

A REFLECTION POINT FOR POLICE AGENCIES

Summary

It is clear that a paradigm shift has taken place regarding societal expectations of Police agencies in their communities. The George Floyd case supercharged this shift as we saw demonstrations across the country in almost every community. Besides the upheaval and fallout in communities on matters of race and use-of-force, there is a brewing threat to public agencies' budgets at the worst possible time. The public sector liability insurance markets are demanding massive premium increases and/or a transferring of financial risks with higher deductibles. Large jury awards in police liability cases and changes in state law are the primary underlying reasons for this change.

Rather than proceeding through a self-reflection phase, some will say the "federal law hasn't changed" or "we already do de-escalation training" and suggest everything is ok in their agency, but they do this at their peril. We have seen liability insurance premium increases of 50 to 100 percent in one year. One client had to absorb a 191 percent increase over two years resulting in a \$4 million annual cost increase. Another client received a demand from their risk-pooling authority for a massive liability premium and deductible increase that would have put the City at a substantial fiscal risk. This demand was tied to high claims activity and the perception that the City wasn't proactively managing these negative trends. The client was forced to seek a new risk-pool authority, but the change increased their costs \$2 to \$3 million per year.

This Policy Paper offers why this national conversation has import to the very foundation and sustainability of our public agencies. It highlights the various Police activities that are part of this national conversation. It offers 14 talking points as a framework to begin and sustain regular conversations between Chief Executives and Police Chiefs. Similar conversations can be had with governing bodies as well. These are the conversations that will help agencies respond to the challenges documented in

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this Policy Paper due to an unprecedented shift in the expectations of our hard-working Police agencies.

Why This is Important

As public agencies, we get our immense authority to act from our residents. Our authority comes from our well-earned legitimacy and trust, which gets to the core of why we exist as a public agency. We earn that trust through our performance, and our transparency and accountability, which are the foundation of our forms of government. These are the reasons why people have much more confidence in local government — when compared to the federal and state levels. We cannot afford to lose this. And we cannot hide from accountability at the local level as we work or live in the very communities that we serve as public servants.

If we lose that legitimacy and trust to act on their behalf, it shows in many ways that potentially de-stabilizes our ability to carry out our mission. Voters may elect new governing bodies or other elected officials. They may not support new or continued tax measures. They may bring their anger into the streets and up to city hall. To maintain this public trust and the government's legitimacy, public agencies need to be thoughtful about how to address the issues brought to the fore in this paper.

How Police Departments function affects your risk management costs, a program that is typically a back-room operation until something goes wrong. What some chief executives may not appreciate is the fiscal impact from claims against their law enforcement agency. A typical self-insured city or county literally (and quietly) has millions tied up to fund open claims or to pay for sky-rocketing insurance premiums. This crowds out their fiscal flexibility in guiding their agency through the current pandemic-caused recession, addressing rising pension costs, or future economic downturns.

The Paradigm Shift

State Legislature and Governor Weigh In

At the end of the 2018-19 legislative session, Governor Gavin Newsom signed AB 392 and SB 230. He characterized AB 392 as “one of the strongest use-of-force laws in the country.” While AB 392 addresses the state's use of force standard, SB 230 focuses on training and requires all law enforcement departments to have use-of-force policies that meet certain standards by January 1, 2021. What adds complication and importance to what Police agencies do in these matters is SB 1421 and its companion bill AB 748 (effective January 1, 2019). These statutes require the release of officer personnel records (in certain cases) and police-captured videos. There are arguments on the true impacts of these bills, but it was a clear indication of the State's concern for these

topics. And since the elected officials that passed these bills represent the entirety of the state and their communities, we believe it is reflective of what their constituents want as well.

Those that think these laws have not moved the needle much may be taking on more risk to their agency than they realize.

George Floyd

The circumstances of the George Floyd case and the ubiquitous videotaping of similar cases has convulsed the nation into multiple days of peaceful demonstrations (and some rioting) across the nation, some of which are still occurring today. The Floyd case clearly “touched a nerve” that had developed over time. The racial, political and socio-economic diversity of protesting participants is unprecedented and reflects issues that are expanding in their importance across the entire country. The Minneapolis Police Department reportedly went through their version of police reform, only to experience this scenario. The growing and conflicting reports from within the Department about George Floyd’s arrest and death highlight that reform only works to the extent that the law enforcement organizational culture supports and sustains it.

