U.S. Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation, May 1996, https://digitalcommons.ilr.cornell.edu/key_workplace/252/, (Page 36 of the report)

²¹ Law Enforcement Action Partnership, Sir Robert Peel’s Policing Principles, Accessed April 2, 2020, <https://lawenforcementactionpartnership.org/peel-policing-principles/>

²² Barr, William. Address at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 2020

DELIBERATIVE AND PRE-DECISIONAL

dissolved, and new relationships can be cultivated.²³ Respect for law enforcement increases when these new lines of communication remain open, which will also lead to increased public safety.

Over the years, programs that embrace a proactive and consistent outreach approach have proven effective in developing and sustaining relationships between law enforcement and the community. Too often, these programs are overlooked or considered to be elective only if there is time and staff available. However, such a casual approach is ill-advised, and law enforcement agencies that do not engage in these programs do so at their own peril. Respect for law enforcement continues to grow only by nurturing and sustaining these relationships; in turn, public safety also grows.

Strong community-based partnerships can lead to greater trust between police and the public they serve. In turn, this trust should evolve and encourage a greater willingness for community members to assist in crime reduction efforts. Another benefit of these relationships can be realized at the investigations level. Increased cooperation on crime can strengthen investigations and help police solve cases.

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Michael “Mick” McHale, President of the National Association of Police Officers (NAPO) says that one way to build relationships between law enforcement and the community is to ensure citizens that any complaint against an officer will be heard and thoroughly investigated. McHale says that NAPO supports the idea of “Comply, Then Complain.” Individuals, including youth, who are approached by a police officer should first “comply.” Then, if the individual feels they were treated unfairly or unlawfully, they can submit a formal complaint with guided assistance throughout the process. McHale says this process would help “rebuild trust with the community.”²⁴

In North Carolina, several agencies worked together to develop Public Service Announcements to explain “Listen, Explain, Comply, Complain.” Chief John Letteney, with the Apex, North Carolina, police department says, “Through the leadership of the North Carolina Association of Chiefs of Police, Regional Directors worked with local agencies and local media partners to develop these Public Service Announcements, which featured local chiefs. The PSAs allow the chiefs to be out front on this important topic, while also providing a guideline to help ensure safe police/citizen encounters and letting the community know that each agency has a process to investigate community concerns and are willing to do so in a professional and responsive manner.”²⁵

They explain that they train their officers to listen to individuals, then explain what they are doing and why. They ask individuals to comply with the officer and then, if they feel they were

²³ Stoughton, Seth, “8 Things We Still Get Wrong About Policing,” *Time* magazine, May 15, 2015, <https://time.com/3859400/policing-misconceptions/>

²⁴ McHale, Michael (Mick), in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, April 27, 2020

²⁵ Letteney, John, email communication with the Respect for Law Enforcement and the Rule of Law Working Group, June 15, 2020

DELIBERATIVE AND PRE-DECISIONAL

treated unfairly, to complain afterward.²⁶

Current State of the Issue

The belief that trust must work both ways and is an intrinsic part of community safety. Miriam Krinsky, Founder and Executive Director, Fair and Just Prosecution writes

Public safety is inextricably tied to public trust, which in turn is rooted in perceptions of justice and fairness. Crime rates are at a historic low in the U.S., and fortifying trust in the justice system is critical to continued efforts to promote public safety. Research has shown that when people perceive the justice system to be fair, they are more likely to believe the legal process is legitimate, comply with court orders, cooperate with police, and follow the law in the future, regardless of whether they “win” or “lose” their case. Also, community members need to know that accusations of misconduct against law enforcement officers will be fully, fairly and independently investigated.²⁷

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Source: Baltimore Police Department

When Baltimore Police Commissioner Michael Harrison took over the department in March 2019, he inherited an agency that was in disarray, with high levels of distrust between law enforcement and the community. He had to strike a balance between support for officers who were on the front lines and support for a community that did not feel respected by these officers. Commissioner Harrison implemented numerous changes to create a culture of accountability, which included hosting a series of community-based listening sessions and conversations with his officers. He learned the importance of not just making changes in the department, but also communicating those changes to the community: “It’s not how well you do it, but how many people know you do it well.” Although change takes time and building trust is a process, the foundation has now been laid.

Commissioner Harrison advises that chiefs who are new to a department should rely on a change management strategist who communicates what is being accomplished to address these matters.

²⁶ You Tube. Listen, Explain, Comply, Complain. November 9, 2015. <https://www.youtube.com/watch?v=SXTDQ-Y63go>

²⁷ Miriam Krinsky, Founder and Executive Director, Fair and Just Prosecution. E-mail message to the President’s Commission on Law Enforcement and the Administration of Justice. April 29, 2020.

DELIBERATIVE AND PRE-DECISIONAL

He believes it to be imperative to a smooth transition process as an agency works to achieve better police–community relations.²⁸

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Tru Pettigrew is the Founder of Tru Access, an organization that helps individuals and organizations build bridges across issues that divide them most. Much of his work focuses on building bridges between law enforcement and the community, with programs like “Barbershop Rap Sessions.” Pettigrew says getting together and talking is the key: “We can’t allow our primary source of information to come from people who like us.”²⁹



Source: Tru Access

[CROSS REFERENCE JUVENILE JUSTICE]

Rhonda McKitten is the Youth Policy and Training Specialist for the Philadelphia Police Department and Project Director for Philadelphia’s Juvenile Assessment Center and Youth Arrest Reform Project as a Stoneleigh Fellow.

“Almost all of officers’ juvenile justice training time is devoted to procedural rules and requirements—NOT how to interact with youth, effectively de-escalate situations involving youth, or identify signs of disabilities that are most common in youth who get arrested.”³⁰

²⁸ Michael Harrison, Commissioner, Baltimore City Police Department, in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, April 24, 2020

²⁹ Tru Pettigrew, Tru Access, in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, April 27, 2020

³⁰ Rhonda McKitten, Stoneleigh Fellow, Philadelphia’s Juvenile Assessment Center and Youth Arrest Reform Project, Power Point: *Tools and Techniques for Law Enforcement Interactions with Youth*, Presentation to the Respect for Law Enforcement and the Rule of Law Working Group, April 24 2020.

