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

Preserving the rule of law is the central function of law enforcement. The safety of American communities does not rely merely on the physical presence of law enforcement, but rather a social trust that law enforcement will hold those accountable who violate the law. Law enforcement provides that trust, and thereby stabilizes and preserves the rule of law. When communities lose respect for law enforcement, they lose faith in the legal order that law enforcement officers administer. As disrespect for law enforcement devolves into disrespect for the law itself, the consequences to public safety and the rule of law are grave.

As former Attorney General Michael B. Mukasey relates, it is not just respect for law enforcement, but respect for the rule of law that is critical to a civil society: “We draw our identity not only from adherence to a system embodied in a law that we call the Constitution, but also from consensus in general terms about what that means. Once that is up for grabs, the whole point of having a country at all, as opposed to just being citizens of the world at large, is up for grabs as well.”¹

These remarks highlight the challenges facing law enforcement agencies across the country. While the majority of Americans appreciate the important role of law enforcement in our society, there still remains significant work to address persistent negative attitudes towards peace officers. For the stability of a free and civilized society hinges on a justice system that is not only fair, but also perceived as such. There are many ways law enforcement agencies and the community at large can foster 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.

Anti-police sentiment has various historical and social origins, but at present time predominantly centers around abuses of power by law enforcement in the discharge of their duties. Unlawful and unjustified use of force by law enforcement officers—although rare—can reasonably undermine community respect and trust, and exacts considerable costs to the rule of law. While the Commission addresses this issue elsewhere in its Report, a notable cause of attitudes towards law enforcement stems from officer involved shootings and use-of-force incidents.

While these incidents deserve attention from law enforcement given their acute impact on community trust, criticism towards the criminal justice system and the police who administer it must also account for the dramatic decreases in crime that effective law enforcement has achieved. After reaching its apex in 1992, violent crime in America today nears a fifty year low. As one author has reported to exemplify this trend: “In the past 30 years, violent crime in New York City has plummeted an astonishing 70 percent. In 1990, there were 2,245 people murdered in New York City; in 2018, the number was 289, a decline of 80 percent, even though the city’s population had increased by more than a million (to about 8.5 million) in that span.”²

While many critics assert “mass incarceration” of “non-violent drug offenders” has been a collateral consequence of this movement, this statement was contradicted by testimony received by the Commission and remains at best disputed. The combined state and federal imprisonment rate for 2019 (419 per 100,000 U.S. residents), based on sentenced prisoners (those sentenced to more than one year), decreased 3% from 2018 (432 per 100,000 U.S. residents). This was the lowest imprisonment rate in 24 years, dating back to 1995. Since 2009, the imprisonment rate—the portion of U.S. residents who are in prison—has dropped 17% overall, including 29% among black residents, 24% among Hispanic residents, and 12% among white residents. The total prison population in the U.S. declined from 1,464,400 at year-end 2018 to 1,430,800 at year-end 2019, a decrease of 33,600 prisoners. This was the largest absolute population decline since year-end 2015.³ Moreover, as Rafael Mangual, Senior Fellow and Deputy Director of Legal Policy at the

³ <https://www.bjs.gov/content/pub/pdf/p19.pdf>

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Manhattan Institute for Policy Research, testified, claims about “mass incarceration” are based on manipulation of statistics and invalid comparisons, such as to other countries that have far lower rates of crime.⁴

[INSERT GRAPH OF INCARCERATION RATE VERSUS VIOLENT CRIME RATE FROM 1990-PRESENT]

The current prison population also does not, contrary to some narratives, consist mostly of “non-violent drug offenders.” “[T]he majority (60%) of prisoners in the U.S. are serving time primarily for one of just five serious offenses: murder (14.2%), rape or sexual assault (12.8%), robbery (13.1%), aggravated or simple assault (10.5%), and burglary (9.4%)...Those serving time primarily for drug offenses constitute less than 15% of state prisoners (who account for about 90% of the national prison population).”⁵ As Jonathan W. Blodgett, the District Attorney for Essex County, Massachusetts, testified to the Commission, “[P]ersons suffering from the disease of addiction, arrested for possessory offenses, are not clogging our prisons. They are, more often than not, offered multiple opportunities for drug treatment, through drug courts, diversion programs and community based assistance.”⁶

Remedying community distrust of police requires dispelling many of the narratives underlying that distrust, but it is even more important to stress that—regardless of the validity of these narratives—law enforcement officers should not be the subject of disrespect simply because of their position on the front lines of an embattled criminal justice system. As our predecessors noted in 1967: “They do not enact the laws that they are required to enforce.”⁷ Police officers may be the first and primary contact between the criminal justice system and the community, but they should not suffer the brunt of all social discontent simply because they are the front line agents of that system that the public primarily encounters.