This is not going away. It may ebb and flow, but we think large jury awards will continue to cause a risk management challenge for some time, unless an agency effectively tackles these issues going forward.

Calls for Police Reform

The calls for change have taken many forms, sometimes reflective of how knowledgeable people are (or are not) on how Police departments actually operate in our communities. Some are calling for elimination of Police departments, others are calling for “defunding” and others are somewhere in between, using the term “reimagining Police departments.” We believe this discussion calls for more understanding and transparency on what Police departments do and why they do what they do. Once that conversation has occurred, then we are ready to pursue strategic change.

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As a team of four retired Police Chiefs, former city/county managers, and a strong risk management and labor relations consulting practice, we believe it is time for self-reflection within our Police departments. There is room for innovation, such as adding health and human services skill sets in certain circumstances. Counties are typically big providers in these areas. We also believe there is benefit in reviewing, updating

and possibly improving what we consider “the basics.” How departments perform and evaluate these basics ultimately reinforces a departmental culture—what behaviors are expected in Police departments. We find that new department heads, such as a Police Chief, appreciate having a base-line review of their department’s current culture and practices that includes a road map for improvement. We posit that it was likely the Minneapolis PD culture that still needed work to sustain their reform effort. We have performed work in evaluating organizational cultures and their relationship to performance for various public agencies, including law enforcement. Based on that experience, we believe cultures reinforce what is right and wrong and ultimately sustains or impedes change efforts.

What Are the Basics?

Use of Force

The common thread among many of the controversial videos is how officers are exercising “use of force”—at what level, were there other options, what were the exigent circumstances that precipitated the use of force, when did it occur and whether it was commensurate with the circumstance and did it appear to be consistent with established agency policy? There arguably is a higher expectation for officers to de-escalate a situation and possibly re-think the need for their involvement at the time. And of course, SB 230 requires policies and training in this area by January 2021. However, **this is a perishable skill that requires constant reinforcement and updates.** Is this an expectation that can be accomplished by departments? Some Police departments do not have the staffing and resources to provide for this important training on a sustainable basis. Courts have been unsympathetic to staffing and budgetary arguments. We believe this investment needs to be seen as a normal cost of doing business and is a good risk management investment.

As we have all witnessed, omnipresent smart phones have created the ability to record use-of-force incidents and share the videos on social media. The public’s interest is piqued along with the desire to exercise their relatively new rights under SB 1421 and AB 748. SB 1421 allows for the release of formerly confidential Police personnel records related to use of force, dishonesty and sexual assault. AB 748 allows for the release of audio and video recordings of “critical incidents” to the public. A program needs to be in place to conform with these two laws and consider how it fits with any administrative reviews, officer safety, transparency, community trust, lawsuits, etc.

Administrative Reviews

A critical part of developing and reinforcing a desired culture is rigorous, consistent and timely reporting and reviewing of all uses of force. Did the action comply with current law? With policy? Was it good customer or constituent service? These are all different standards and have relevancy. There is a cliché in some circles that after

reviewing some “use of force” scenarios, it was found to be “lawful but awful.” It may have been legal but not the best course of action. What we learn from these reviews communicates a lot about what is expected from our officers, an important lynchpin in a departmental culture. The reviews provide potential kudos for great work, guidance for more learning, training and an opportunity for recognition of a job well done. These reviews may also require disciplinary action to get the desired change in behavior.

Community Policing, Problem Solving and Diversity

The model and philosophy of community policing and problem solving is still relevant today. Handling community problem-solving opportunities “upstream” is more efficient in the long term than just relying on “downstream” calls for service. It’s this latter approach that is the source of conflict, negative scenarios and risk to our officers and the public.

We believe community policing is best done by a diverse workforce that mirrors the community it serves. It requires earned trust and transparency. It also requires earnest, authentic engagement of the community. Also, the police department needs to be adequately resourced and trained to implement problem-solving approaches in our communities. It is indeed a different skill set.