DELIBERATIVE AND PRE-DECISIONAL

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7.2.1 Law enforcement agencies should continue to be devoted to community outreach and developing and maintaining strong, positive relationships with various segments of the community, regardless of a change in leadership or budget; efforts at building relationships must be consistent and ongoing.

[CROSS REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT #8.2.6]

Implementing strategies to accomplish stronger police–community relations can be daunting. Agencies looking to make these positive changes should look to other successful programs that already exist, such as citizen and youth police academies, clergy–police partnerships, youth mentoring, and partnerships with the business community.

In North Carolina, the Fayetteville Police Department prioritized community outreach by focusing on a variety of community-based engagement opportunities. The department identified and understood their audiences and recognized the need to use a diverse approach that covered a variety of interests, including community empowerment response teams, community watch groups, Citizens on Patrol, Coffee with a Cop, police activities leagues, and a Police Explorer program..³¹

In some communities, the local labor, fraternal, or representative organization sponsors these activities, which can be leveraged by the agency.



Source: Fayetteville, North Carolina, police department

7.2.2 Law enforcement agencies should engage in educational outreach efforts with the community to increase transparency, deepen relationships, and provide a knowledge of and appreciation for the daily responsibilities of law enforcement.

An informed community can help improve relationships between law enforcement and the communities they serve. When community members understand the daily responsibilities of an officer, the decisions they face, and the breadth of assistance they are expected to provide every day, they can become law enforcement’s strongest advocates and supporters. From Citizens

³¹ City of Fayetteville, Community Policing, Accessed March 23 2020. <https://fayettevillenc.gov/government/city-departments/police/community-policing>

DELIBERATIVE AND PRE-DECISIONAL

Police Academies to after-school programs, efforts that give citizens a greater awareness of the work of law enforcement can go a long way toward increasing respect for law enforcement.

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Source: Pinellas County Sheriff's Department

Pinellas County Sheriff's Citizens Academy

The Sheriff's Citizens Academy (SCA) is an 11-week program in Pinellas County, Florida, that offers residents an exclusive, behind-the-scenes look at the sheriff's office. Classes are held midweek in the evenings, and the program is free of charge and includes a meal each class night.³²

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7.2.3 Law enforcement agencies must ensure that their relationships with the clergy, community groups, businesses, and all other groups are not limited to the law enforcement executive. These relationships should filter throughout the organization and be built from the bottom up, and officers should be the lynchpins for establishing those relationships.

While strong relationships between law enforcement executives and community stakeholders are essential, those relationships should not only exist at that level. Many others throughout the organization, particularly line-level personnel, can benefit from those relationships.

According to Reverend Markel Hutchins, founder of "One Cop, One Precinct," "when a law enforcement executive leaves a department, their relationships go with them."³³ The goals of One Cop include engaging community members to assist in improving public safety and strengthening opportunities for engagement between patrol officers and their communities. Reverend Hutchins stresses that these relationships must permeate the department and not simply exist at the leadership level.

[CROSS-REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT]

³² Sheriffs Citizens Academy. Pinellas County Sheriffs Office. Accessed April 21, 2020.

<https://www.pcsoweb.com/program-services/citizens-academy>

³³ Reverend Markel Hutchins, One COP, in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, April 3, 2020



Source: One COP

7.2.4 Law enforcement agencies should partner with other government entities to incorporate well-established efforts, such as crisis intervention teams, to improve outcomes for programs designed for special populations.

Expanding services to include crisis teams or community empowerment response teams would help law enforcement officers by partnering with or engaging trained specialists to assist persons with mental health disorder or other serious issues.

[CROSS-REFERENCE SOCIAL PROBLEMS]

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IACP’s One Mind Campaign “seeks to ensure successful interactions between police officers and persons affected by mental illness. The initiative focuses on uniting local communities, public safety organizations, and mental health organizations so that the three become “of one mind.”

The principles of the program are: establishing a clearly defined and sustainable partnership with a community mental health organization; developing a model policy to implement police response to persons affected by mental illness; training and certifying sworn officers and selected non-sworn staff in mental health first aid training or other equivalent mental health awareness course; and providing crisis intervention team training.³⁴



COMMUNITY • PUBLIC SAFETY • MENTAL HEALTH

Source: International Association of Chiefs of Police

[END TEXT BOX]

7.2.5 Law enforcement should maintain regular and positive interactions at schools and

³⁴ One Mind Campaign, International Association of Chiefs of Police, Accessed May 8, 2020.
<https://www.theiacp.org/projects/one-mind-campaign>

DELIBERATIVE AND PRE-DECISIONAL

with youth in general, especially by taking part in programs that pair youth and law enforcement to establish relationships and build trust.

Today's youth are tomorrow's citizens, and law enforcement agencies should take time to foster those relationships. Working with local schools within their jurisdiction, agencies should use school resources officers and also bring in other law enforcement officers for presentations or assemblies at the elementary, middle, and high school level. These visits can strengthen bonds while conveying the role of law enforcement within the community and the benefits of working together. Additionally, interacting with officers in these settings can help break down traditional barriers between youth and police and enhance potential recruiting strategies.

[CROSS-REFERENCE JUVENILE JUSTICE]

[BEGIN TEXT BOX]



Source: National Association Police Athletic/Activities League

The CEO of the National Police Athletic/Activities Leagues (PAL), Jeff Hood, says that PAL is all about relationship building. To keep those relationships going through the COVID-19 pandemic, Hood conducted weekly calls with youth and law enforcement called “Community Connection,” where he invited celebrity guests every week. Some accomplished individuals have been former PAL kids, including Muhammad Ali, George Forman, Colin Powell, and Alicia Keyes.³⁵

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Safe & Sound is an independent, non-profit organization in Milwaukee, Wisconsin. Our mission is to unite residents, youth, law enforcement and community resources to build safe and empowered neighborhoods. As part of our commitment to the community we also serve as the Prevention Initiative of the North Central High-Intensity Drug Trafficking Area (HIDTA).