It is therefore important to emphasize that law enforcement officers have an important but limited responsibility to execute the law, and that criticism towards officers should be accordingly limited to how they discharge that responsibility. In general, attacks towards the criminal justice system should not be directed at law enforcement officers simply because they are physically in the streets to take it. Reinforcing the separation of powers within the criminal justice system is therefore essential to fostering respect for law enforcement and the rule of law. One measure to do so the Commission believes is important is to discourage and restrain prosecutorial nonenforcement policies in order to maintain the clear and appropriate roles between legislators and law enforcement officials who execute the laws they enact.

This is not to say that all criticism towards police is misplaced. In fact, today the greatest source of distrust and disrespect for police results from the unlawful use of force against citizens in the course of enforcing the law. Accordingly, the Commission recommends specific protocols and policies to minimize unjustified uses of force, which should function to restore community trust in law enforcement and their capacity to ably and safely do their job. Police officers are far from perfect. There is always more work to be done. Genuine and enduring distrust between law enforcement and communities remains, and—as discussed below—there are many ways that law enforcement can continue to engage with the community and build relationships that promote respect for law enforcement as well as the rule of law that keeps citizens safe.

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

Respect for law enforcement depends on a clear demarcation and understanding of the duty of the executive branch to enforce the law. Respect for law enforcement and the rule of law must permeate all levels of

⁴ Rafael Mangual, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020

<https://www.justice.gov/file/1305886/download>; For example, certain neighborhoods in Chicago and Baltimore experience “30% of the homicides seen in the whole of England and Wales, despite those subsections having a combined population that (at 292,898) is just 0.5% of England and Wales.”

⁷ CITE 1967 REPORT

⁷ CITE 1967 REPORT

⁷ CITE 1967 REPORT

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society. 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. Respect for law enforcement must start at the highest levels of government:

We cannot expect parents to teach their children the importance of respecting those in authority, while elected leaders are demonizing their law enforcement agencies to gain political favor in times of crisis. We must implore methods of reconciliation to help restore the faith of the community that those officers responding to situations are there to help them, not hurt them. Similarly, our community leaders must sit down with local law enforcement to further develop that relationship. The safety of our citizens and our officers does not have to be diametrically opposed.⁸

A threat to the rule of law, and the ability of law enforcement to uphold it, has recently come from “progressive” or “social reform” prosecutors who purport to share the distrust and cynicism for law enforcement that some in their communities have.⁹ Despite their election to a position to enforce the law, these prosecutors view the very laws they enforce as unjust and illegitimate, and therefore seek to undermine that system by unilaterally deciding not to enforce certain laws. [CITE] Unlike standard prosecutorial discretion, in which a prosecutor assesses whether to pursue charges after a case-by-case examination of the individual circumstances, nonenforcement policies remove that discretion entirely by prescribing that certain laws will be categorically unenforced.

The flaws of this approach are clear, as U.S. Attorney Macgregor Scott of the Eastern District of California testified to the Commission: It “1) usurps the constitutional role of the legislative branch; 2) miscasts who the prosecutor represents in a criminal case; 3) causes violent crime rates to go up, especially in minority communities; and 4) and forgets crime victims.”¹⁰

On a legal, even philosophical, level these progressive prosecutors are not only violating the obligation of the Executive Branch to enforce the law but they also are disregarding our system of separation of powers. In the language of the U.S. Constitution, the Executive has the duty to “take care that the laws be faithfully executed.” If a prosecutor appropriates to herself the right to decide what crimes should be prosecuted, as one author has explained, “[i]t becomes an executive veto of the community’s right to define and punish penal offenses through its legislative representatives.”¹¹ Moreover, when enforcement of the law depends on executive whim, and not on the legislative will of the people, citizens may erroneously believe that law enforcement—not lawmakers—are responsible for the laws they enforce. Recent events in the arena of immigration law exemplify the detriment to law enforcement that occurs when executive nonenforcement violates the separation of powers. In or around 2017, after a change of presidential administration resulted in increased enforcement of immigration laws, critics of those laws attacked and vilified federal immigration law enforcement officials—the United States Immigration Custom and Law Enforcement—for simply enforcing the laws they were sworn to uphold. [CITATION] The misdirected hostility towards ICE stemmed from the fallacy that it was the executive branch, not the United States Congress, that determined what laws to enforce.