Mutual Understanding and Self-Reflection — Conversations Between Chief Executives and Police Chiefs

Let’s face it, sometimes there is a certain mystique and protective nature surrounding Police departments and their operations that might hinder regular conversations between Chief Executives, their governing bodies and Police Chiefs. Conversely, some Police Chiefs are hesitant to provide constructive feedback to their bosses. We believe now is the time to change these patterns. Absent these conversations, leaders outside the Police department run the risk of being blind-sided. And the department runs the risk of not addressing their needs or reducing vulnerabilities.

To this end, we offer the following topics or questions to begin and facilitate that conversation. These are developed for stakeholders to both understand, evaluate and propose changes.

1. The Sanctity of Life

Is this a stated priority of your Police department? How does this impact all aspects of the department from its policies, its review of practices and the hiring-to-retirement milestones of officers?

2. **Police Culture**

How would you describe the Police department culture? Is the desired culture articulated somewhere? How do you reinforce and sustain it? Would your patrol officers agree with you? Do you think departmental performance emulates this desired culture? Do you have a transfer or rotation policy? What is the state of the relationship between our community and department? How do you know?

Front-line supervisory performance and officer performance management are two key parts of reinforcing a desired culture. How do we select and train our supervisors? What is the ratio of supervisors to officers? How often do we evaluate our officers?

3. **Citizen Complaints and Internal Affairs**

How do you track citizen complaints and internal affairs cases? How many cases have there been over the past three years? Are there a group of officers who have a higher than average number of complaints/internal affairs cases? What is the longer-term trend? What were the disposition of these cases? How do the outcomes of these cases impact departmental priorities, discipline and learning? Are there incidents from the past that are still affecting trust in the community?

4. **Work Demands and Satisfactory Outcomes**

Do you have the capability of tracking calls-for-service and related outcomes from our officers' interactions with residents and others? Are there different skill sets outside the POST law enforcement training and standards that might produce a better outcome, and free up capacity in our officers?

5. **Use of Force**

How do you track use-of-force cases? What is the trend over the last 10 years? Why? What is the review process for use-of-force? Is it timely? Does your tracking include an early warning system? Are there specific staff regularly involved with high-profile incidents or creating liability exposure?

6. **Cost of Risk**

What are the current open claims against the agency for Police activities and the forecasted financial exposure? What has been the actual payout in this area for the last 10 years?

7. **Driving**

Do you track collision data and what does the data suggest over the last 10 years? What pursuit data do you capture over the same time period? What is the review and accountability process for these incidents?

8. **Body Worn Cameras**

What is the department's policy on activation and why? Is use discretionary or mandatory, and why? Can officers review their videos before completing reports or being interviewed by others? Does anyone complete audits of videos as a learning or performance accountability tool?

9. **Property and Evidence**

When was the last audit of the department's practices in this area?

10. **21st Century Policing**

Has the department discussed and embraced the six pillars of 21st Century Policing? How? Is it discussed during trainings and/or hiring and promotional decisions?

11. **Training**

What was the training budget for the past three to five years? Why has it increased or decreased? How does the training program reconcile with the priorities of the department? How is de-escalation trained and sustained? Do you have adequate staffing to provide time for staff to attend training? Are supervisors trained well enough to ensure de-escalation through verbal and tactical options on the scene?

12. **Transparency and Media Engagement**

Is there a conflict between transparency, public trust and litigation? Is the department ready for timely release of information? Are we prepared for speed, accuracy and transparency when working with social and regular media along with community demands?

13. **Staff Selection and Retention**

How are recent events and legal changes impacting hiring and retention success? Are we modeling best practices for hiring, training and supervision? What are they?

14. **Strategic Planning**

What are your priorities and plans for the future? Why? How can I help you?

We hope you find these “conversation starters” helpful. And, we are ready to assist your agency in evaluating and addressing the issues mentioned above. Our consultants have experience on both sides of the conversation and on each of the 14 topics – as a County Administrator or City Manager, Police Chief, Labor Relations and Risk Manager. We can evaluate and quantify the cost of risk when operating a Police agency. And to the extent there is desired change, we can help you through the labor relations aspect. Our consultants and attorneys work seamlessly together to complete assessments, troubleshoot difficult issues and help with any “heavy lifting.” Likewise, we can partner

with you to enhance your readiness for this paradigm shift in expectations. We believe the time is now to have those courageous conversations to maintain trust with those you serve and protect your officers and fragile budgets.