Our approach centers on three constituent groups—adult residents, youth, and law enforcement—each essential for positive, sustained change in neighborhood safety. We work to build bridges between and amongst these groups to increase collective efficacy, which is one of the two main predictors of crime and safety in a neighborhood.”³⁶

³⁵ Jeff Hood, CEO, National Police Athletic/Activities Leagues, in discussion with the Respect for Law Enforcement and the Rule of Law Working Group, May 1, 2020

³⁶ Safe and Sound. What We Do, Accessed April 23, 2020. www.safesound.org

DELIBERATIVE AND PRE-DECISIONAL

Bree Spencer, Director of Technical Assistance and Evaluation, Safe & Sound

[END TEXT BOX]

7.3 Respect for Law Enforcement and the Rule of Law by the Executive Branch

Background

PULL QUOTE: “Far from respecting the men and women who put their lives on the line to protect us, it has become common in some quarters to scapegoat and disrespect police officers and disparage the vital role [they] play in society.”³⁷ - Attorney General William P. Barr

Law enforcement officers across the country risk their lives every day to protect communities and maintain the functioning of a civil society. Respect for law enforcement and the rule of law is a critical part of the equation that ensures our safety and well-being. As writer and commentator Sanjay Sanghooe puts it, “As a nation we strive to be free. Yet freedom comes with a responsibility to be civil towards our fellow citizens. Respect for law enforcement is a vital part of that. It is not a . . . ‘social norm of submissive behavior towards authority’ but a social contract that makes us a civilized nation. We follow laws because that is the only way that a sane society can function without constant friction and possible violence. The alternative is anarchy.”³⁸

Respect for law enforcement and the rule of law must permeate all levels of society.³⁹ State, local, and tribal executives should recognize that they set the tone. Governors, mayors, city managers, county executives, U.S. attorneys, prosecutors, and all elected officials should demonstrate respect for the rule of law and the men and women responsible for enforcing the law.⁴⁰

Current State of the Issue

Certain recent trends in criminal justice have imposed new challenges on law enforcement. In California, for example, the Police Officers and Research Association of California (PORAC) reports,

California’s experiments in criminal justice reform have had a decidedly negative impact on public safety in California, and made it harder and more dangerous for peace officers to do their jobs and serve their communities. . . . Not only did the early release or reduced sentences offered to many offenders allow them to restart their criminal careers ahead of

³⁷ Barr, William. Address at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 2020

³⁸ Sanghooe, Sangay. “Why We Should Respect Law Enforcement.” HuffPost, 12/22/2014, https://www.huffpost.com/entry/why-we-should-respect-law_b_6367102?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAA-NlzntE7loLkNeXCbueFpB2b467A2nxKakMdyMHTifBiI7c8EM-1_tDISaLQ-5G00jX_UFygQr2yAyLGyZr6uBDsXSwuefQ3_IQTZyfwWdviTkzaqeW4M0Tfx7y9cCJ6EYI7hnBVXDPBy0MsvG7ZxT1wrMjaMX6iLRoBi4RfqG

³⁹ American Bar Association. “Rule of Law in American Life: A Long and Intentional Tradition.” August 22, 2019, https://www.americanbar.org/groups/public_education/resources/rule-of-law/rule-of-law-in-american-life--a-long-and-intentional-tradition/

⁴⁰ Ibid

DELIBERATIVE AND PRE-DECISIONAL

schedule, the new influx of former inmates in California communities has tied up already meager law enforcement resources, allowing other criminals space to escape justice. With all of the responsibilities being imposed on modern law enforcement—from the use of expensive and time-consuming technology, to dealing with the impacts of illegal immigration and drug trafficking, to serving as first responders, to a seemingly growing population impaired by mental illness—our resources are already overstretched.⁴¹

In addition, the “progressive prosecutors” phenomenon, which is happening in several cities across the nation, has concerned law enforcement and others in the criminal justice system with what they view as selective enforcement of the law. *The Washington Post* criminal justice reporter Marc Berman explains, “Progressive prosecutors, as they are generally known, have been elected on platforms that include abandoning cash bail, declining low-level charges, not pursuing marijuana cases and closely scrutinizing police conduct, in efforts to change a system that they say over-incarcerates and disproportionately punishes poor people and racial minorities.” But, Berman continues, other prosecutors say that this is not the role of a prosecutor. Berman says, “They argue that you can't just look at a class of crimes and decide not to prosecute them. And that is what some of these progressive prosecutors have done, is they've said that they're not going to pursue certain crimes. Some drug possession, marijuana possession and things like that.”⁴²

The limits of prosecutorial discretion continues to be debated. In discussing questions such as which crimes to prosecute, which charges to drop, how severe a sentence should be, or whether to accept a plea deal, Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF) writes,

These decisions are described as prosecutorial discretion for the simple reason that they are decisions that fall squarely within the authority of prosecutors and reflect the prosecutor's view of the appropriate priorities for her office in a particular jurisdiction. The exercise of this discretion is particularly appropriate where prosecutors are elected—often on a platform that sets out the candidate's proposed priorities to voters, who then elect a prosecutor with the express expectation that those priorities will be pursued.⁴³

But in Philadelphia, United States Attorney William McSwain (Eastern District, Pennsylvania) has been in a public battle with Philadelphia District Attorney Larry Krasner since he was elected, accusing Krasner of being soft on crime and criminals, ignoring the law, and forcing McSwain to increase prosecutions of violent offenses.⁴⁴

7.3.1. Prosecution offices should train incoming prosecutors on the importance of enforcing the law.

⁴¹ Brian Marvel, President, Peace Officers Research Association of California, email communication to the President's Commission on Law Enforcement and the Administration of Justice, February 27, 2020

⁴² Berman, Mark. “America's new ‘progressive prosecutors’ are getting pushback.” *Washington Post*. November 12, 2019.

⁴³ Sherrilyn Ifill, President and Director Counsel NAACP Legal Defense and Educational Fund, email statement provided to the President's Commission on Law Enforcement and the Administration of Justice, April 29, 2020

⁴⁴ Oprysko, Caitlin. “I am fed up with it’: Philadelphia U.S. attorney torches local D.A. after police standoff,” *Politico*, August 15, 2019

DELIBERATIVE AND PRE-DECISIONAL

[CROSS REFERENCE INTERSECTION OF CRIMINAL JUSTICE PERSONNEL]

Principled adherence to the rule of law should be instilled in new generations of prosecutors. They should hear about the detrimental impact that failing to prosecute duly enacted laws can have on both the community and on officer morale.