Nonenforcement also has clear practical consequences to public safety. The Commission notes one case in Massachusetts described by Deputy Attorney General Rosen of a woman brutally assaulted while walking her

¹⁶ Gail Heriot, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020 <https://www.justice.gov/file/1305886/download>

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dog.¹² A criminal knocked her to the ground where she lay unconscious and suffering a skull fracture, among other injuries. The victim is reportedly still coping with speech, vision, and hearing impairments. The prosecutor, a self-described social reform district attorney, had publicly stated that it was her responsibility to “represent not just the victim, but the defendant and the community.” The district attorney allowed the offender to plead guilty to a misdemeanor with a suspended sentence and one year of probation, even though the victim begged the prosecutor not to cut this deal and called it “flagrant, appalling, and disgusting.” Nor was this case an anomaly. An analysis by the local media revealed that the Massachusetts district attorney was dropping “more cases than before, but some of the cases don’t seem ‘low-level’ at all, involving serious bodily injury, major thefts, and career criminals.”¹³ As the Deputy Attorney General stated, “victims deserve better.”¹⁴ In fact, as DA Blodgett told the Commission, the entire 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...Their voices must be heard and respected.”¹⁵

Categorical nonenforcement of certain laws—be it resisting arrest, petty theft or certain drug crimes—imperils the rule of law and only exacerbates disrespect for law enforcement. When communities can no longer depend on the criminal justice system to enforce the law and obtain justice for victims, trust in law enforcement deteriorates. Not only do victims deserve to have the rule of law respected, so do those who enforce the law. Widespread disrespect for the law endangers law enforcement officers and the communities they protect. In the aftermath of anti-police civil unrest in 2016 and 2020, for example, there have been unmistakable corresponding increases in crime. [CITE]

7.1.1 Prosecutorial authorities who adopt nonenforcement policies should publish such policies in the interests of transparency.

Prosecutors should have discretion in prosecuting cases to account for case strengths and weaknesses and to accommodate the pursuit of successful criminal justice objectives. However, the public deserves to know if and when prosecutors forego that discretion completely by refusing to enforce valid laws enacted by the people. Given that categorical nonenforcement of a law is tantamount to its abolition, transparency and accountability demand that prosecutor’s offices publicly share written guidelines for nonenforcement priorities that correspond with community crime data and proven strategies for reducing crime.

7.1.2 State officials should provide oversight of prosecutors who have blanket policies not to prosecute certain categories of crimes.

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 and ultimately the authority of the citizens of that community. 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. State governments, through legislative committees and executive actions, should oversee local prosecutors who refuse to prosecute crimes by conducting hearings and issuing reports to the public about the impact of those policies. Where necessary, legislators should take legal action to prevent such policies from harming public safety.

7.1.3 The doctrine of qualified immunity for law enforcement officers should not be weakened.

¹⁶ Gail Heriot, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020 <https://www.justice.gov/file/1305886/download>

¹⁶ Gail Heriot, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020 <https://www.justice.gov/file/1305886/download>

¹⁶ Gail Heriot, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020 <https://www.justice.gov/file/1305886/download>

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A related aspect of appreciating the role of law enforcement in merely enforcing the law is protecting these officers in the course of good faith law enforcement. The doctrine of qualified immunity protects government officials, including law enforcement officers, from being personally subjected to a civil lawsuit for an action that does not violate a clearly established statutory or Constitutional right. As Gail Heriot, Professor of Law, University of San Diego & Member, U.S. Commission on Civil Rights, explained to the Commission, “[I]t is thought that otherwise there is a danger that public officials will protect themselves by opting for inaction...This is a greater danger for public officials than it is for private citizens. In the private sector, diligence and industry tend to have a more direct link to reward than they do for public officials...But when a police officer saves a life, he doesn’t get to keep it. If only his errors and not his successes affect his fortunes, a reluctance to act at all may be the result.”¹⁶

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 judicial process that can include discovery, depositions, and a trial.¹⁷ The doctrine of qualified immunity should not be weakened. Officers who use excessive force can still be punished under existing procedures. If an officer does violate the law, he is subject to criminal investigation and prosecution under state and federal statutes, and he can also be subject to administrative punishment, such as suspension or firing even if criminal charges are not brought.

In speaking against the idea of limiting qualified immunity, Attorney General William Barr said: "I don't think you need to reduce immunity to go after the bad cops, because that would result certainly in police pulling back. Policing is the toughest job in the country. . . . The vast, overwhelming majority of police are good people. They're civic-minded people who believe in serving the public. They do so bravely. They do so righteously."¹⁸

7.2 Building Relationships

Background

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.”¹⁹ - Attorney General William Barr

Respect for law enforcement increases when partnerships are forged between agencies and their communities; each benefits realizing the other’s perspective. When they can work through stereotypes and misunderstandings, years of false narratives can be dissolved, and new relationships can be cultivated.²⁰ These new lines of open communication increases public safety and respect for law enforcement.

Over the years, programs that embrace a proactive and consistent outreach approach have effectively developed and sustained relationships between law enforcement and the community. Law enforcement agencies may overlook these programs and consider them only if time and staff are 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 grows only through nurturing and sustaining these relationships.

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-

¹⁶ Gail Heriot, Testimony before the Commission on Law Enforcement and the Administration of Justice, July 21, 2020 <https://www.justice.gov/file/1305886/download>

¹⁷ Robert Fagin, Attorney, San Diego County Sheriff’s Department, CA, email communication with Respect for Law Enforcement and the Rule of Law Working Group, email communication with Respect for Law Enforcement, June 24, 2020.

¹⁹ 2015 Time Magazine Quote, citation needed

¹⁹ 2015 Time Magazine Quote, citation needed

¹⁹ 2015 Time Magazine Quote, citation needed

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reduction efforts. Another benefit of these relationships can be realized at the investigations level, as increased cooperation can strengthen investigations and help solve crimes.

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. 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 helps “rebuild trust with the community.”²¹

7.2.1 Law enforcement agencies should continue to prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing a knowledge of and appreciation for the daily responsibilities of law enforcement.

[CROSS REFERENCE BUSINESS AND COMMUNITY DEVELOPMENT]

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 business community partnerships.

Houston Police Chief Art Acevedo, who is president of the Major Cities Chiefs Association (MCCA), says the importance of building these relationships can’t be stressed enough: “Overwhelmingly, MCCA members have heard from their communities—we don’t want less police, we want better policing. It is imperative that law enforcement work tirelessly—in both good times and bad—to build strong relationships with the communities they serve. It is much easier to navigate a crisis when the public trusts law enforcement and knows their concerns will be taken seriously.”^[1]

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.^[2]

While it may not be feasible to immediately and directly touch every community member through these outreach efforts, social media has been shown to be another way to build a positive narrative that reinforces the work accomplished by the men and women 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, neighboring agencies, or local labor or representative organization).

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 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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Nicholas A. Trutanich, U.S. Attorney for Nevada, says that building those relationships is critical: “Community leaders and law enforcement should consider forming partnerships, involving regular meetings attended by executive-level officers, to build and maintain trust. Among other things, such meetings would allow law enforcement to solicit feedback from community leaders, and continually reinforce that the safety of the community (not arrests or convictions) is law enforcement’s highest priority.”²²

7.3 Promoting Transparency and Accountability When Officers Use Force

Law enforcement is a dangerous task, and officers may need to use physical force to subdue suspects, sometimes (though rarely) including deadly force. Any understanding of these situations, and their importance to community trust, must account for the fact that such incidents can and will occur. Law enforcement officers must necessarily use force to “enforce” the law. Moreover, when a criminal suspect resists their authority, police do not have the option of simply standing down. If it were otherwise, citizens could avoid arrest by simple noncompliance. In fact, nearly all force used by police officers results from a citizen refusing to obey their orders. The most effective measure, therefore, to prevent police from using force remains for citizens to comply with law enforcement commands.

Nevertheless, police officers are not perfect. At times, use of force may be unwarranted or unjustified. In the aftermath of the killing of George Floyd on May 25, 2020, President Trump signed in the following month Executive Order No. 13929 entitled “Safe Policing for Safe Communities.”²³ Pursuant to this Executive Order, the Department of Justice has devised generalized standards for safe policing, most prominently those involving use of force, and mandated that law enforcement agencies certify that they meet these standards in order to receive federal funding.²⁴ These actions will ensure that police departments implement sound and standardized policies on officer use of force that will minimize incidents where officers engage in excessive or unwarranted force.