Training should improve prosecutors' understanding of the effort and resources that officers put into each arrest and the risks that officers encounter in the line of duty. Training should also highlight the importance of the prosecutor's role to work alongside law enforcement officers to secure justice within a community. This training can include ride-alongs or periodic round tables with police departments to help a new prosecutor understand the perspective of law enforcement officers.

New prosecutors should be trained on the importance of enforcing duly enacted laws, the impact of dismissing cases absent merited diversion, and the impact that categorically refusing to enforce the law has on community and police morale.

Training a novice prosecutor on the importance of the rule of law can empower and boost the morale of both the prosecutor and the law enforcement officer. The new prosecutor will be better equipped to enforce duly enacted laws, as they will have the data and information on the importance of their role and cases. This training will also improve respect for law enforcement officers and their relationship with the prosecuting agency. A new prosecutor will be more motivated to enforce the law and cases that officers have charged because they will have a better understanding of the effort put into each case.

Training opportunities are critical in the effective and competent investigation, review and prosecution of criminal offenses. To that end, elected prosecutors should endeavor to provide those critical tools to enhance success for the fair and competent prosecution of all criminal offenses to those prosecutors under their charge. New prosecutors, in particular, benefit from multiple, varied trainings which inspire confidence and guidance for better job performance. The leadership necessary to provide these training opportunities must start from the top encouraged and supported by the elected prosecutor.

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Prosecutor training is provided by the National District Attorneys Association, including training specifically geared to working with law enforcement:

“NDAA provides extensive training for prosecutors and members of the prosecution team throughout the year, including multidisciplinary learning opportunities with law enforcement, other criminal justice professionals, and community stakeholders. In focusing on prosecutor and police relations, NDAA has presented sessions such as Police/Prosecutor Relations, Challenges and Solutions for Policing, Prosecuting, and Accountability in Rural Communities, Law Enforcement Challenges to Domestic Violence, and working collaboratively within a multi-disciplinary team in child abuse and domestic cases.” - Nelson Bunn, Executive Director, National District Attorneys Association⁴⁵

[END TEXT BOX]

⁴⁵ Nelson Bunn, Executive Director, National District Attorney's Association, Email to the Respect for Law Enforcement and the Rule of Law Working Group, May 27, 2020.

DELIBERATIVE AND PRE-DECISIONAL

7.3.2 Prosecutors should practice transparency with charging decisions.

While law enforcement officers have the authority to arrest and charge suspects, prosecutors have absolute discretion in whether or not to bring formal charges. Charging decisions can range from bright-line analysis to increasingly complex decision-making. Complex charging decisions can involve multiple witness statements and may require weighing the quality and quantity of the evidence in addition to weighing the credibility of a victim or witness. Cases are unique in facts and circumstance; therefore, prosecutors are properly and fairly afforded broad discretion in making charging decisions.

Considering the volume of criminal charges filed each year, routine criminal charges garner little controversy. Additionally, states and jurisdictions vary in their practice of disclosing charging decisions and collecting case resolution data. However, where a community or the nation has been gripped by a high-profile case, the prosecuting office should be transparent in their decision-making process on whether to proceed with a case or how a case was resolved.

An example of engaging in transparency can be found in the Los Angeles Police Department's critical incident review policy. LAPD's policy states that "video evidence in the Department's possession of critical incidents involving LAPD officers be released to the public within 45 days of the incident."⁴⁶ It goes on to say that "This release shall consist of relevant video imagery that depicts the actions and events leading up to and including the critical incident. Relevant video imagery is video and accompanying audio footage that is typically considered by the Chief of Police, Board of Police Commissioners, and criminal prosecutors to determine the propriety of an officer's conduct during such critical incident. The release of video shall be accompanied by additional information to provide context based on the evidence available at the time of release."⁴⁷

Visitors to LAPD's website can find video of a critical incident, narrated and put in context by a public information officer, who also explains their policy and the steps in an investigation.

Additionally, agencies or prosecutor's offices should consider the use of an independent prosecutor or an independent review agency before making charging decisions in all use-of-force cases. Many agencies turn these cases over to a neighboring jurisdiction, an inspector general's office, a district attorney, or a panel that has been set-up for the sole goal of investigating these cases. Prosecutors could also consider a policy of sending all such cases to a grand jury.

Transparency in charging remains a critical issue. In 2014, national protests erupted after an 18-year old black man was shot and killed during an altercation with a 28-year old white police officer in Ferguson, Missouri. A grand jury was called and ultimately decided not to indict the officer. To announce the decision, St. Louis County's Prosecuting Attorney Robert McCulloch held a press conference summarizing the evidence the grand jury considered that led to its decision not to indict. McCulloch noted, "Many witnesses made statements inconsistent with other statements they made and also conflicting with physical evidence, some were completely refuted by physical evidence." He provided examples of inconsistencies in the evidence, discussed the applicable law, summarized the process taken by the grand jury, and shared that

⁴⁶ Los Angeles Police Department. Board of Police Commissioners Critical Incident Video Release Policy. February 20, 2018. http://www.lapdonline.org/home/news_view/63555

⁴⁷ Ibid

DELIBERATIVE AND PRE-DECISIONAL

evidence and the grand jury testimony of the witnesses were to be released at the conclusion of the press conference. McCulloch's press conference did not insulate St. Louis from community dissent over the grand jury's decision; however, it is an effective example of transparency in charging decisions and helped promote a perception of trustworthiness.⁴⁸

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In a speech to the Fraternal Order of Police annual conference in New Orleans in August 2019, Attorney General Barr denounced prosecutors who are not aggressively enforcing the law. He said that having such prosecutors is “demoralizing to law enforcement and dangerous to public safety” and that they “spend their time undercutting the police, letting criminals off the hook, and refusing to enforce the law.”⁴⁹

Barr said that cities with prosecutors who refuse to prosecute “lower-level drug offenses” are cities that “are headed back to the days of revolving door justice. The results will be predictable. More crime, more victims.”⁵⁰

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7.3.3 Prosecutorial authorities should have publicly available written guidelines that include enforcement priorities corresponding with community crime data and proven strategies for reducing crime. Decisions to not to charge offenses that are inconsistent with those guidelines should be publicly available and explained either in writing or in open court.

Prosecutors must have discretion in prosecuting cases to account for case strengths and weaknesses and to accommodate the pursuit of successful criminal justice objectives. However, a system of accountability should be in place to determine if a prosecutor abuses that discretion. In jurisdictions where the prosecutor refuses to enforce a law, the executive branch takes over the role of the legislative branch by autonomously choosing which laws to implement. This practice erodes respect for law enforcement, the rule of law, and the principle of the separation of powers, while also diminishing the importance of justice for victims. To promote accountability while preserving a prosecutor's discretion, prosecution offices should have written guidelines for enforcement priorities that correspond with community crime data and proven strategies for reducing crime that are shared with the public. Prosecutors should be required to make case-management decisions available to the public if the decision deviates from those guidelines.

7.3.4 Each state should create state-level oversight committees that would review cases that a prosecutor decides not to prosecute, when that decision results from a blanket policy not to prosecute certain categories of crimes.

⁴⁸ Shalby, Colleen, "Protesters react to Ferguson Grand Jury decision not to indict Darren Wilson," *PBS News Hour*, November 24, 2017, <https://www.pbs.org/newshour/nation/follow-reaction-ferguson-grand-jury-decision>

⁴⁹ Barr, William. Address to Fraternal Order of Police Annual Conference. New Orleans, LA. August, 2019.

⁵⁰ Ibid

DELIBERATIVE AND PRE-DECISIONAL

The discretion of the prosecutor is the most effective tool in the prosecutor's toolkit.⁵¹ Professional prosecutors exercise discretion in meaningful and thoughtful ways, yet some prosecutors exceed their role by ignoring statutory mandates.

Prosecutors in several cities and jurisdictions have stated that they will not prosecute certain cases, such as those involving shoplifting or thefts of personal items under a certain dollar amount, low-level drug offenses, certain marijuana cases, or driving with an invalid license.

When a prosecutor unilaterally decides to not prosecute an entire category of crimes (i.e., deems it a low-level offense that does not warrant prosecution or otherwise fails to prosecute a case where probable cause for an arrest is present) that prosecutor is usurping legislative authority. These laws have been duly enacted by an elected legislative body, and the public has a reasonable expectation that breaking these laws will result in prosecution.

As an alternative, prosecutors should consider diversionary programs. According to the DOJ, pretrial diversion (PTD) is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the U.S. Probation Service. In the majority of cases, offenders are diverted at the pre-charge stage. Participants who successfully complete the program will not be charged or, if charged, they will have the charges against them dismissed; unsuccessful participants are returned for prosecution.

The major objectives of pretrial diversion are to

- prevent future criminal activity among certain offenders by diverting them from traditional processing into community supervision and services
- save prosecutive and judicial resources for concentration on major cases
- provide, where appropriate, a vehicle for restitution to communities and victims of crime
- have a period of supervision that does not exceed 18 months, but may be reduced.⁵²

PULL QUOTE: "In some instances, it appears we're going so far that we're putting the criminal and their interest in front of the victim's interest. . . . It just appears to us that the prosecutors are starting to take the law from misdemeanor areas and applying that mindset to more serious crimes like gun violations."⁵³ – Chief Art Acevedo, Houston Police Department; head of the Major Cities Chiefs Association

Contrary to popular belief, a prosecutor does not manage the entire criminal justice system, and they do not have undue influence and oversized power that manipulates outcomes in all criminal matters. This narrative marginalizes law makers, judges, juries, defense counsel, and others in the criminal justice system. A state-level mechanism to review these cases would help restore public trust that duly enacted laws are being followed.

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⁵¹ Davis, Angela. "The Power and Discretion of the American Prosecutor." *Droit et Cultures*. Accessed April 30, 2020. <https://journals.openedition.org/droitcultures/1580>

⁵² Department of Justice. Pre-Trial Diversion Program. <https://www.justice.gov/jm/jm-9-22000-pretrial-diversion-program>

⁵³ Jackman, Tom. "In Some Big Cities, Reform-Minded Prosecutors and Big City Police Chiefs Have Been At Odds. Here's What Happened When They Met in DC." *Washington Post*. July 17, 2019

DELIBERATIVE AND PRE-DECISIONAL

From USA Today, February 8, 2020 -- “New, More Progressive Prosecutors Are Angering Police, Who Warn Approach Will Lead to Chaos”⁵⁴

James Pasco, executive director of the National Fraternal Order of Police in Washington, D.C., echoes those concerns. He condemns the “cherry-picking approach where prosecutors pick what laws are important to police” and says ultimately police pay the price.

“Police officers sense their lives are in danger if they feel the prosecutor doesn’t have their back,” Pasco says. “You arrest people who are breaking the law, but sometimes they’re then not even held. That has a chilling effect on the enthusiasm of officers.”

Ultimately, Pasco says, the result of progressive prosecutorial policies is “chaos and anarchy,” and he predicts the end result will be a pendulum swing back to tough-on-crime policies.

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7.3.5 State legislatures should enact stronger financial penalties, including adequate monetary awards of restitution, to compensate victims of crime.

When a prosecutor makes a decision not to prosecute certain crimes, it often results in collateral damage to communities and further harms the victim. For example, business owners suffer economic losses from shoplifting. Individuals have to endure the loss of personal property, with no reimbursement, when personal theft is deemed to be at a financial level lower than the threshold to prosecute.

Essex County, Massachusetts, District Attorney Jonathan Blodgett says that, all too often, the discussion around criminal justice reform ignores the victims of crime. Blodgett says, “The crime victim is the only one in the courtroom who didn’t ask to be there, who has suffered an incalculable loss that cannot be restored. Most importantly, the only voice for the victim, in every courtroom in this country, is that of the prosecutor. Their voices must be heard and respected.”⁵⁵

Relieving defendants of accountability and personal responsibility by not charging someone of a crime results in no mechanism to provide financial restitution to victims and does little to deter criminals. This also causes further distress to those they have victimized.