These measures are independent of the work of the Commission, but complement and comport with the Commission’s recommendations regarding use of force. For infrequent as these incidents may be, incidents involving police use of force garner widespread public attention, which is often driven by social media, 24/7 news cycles, and social divisions within the nation. When incidents of police use of force occur that result in death or serious injury, it is imperative that both prosecutor and law enforcement officers have transparent and effective protocols for handling such an event.

It is true that “police use of force is extremely rare. Rarer still are uses of force that are injurious and unwarranted.”²⁵ The Bureau of Justice Statistics estimates that law enforcement officers interact with members of the public on 50 million or more occasions per year.²⁶ Incidents involving use of force are rare in this context. Citizen surveys indicate that force is used in 0.6 percent of interactions.²⁷ When an officer uses force, it is typically during an arrest, is at the low end of the use-of-force spectrum, and is the result of suspect resistance or aggression.²⁸ At the extreme end of the spectrum, the suspect is usually armed when an officer uses deadly force.²⁹ The data thus show that less than a half of a percent of police officers discharged their firearms in 2018, and only three arrests out of 1,000 involved use of a firearm.³⁰ Similarly, less than one

²³ *Executive Order on Safe Policing for Safe Communities*, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/> [NEEDS FULL CITE]

²³ *Executive Order on Safe Policing for Safe Communities*, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/> [NEEDS FULL CITE]

²⁴ [CITE DOJ announcement with Ja’Ron].

²⁵ Mangual, *supra* note 2.

³⁰ *Id.*

³⁰ *Id.*

³⁰ *Id.*

³⁰ *Id.*

³⁰ *Id.*

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percent of arrest used any physical force at all.

Nevertheless, even isolated incidents can nurture a cynicism about the criminal justice system that “erode[s] the public’s respect for the policing profession and the system of laws they’re sworn to uphold.”³¹ This environment is challenging for law enforcement, as they have the additional burden of combatting negative perceptions that are based on a small—but magnified—sample of incidents. These incidents have spurred a national conversation over police practices, including the types of accountability mechanisms in place to investigate and adjudicate allegations of misconduct and excessive use of force. Trust in a process is important for building and maintaining legitimacy.³²

A prosecutor’s office will often have a substantial and important role in addressing and adjudging the actions of a law enforcement officer who has engaged in use of force resulting in serious injury or death. The Commission examines that role elsewhere in the report.

But the law enforcement agency of the involved officer necessarily has a role as well, and its accountability process may have a substantial impact on public trust and respect for law enforcement. These mechanisms, however, vary widely in their form and function in agencies nationwide. For example, criminal investigations can be conducted by the involved law enforcement agency or independently by another agency, task force, or prosecutor. There is a growing demand for independent criminal investigations on deadly force, as well. Furthermore, more than one investigation may take place. State and local law enforcement agencies may conduct an administrative investigation to determine if the use of force was within department policy and/or a criminal investigation to determine if the use of force was compliant with the law.³³ The process of an investigation needs to be explained clearly and executed transparently so that the public has confidence in the outcome.

At the same time, officers involved in a use-of-force incident have the right to due process. The Constitution grants that right to all Americans regardless of their chosen profession and law enforcement is not exempted. Bending the investigative process to political pressure erodes the Constitutional protection of due process. To ensure immunity from undue influence, the conduct of internal investigations must be consistent, transparent, and impartial. Two Supreme Court decisions have reinforced this. In Garrity v. New Jersey, 385 U.S. 493 (1967), the Court stated that law enforcement officers and other public employees have the right to be free from compulsory self-incrimination. Similarly in Gardner v. Broderick, 392 U.S. 273 (1968), the Court ruled that a law enforcement officer who refuses to waive his constitutional protections cannot be dismissed from office because of that refusal.

Currently, rights for officers involved in administrative investigations vary depending on state and local law. In 2015, 14 states had Law Enforcement Officers’ Bill of Rights (LEOBR), which define and protect the due process rights of officers who are subject to such investigations. During the same period, 11 states were in the process of developing legislation. At the federal level, the FOP has been working to pass legislation to define and protect due process.³⁴ These rights, for example, may extend to allowing officers direct access to body worn camera and in-car camera footage before giving their statements to investigators. In 2016, about 60 percent of agencies with body-worn cameras allowed the officers who made the recording direct access to

³¹ *Id.*

³³ International Association of Chiefs of Police, *Officer-Involved Shootings: A Guide for Law Enforcement Leaders* (Washington, DC: Office of Community Oriented Policing, 2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf; and Beau Thurnauer, *Best Practices Guide for Internal Affairs: A Strategy for Smaller Departments* (Washington, DC: International Association of Chiefs of Police, n.d.), <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

³³ International Association of Chiefs of Police, *Officer-Involved Shootings: A Guide for Law Enforcement Leaders* (Washington, DC: Office of Community Oriented Policing, 2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf; and Beau Thurnauer, *Best Practices Guide for Internal Affairs: A Strategy for Smaller Departments* (Washington, DC: International Association of Chiefs of Police, n.d.), <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

³⁴ Eli Hager, “Blue Shield: Did You Know Police Have Their Own Bill of Rights?,” The Marshall Project, <https://www.themarshallproject.org/2015/04/27/blue-shield#.Etqk3UTYF>; and “Due Process Rights for Law Enforcement Officers,” Fraternal Order of Police, accessed July 22, 2020, <https://fop.net/CmsPage.aspx?id=97>.

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the video.³⁵

The recommendations below provide guidance to law enforcement agencies and governments overseeing them to improve handling of use-of-force incidents that will promote transparency and public understanding in order to reduce community tensions in the aftermath of such an event.

7.2.1 Law enforcement agencies should have well-documented and publicly available protocols for conducting administrative investigations of alleged officer misconduct and any uses of force.

Law enforcement agencies have an obligation to maintain protocols for administrative and criminal investigations of misconduct, use of force, and integrity failures. These protocols should appropriately consider best practices and be reviewed by a competent legal authority to establish the legal foundation for all investigations. These protocols should consider: thresholds that trigger an investigation; the unit responsible for conducting the investigation; notifications of all appropriate parties; investigative practices, including evidence collection, interview procedures, incident analysis, investigative steps, target timeframes, adjudication considerations, dispositions and required notifications to license or certifying entities, and the due process rights of officers, including in some instances, the right to representation.

Agencies should routinely review protocols for potential updates; how to apply research or legal decisions; and best practices to improve the efficiency, effectiveness, and fairness of investigations. Routine and systematic audits and inspections of investigative files can help agencies identify necessary refinements in training, policy, and practice in investigations.³⁶ Such audits can be conducted by qualified agency personnel. Alternatively, agencies can seek outside assistance. Agencies should account for cost, quality, timeliness, and capacity in determining the best approach.

7.2.2 Law enforcement agencies should publicly disseminate and educate the community on all use-of-force policies and procedures, including protocols for criminal and administrative investigations.

By making the investigative process more transparent, law enforcement agencies have an opportunity to educate the public, establish expectations, and engender trust. The Bureau of Justice Assistance's (BJA) guide, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations*, states that the written protocol for criminal investigations of use-of-force incidents may be shared with the public to instill confidence in the fairness of the process.³⁷ Likewise, an administrative investigation may demonstrate to the public that the agency is working to address a potential violation of policy and holds officers accountable when necessary. Public confidence and trust cannot exist without understanding of the agency's accountability process.

7.2.4 States should enact legislation that requires law enforcement agencies to have an independent, external agency that has met minimum training and accreditation standards conduct the criminal investigation of use-of-force incidents that result in death or serious bodily injury.

Independent criminal investigations increase transparency and public trust in the aftermath of use-of-force incidents. Specifically, a law enforcement agency not involved in the incident should conduct any criminal investigation involving a use-of-force incident. At a minimum, a use-of-force incident involving death or serious bodily injury should require an independent, external investigation.³⁸ State legislation should outline

³⁵ Shelley S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies*, 2016 (Washington, DC: Bureau of Justice Statistics, 2018), 7, <https://www.bjs.gov/content/pub/pdf/bwclea16.pdf>.

³⁶ U.S. Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field* (Washington, DC: Office of Community Oriented Policing Services, 2019), <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>

³⁷ Bureau of Justice Assistance, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations* (Washington, DC: Bureau of Justice Assistance, 2017), <https://it.ojp.gov/GIST/1202/Considerations-and-Recommendations-Regarding-State-and-Local-Officer-Involved-Use-of-Force-Investigations>.