7.3.6 The Bureau of Justice Statistics should ensure that annual reports be provided with timely information on the number of individuals incarcerated in jails and prisons in the United States. This information should be widely distributed.

The Bureau of Justice Statistics (BJS) reports on prisoners, jail inmates, probationers, and parolees should be released annually in the proceeding fall (e.g., 2018 data in fall 2019). It is vitally important that this critical information be collected and released in a timely fashion.

[CROSS-REFERENCE DATA AND REPORTING]

Providing timely, accurate information on the number of individuals incarcerated in the United States will help correct inaccurate narratives, including a false narrative that the number of individuals incarcerated in the U.S. continues to increase. The most recent report on prisoners

⁵⁴ Della Cava, Marco. “New, More Progressive Prosecutors Are Angering Police, Who Warn Approach Will Lead to Chaos,” *USA Today*. February 8, 2020

⁵⁵ Blodgett, Jonathan, email communication to the Respect for Law Enforcement and the Rule of Law Working Group, June 15, 2020.

DELIBERATIVE AND PRE-DECISIONAL

from the Bureau of Justice Statistics found,

the number of prisoners under state or federal jurisdiction decreased by an estimated 24,000 (down 1.6 percent) from 2017 to 2018, and by 143,100 (down 9 percent) from 2008 to 2018. In 2018, the combined state and federal imprisonment rate (431 sentenced prisoners per 100,000 U.S. residents) was the lowest since 1996 (427 per 100,000). The imprisonment rate fell 2 percent from 2017 to 2018 and 15 percent from 2008 to 2018. From 2008 to 2018, the imprisonment rate dropped 28 percent among blacks, 21 percent among Hispanics, and 13 percent among whites.⁵⁶

This report should also continue to include the number of prisoners who are incarcerated while on probation. The report also found that “67 percent of admissions to state prisons and 90 percent of admissions to federal prisons in 2018 were on new court commitments. Thirty percent of state and 10 percent of federal admissions were due to post-custody supervision violations. Five states admitted more than half of their prisoners for violating conditions of post-custody supervision: Washington (75 percent), Idaho (65 percent), Vermont (65 percent), Utah (52 percent), and New Hampshire (52 percent).”⁵⁷

Other statistics that should be collected and widely shared include the number of defendants who are serving time for non-violent felonies; the percentage of those individuals who are released in under a year; and how many individuals who are currently serving time for violent crimes have prior arrests.

Additionally, one must consider how a “violent criminal” is defined. In some cases, inmates are determined to be non-violent because they were convicted of an offense (i.e., drug possession) where that title is not applied. The original case may have actually been a violent felony with weapons or an assault; however, if the other charges were not brought or if there was a plea bargain, the offender is then officially labeled non-violent. This can affect the individual’s charging status, whether they remain in detention, and the outcome of their sentencing.⁵⁸

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In 2019, the Florida Sheriffs Association created the Florida Sheriffs Research Institute to conduct comprehensive research on public safety and to make policy recommendations about the criminal justice system. One of their findings states,

“A Summary of Results Data from the Florida Department of Corrections (FDC) establishes that most inmates incarcerated in Florida’s prisons (56 percent) have been previously convicted of violent offenses. Despite this fact, advocates for eliminating minimum mandatory sentences and releasing drug offenders 35 percent earlier than their judge-imposed sentences have recently identified these repeat criminals as low-risk, non-violent offenders. An analysis of inmate data from the Department of Corrections shows this assertion is wrong. A recent analysis examined the criminal history of 10,917 inmates in FDC custody as of October 2019 who were convicted of a drug-related crime. These inmates accounted for a total of 394,019 prior criminal charges and 194,011 prior

⁵⁶ Carson, E. Ann. “Prisoners in 2018.” Bureau of Justice Statistics. April 2020. <https://www.bjs.gov/content/pub/pdf/p18.pdf>

⁵⁷ Ibid

⁵⁸ “What Happens in a Felony Case.” United States Attorney’s Office Northern District of Illinois. Updated July 24, 2015. <https://www.justice.gov/usao-ndil/programs/vwa-felony>

DELIBERATIVE AND PRE-DECISIONAL

criminal convictions, or an average of 18 convictions per inmate, prior to their current incarceration.”

[END TEXT BOX]

7.3.7 Each state’s department of corrections should produce an annual report on statewide incarceration rates and the characteristics of those incarcerated with certain uniform data. These reports should be shared with the media and the public while ensuring that they comply with that state’s public record guidelines.

To provide the public with a more accurate picture of who is being incarcerated and why, this information should include the

- offenses resulting in incarceration
- number of prior offenses and criminal histories of those incarcerated
- number of probation offenses of those incarcerated
- number of individuals incarcerated while on probation
- total number of arraignments of those incarcerated

Sometimes, the prevailing narrative concerning incarcerated individuals is at odds with the data. When that is the case, public opinion can be based on inaccurate information and a misunderstanding of the criminal justice system. Accurate statistics could correct this. Uniform information could help compare the relative success of states’ criminal justice policies.

7.3.8 The Bureau of Justice Statistics should annually release its report on police–public contact. The Bureau of Justice Statistics should ensure this information is released within 12 months of the data collection reference year (e.g., 2019 data should be released by year-end 2020).

Currently, BJS releases its police–public contact report every three years; however, these statistics should be updated to present timely and accurate information. The DOJ should ensure this information is widely and regularly distributed to fully inform the public about these interactions.

In the most recent BJS report from 2015, 1.6 percent of those who reported encounters with police said that the encounter involved the threat of use or force or actual use of non-lethal force.⁵⁹ Reports supplied by local law enforcement agencies also indicate that, among the millions of contacts between officers and citizens every day, the incidents or threats of non-lethal force represents a small percentage of those contacts. Such an effort, completed regularly on an annual basis by BJS, would provide an informed narrative of the vast number of interactions between law enforcement and citizens.

The DOJ should combine this information with the most current information produced by the FBI’s National Use-of-Force Data Collection. The combination of these statistics will provide a more accurate picture of the nature of law enforcement’s interactions with the public.

⁵⁹ Davis, Elizabeth and Whyde, Anthony. Contacts Between Police and the Public, 2015. *Bureau of Justice Statistics*. October 2018.

DELIBERATIVE AND PRE-DECISIONAL

Heather MacDonald, with the Manhattan Institute, argues that use-of-force numbers must be taken in context. In a Wall Street Journal opinion piece she writes that, in spite of recent coverage of officer-involved deaths, it isn't "representative of the 375 million annual contacts that police officers have with civilians."⁶⁰

[CROSS-REFERENCE DATA AND REPORTING]

[BEGIN TEXT BOX]

The F.B.I.'s National Use-of-Force Data Collection

"The voluntary collection gathers data on law enforcement use-of-force incidents resulting in the death or serious bodily injury of a person, and incidents when a law enforcement officer discharges their firearm at, or in the direction of, a person. The goal of collection is not to offer insight into single incidents, but to provide a comprehensive view of the circumstances, subjects, and officers involved in use-of-force incidents nationwide. Participation will promote transparency and accountability between law enforcement and the communities they serve, and can facilitate dialogue and educate the public concerning how law enforcement is trained on use of force."⁶¹

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Source: <https://www.fbi.gov/file-repository/ucr/use-of-force-flyer.pdf/view>

A recent study published in the *Journal of Trauma and Acute Care Surgery Injuries* found that more than 99 percent of arrests by police are made without the use of physical force.⁶² Rafael Mangual from the Manhattan Institute reports, "that study, undertaken by a team of doctors and criminologists, analyzed more than one million service calls to three midsize police departments in North Carolina, Louisiana, and Arizona. Those calls resulted in 114,064 criminal arrests. In making those arrests, police used force just 0.78 percent of the time, and when they did, they

⁶⁰ Mac Donald, Heather. "The Myth of Systemic Police Racism." Wall Street Journal. June 3, 2020.

⁶¹ FBI Global Law Enforcement Support Section. *National Use of Force Data Collection*. April 2020.

⁶² Bozeman, et al., [Injuries associated with police use of force](#), J. of Trauma & Acute Care Surgery. March 2018.

DELIBERATIVE AND PRE-DECISIONAL

seemed to have exercised restraint, given that “among 914 suspects, 898 (98 percent) sustained no or mild injury after police UOF.”⁶³

[END TEXT BOX]

7.3.9 Congress should enact legislation to make it a federal offense to deliberately target law enforcement officers with violence.

Efforts should be made to create a penalty for violent, targeted attacks on state and local law enforcement officers that were intended to kill or were an attempt to kill an officer.

Congress should enact legislation that makes it a federal crime to deliberately kill or attempt to kill a law enforcement officer in a manner causing serious injury or death to the officer. The Protect and Serve Act is much more narrow. This proposed legislation should be expedited to ensure those who serve and protect are also better protected.

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- In October 2015, the U.S. Department of Justice released a report entitled [Ambushes of Police](#). The Executive Summary of the report states, “the proportion of fatal attacks on officers attributable to ambushes [is] increasing. Concerns about targeted violence against police are on the rise, while officers must not only be guardians of the public but also be prepared to respond to violence targeting them.”⁶⁴
- In May 2017, the Federal Bureau of Investigation (FBI) released a report entitled [The Assailant Study: Mindset and Behavior](#).⁶⁵ The report identified a disturbing and growing trend of attackers who are motivated by a desire to kill a law enforcement officers.
- A December 2017 study by the COPS Office entitled [Making It Safer](#) examined law enforcement officer fatalities from 2010–2016, including ambush attacks.⁶⁶ The study found that 20 percent of ambushed officers were seated in their patrol cars, and “56 percent were not on a call or engaged in any enforcement activity. Many of these officers were simply eating, sitting on post, or in five cases, targeted and killed while at their home or on their way home.”

[END TEXT BOX]

63 Rafael Mangual, Deputy Director of Legal Police, Manhattan Institute, email communication to the Respect for Law Enforcement and the Rule of Law Working Group, May 6, 2020

⁶⁴ Fachner, George and Thorkildsen, Zoe. “Ambushes of Police: Environment, Incident Dynamics, and the Aftermath of Surprise Attacks Against Law Enforcement.” Department of Justice Office of Community Oriented Policing Services. February 2016, <https://www.nationalpublicsafetypartnership.org/clearinghouse/Resource/364>

⁶⁵ Federal Bureau of Investigation. “The Assailant Study: Mindset and Behaviors.” May 2017. https://www.valorforblue.org/Documents/Clearinghouse/FBI-The_Assailant_%20Study_Mindsets_and_Behaviors.pdf

⁶⁶ Bruel, Nick and Luongo Desiree, “Making It Safer: A Study of Law Enforcement Fatalities Between 2010-2016,” National Law Enforcement Officers Memorial Fund, December 2017, <https://www.hSDL.org/?abstract&did=809129>

DELIBERATIVE AND PRE-DECISIONAL

[BEGIN TEXT BOX]

National Blue Alert Network

In 2015, Congress passed the Rafael Ramos and Wenjian Liu National Blue Alert Act, named in honor of two New York City police officers killed in an ambush attack on December 20, 2014. The act establishes a voluntary nationwide system to give police an early warning of threats against police officers and to aid in the apprehension of suspects who have killed or seriously injured an officer. In 2016, the COPS Office was asked to implement the Blue Alert Act and establish a National Blue Alert Network.⁶⁷

LINK TO NATIONAL BLUE ALERT NETWORK: <https://cops.usdoj.gov/bluealert>

2019 - LAW ENFORCEMENT OFFICERS SHOT IN THE LINE OF DUTY

There were **224** incidents in 2019 where law enforcement officers were shot in the line of duty, a **10 percent** increase over the number of incidents in 2018; 44 of those officers died, as a result of those attacks.⁶⁸

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7.3.9 The Department of Justice should publicly express its support for qualified immunity for law enforcement officers, including filing amicus briefs that support qualified immunity jurisprudence, on the grounds that any derogation of the immunity would negatively effect the ability of an officer to carry out his duties.