³⁸ For this report, serious bodily injury is "bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." See "National Use-of-Force Data Collection," Federal Bureau of Investigation, accessed August 14, 2020, <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

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the appropriate method for determining when and how an independent criminal investigation should be conducted, which should include “written protocols such as MOUs or standard operating procedures (SOPs) to identify and determine each jurisdiction’s investigative response to a use-of-force incident, including which agency will serve as the primary investigative entity, the role of the prosecutor, and contact protocols. Agencies taking on the investigative responsibility should develop a uniform standard agreement to promote consistency and uniformity of approach.”³⁹

7.3 Public Outreach

Programs that embrace a proactive and consistent outreach approach have effectively developed and sustained relationships between law enforcement and the community. Given the constant and stressful demands on law enforcement, law enforcement agencies might overlook these programs and consider them only if time and staff are available. However, such a casual approach is ill advised. Respect for law enforcement grows only through nurturing and sustaining these relationships.

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.

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.⁴⁰

Furthermore, with the omnipresence 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 even sooner; if this narrative is negative, it is often difficult to overcome. Law enforcement professionals should promptly share the facts of an incident, to the extent possible.

For years, police agencies have relied primarily on broadcast media to ensure communities receive public safety messages and alerts; however, that is no longer the sole method to accomplish those tasks. Multiple online tools, including social media platforms and blogs, enable community members to learn more about the reality of policing and the lives of law enforcement officers in near-real time.⁴¹

7.3.1 Law enforcement agencies should prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing knowledge of and appreciation for the daily responsibilities of law enforcement.

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 business community partnerships.

While strong relationships between law enforcement executives and community stakeholders are essential, those relationships should not only exist at the senior leadership level. Many others throughout the organization, particularly line-level personnel, can benefit from those relationships. Law enforcement agencies should ensure that their relationships with the clergy, community groups, businesses, other groups, and the public are not limited to executive leadership. These relationships should filter throughout the law

³⁹ Bureau of Justice Assistance, *Considerations and Recommendations*, 7–8.

⁴⁰ “National Night Out,” National Night Out, May 7, 2020, <https://natw.org/>; and “National Police Week,” National Law Enforcement Memorial Fund, accessed July 9, 2020, <https://nleomf.org/programs-events/national-police-week>.

⁴¹ Gary Cordner and Elizabeth Beall Perkins, *E-COP: Using the Web to Enhance Community Oriented Policing* (Washington, DC: Office of Community Oriented Policing Services, 2013), <https://cops.usdoj.gov/RIC/Publications/cops-w0706-pub.pdf>.

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enforcement organization and be built from the bottom up, and officers should be the linchpins for establishing those relationships.

7.3.2 Train new prosecutors on the work of law enforcement officers.

[CROSS REFERENCE CRIMINAL JUSTICE PARTNERS]

Training for new prosecutors should include highlighting the importance of the prosecutor's role of working alongside law enforcement officers to secure justice within a community. This training can include ride-alongs or periodic roundtables with law enforcement agencies to help a new prosecutor understand the perspective of law enforcement officers. Such training would 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 prosecutors this way would make their work more efficient and boost the morale of both prosecutors and law enforcement officers. This training will also improve prosecutors' respect for law enforcement officers and officers' relationship with the prosecuting agency.

7.3.3 Law enforcement agencies should develop and maintain a strong social media presence and a comprehensive public outreach plan to consistently deliver accurate and timely 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. This should include dedicated personnel to regularly share positive stories via social media, print and broadcast media, community websites, and other digital avenues. Agencies with limited resources or experience should look for partnership opportunities to share in these effort, such as other police departments and sheriff's offices, national police organizations, and local or national labor organizations. Government executives should also convey a positive message about law enforcement officers who protect their communities.

Police leadership should look through a public lens to consider how well the public understands their agency's mission and priorities, and leadership should ensure that the agency's core values reflect the community's priorities.

7.3.4 Law enforcement agencies should ensure that their social media technology and strategies are current and constantly updated 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, agencies should maintain a traditional website to ensure optimum accessibility, outreach, and engagement opportunities.

Moreover, law enforcement agencies should create and maintain guidelines or policies regarding the use of personal media accounts. While employees of a law enforcement agency should be able to express themselves on social media, they should be aware of 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