Qualified immunity is a legal defense doctrine in United States federal law that allows a government official who is sued in a federal lawsuit for deprivation of civil rights to assert immunity if the alleged constitutional violation was not clearly established at the time the conduct occurred. When a federal judge grants qualified immunity, it may result in the early dismissal of a lawsuit for money damages and prevent a law enforcement official from having to go through the stresses and financial pressures of a long drawn out judicial process that can include discovery, depositions, and a trial.

The U.S. Supreme Court first introduced the qualified immunity doctrine in 1967 to protect law enforcement officials from frivolous lawsuits and financial liability in cases where they acted in good faith in an unclear legal situation. Much like the constitutional prohibition of ex post facto laws which prohibit criminal statutes that punish actions retroactively, the doctrine of qualified immunity seeks to protect government officials, including law enforcement officers, from civil liability for actions deemed unconstitutional by a court, after they have occurred.

In recent years, there have been continued attempts to chip away at qualified immunity. Eliminating or drastically limiting qualified immunity would negatively affect law enforcement. Citizens seeking careers in law enforcement may opt for a different career choice if they know that they could be financially bankrupted if a judge or jury declared that conduct which had already occurred and which was not previously recognized as unconstitutional was now suddenly unconstitutional. Additionally, current law enforcement officers may seek to limit their enforcement activity in order to avoid future unknown liability.

⁶⁷ Office of Community Oriented Policing Services, Department of Justice. National Blue Alert Network. <https://cops.usdoj.gov/bluealert>

⁶⁸ Ibid

DELIBERATIVE AND PRE-DECISIONAL

The Supreme Court said that "qualified immunity 'gives government officials breathing room to make reasonable but mistaken judgments,' and 'protects 'all but the plainly incompetent or those who knowingly violate the law.'"⁶⁹ Law enforcement officers are often forced to make split second decisions, sometimes involving life and death situations, and they should be afforded protections from errors likely to occur as a result of being human.

7.3.9 School systems should incorporate courses on the importance of respecting the law.

As a nation of laws, students should be educated in why the rule of law was so important in our nation's creation, how laws protect the greater good, and how it is every citizen's responsibility to comply with these laws. This education, focused on developing a culture of respect, should be incorporated in both primary and secondary schools.

⁶⁹ Staton v. Sims, 571 U.S. 3 (2013)

DELIBERATIVE AND PRE-DECISIONAL

Methodology: Respect for Law Enforcement and the Rule of Law

The Working Group conducted outreach to: the International Association of Chiefs of Police (IACP), the Fraternal Order of Police (FOP), the National Association of Police Organizations (NAPO), Police Executive Research Forum, American University, the Manhattan Institute, Onodaga County District Attorney's Office, One COP, Peace Officers Research Association of California, Charlotte-Mecklenburg Police Foundation, Safe and Sound, Stoneleigh Foundation, National Association of Police Athletic/Activity Leagues, Fayetteville Police Department, Mountain View (CA) Police Department, Arlington (TX) Police Department, Pinellas County Sheriff's Office, Pasco County Sheriff's Office, Baltimore Police Department, San Bernardino County Sheriff's Office, MORE TO COME AFTER HEARING

Business Meetings

Working Group conference calls were conducted on:

February 19

March 3

March 10

March 19

March 26

April 6

May 4

May 5

In addition, calls with Chairs and Co-Chairs were conducted on:

February 12 (Chief Hawkins)

February 12 (Sgt. Pride)

February 13 (AG Moody)

February 14 (DA Blodgett)

February 15 (Sgt Smallwood)

Presentations to the Working Group:

The Working Group conducted Subject Matter expert calls twice a week on a variety of topics related to Respect for Law Enforcement and the Rule of Law. Dates and speakers were as follows:

- 1) March 23, 2020
 - Rafael Mangual, Manhattan Institute (faulty data, under enforcement of laws)
 - Bill Fitzpatrick, District Attorney, Onodaga County (NY) (progressive prosecutors)
- 2) April 3, 2020

DELIBERATIVE AND PRE-DECISIONAL

- Reverend Markel Hutchins/One COP (police-clergy partnerships)
 - Deputy Chief Chris Hsiung, Mountain View, CA (social media/media relations)
 - Lt. Chris Cook, Arlington County, TX (social media/media relations)
- 3) April 10, 2020
- Ricky Butler, Community Programs Manager, Pinellas County Sheriff's Office (social media and community outreach)
 - Chase Daniels, Assistant Executive Director, Pasco County Sheriff's Office (Citizen Police Academies)
- 4) April 13, 2020
- TJ Smith. TJ Smith Media, formerly with the Anne Arundel County (MD) Police Department, and former PIO with the Baltimore Police Department (officer morale after a high-profile incident)
 - Shawn Welch, Director-at-Large, Contra Costa County (CA) Deputy Sheriffs Association, Peace Officers Research Association of California (criminal justice reform gone awry, under-enforcement of laws)
- 5) April 17, 2020
- Glen Mowrey, Former Deputy Chief Charlotte-Mecklenburg Police Department, Charlotte-Mecklenburg Police Foundation (importance of police foundations)
- 6) April 24, 2020
- Commissioner Michael Harrison, Baltimore Police Department (re-building morale and instilling accountability after a high-profile incident)
- 7) April 24, 2020
(Joint Call with Juvenile Justice and Youth Crime WG)
- Rhonda McKitten, J.D., Stoneleigh Fellow and Youth Policy and Training Specialist (youth partnerships with law enforcement)
 - Bree Spencer, Director of Technical Assistance & Evaluation, Safe and Sound (youth partnerships with law enforcement)
- 8) April 27, 2020
- Tru Pettigrew, Tru Access (building relationships with law enforcement and the community)
 - Michael "Mick" McHale, President (NAPO) (comply, then complain)
- 9) May 1, 2020
- Deputy Chief James Nolette, Fayetteville Police Department (Community Empowerment Response Teams)
 - Jeff Hood, National PAL (building relationships between youth and law enforcement)

DELIBERATIVE AND PRE-DECISIONAL

Literature Search

Google, COPS Office, BJA, BJS, FBI, NCJRS, IACP, FOP, PERF, NAPO, National Police Foundation, NOBLE