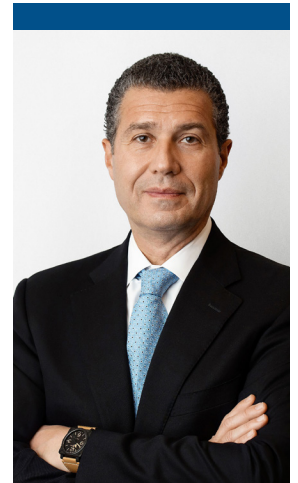


# A MODEL APPROACH *to* COMPREHENSIVE POLICE REFORM

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**Overview:** The confluence of pandemic-fueled restlessness and the shocking deaths of a succession of Black Americans by police, many captured on video, galvanized protests across the nation and the world in 2020. In the United States, police violence is a leading cause of death of young Black men — on average, unarmed Blacks are 3.5 times more likely to be shot by police than are unarmed whites. This is not a new problem, but in 2020 Americans of all ages, races and ethnicities took to the streets by the tens of thousands to demand police reforms, greater accountability and transparency, and a transformation in the relationship between law enforcement agencies and the communities they serve.

A significant force in the emergence of this renewed social justice movement is the omnipresence of video. The advent of bodycams and dashcams for police and video cameras in the hands of most citizens has provided damning and indisputable documentation of violent police actions toward Black Americans. These videos reveal a racist culture against Black men, where officers use overtly racist language and behavior and unreasonable and excessive force, too often resulting in graphic, gruesome, and unjustifiable deaths.

Civil justice movements have arisen in the past yet failed to produce lasting meaningful reform. Building trust between communities and police will require comprehensive change and a set of agreed-upon federal standards common to all law enforcement. We offer this paper as a blueprint for reforms that will yield greater transparency and accountability to improve the level of trust between citizens and the officers who are sworn to serve and protect them. Calls to defund the police have been misconstrued and twisted into an attack on Black Lives Matter, when, in fact, they were aimed to draw attention to the need to define a proper role for police and to fund appropriate training and reforms, leading to improved accountability.

# 1.

## STANDARDIZE *and* PROFESSIONALIZE POLICING

Historically, police standards — including recruitment, selection, certification, training, procedures, and protocols — have been established at the local level, with wide variations from jurisdiction to jurisdiction. This sits in stark contrast to many other professions, even those where performance does not carry such life-and-death implications as law enforcement. Many professions, including law, medicine, aviation and even hairdressing, have required minimum education, training, and licensing standards and include oversight and regulation by a governing body empowered to revoke licenses for violations of performance standards, and to prohibit dismissed individuals from gaining employment in other places. Uniform standards are absent in law enforcement, where thousands of agencies at the federal, state, and local levels adhere to different standards promulgated by a multitude of organizations including The Commission on Accreditation for Law Enforcement (CALEA), Peace Officer Standards and Training (POST), Federal Law Enforcement Training Accreditation (FLETA), and the International Association of Chiefs of Police (IACP). Individual agencies have independent and non-uniform guidelines created by their respective unions. We believe a national standard that sets a minimum bar and consistent expectations is essential to creating uniform, professional policing in every jurisdiction and at every level, while also allowing for local agencies to still adapt the way they conduct their departments to meet local needs based on the sizes and cultures of their communities. In addition to consistent and professional policing, a national standard can also reestablish citizens' trust that they are interacting with professionals trained to a high standard, and that those professionals can and will be held accountable to that standard. A national standard would also enable an agency to measure and discover areas in an officer's skillset that may need reinforcing, retraining, or even reprimand, ensuring that policing is kept to a respectable and efficient standard, well after recruitment.

The on-the-job experiences of law enforcement officers can inflict a heavy toll on the mental health and well-being of those officers, who are routinely called upon to deal at close range with the darkest human behavior. The “tough-it-out” traditions of law enforcement often force officers to internally bury the worst of what they encounter, and while some strides have been made in providing mental health resources, too few agencies offer robust assistance or a culture that helps these officers process the negativity in a constructive, healthy way. The culture or code

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of silence within police departments coupled with the stresses of the job lead to a mental health spiral for many officers. To enhance the overall professionalism of law enforcement as well as officer safety, agencies must address the mental health needs of their own officers. This should include assessment, training, insightful psychological exams, compassionate treatment, mandatory job rotation, and reassignment of duties, if necessary.

We therefore recommend adoption of:

- National licensing standards to ensure consistency and a baseline of performance and measurements, as well as a process to decertify officers who are no longer fit for duty.
  - Model policies and procedures to create a roadmap for law enforcement leaders.
  - Development of a national police hiring exam that identifies suitable candidates on psychological, emotional, physical, and intellectual levels.
  - Standard and consistent training to prepare and maintain officers fit for duty, keeping perishable job skills sharp with regular, interactive training modules.
  - Enhanced mental health services for officers to prepare them for their duties and support them throughout their career
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# 2.

## ENHANCE ACCOUNTABILITY *and* TRANSPARENCY

Law enforcement officers are public servants, and a sacred trust should exist between them and the communities they police. For this trust to be realized, officers must be accountable for their actions. The public needs, and should be entitled to, full visibility and transparency on the part of law enforcement. However, policing today is beset by wide variations in a range of areas, including incidents that involve citizen injuries or deaths in police custody; investigations into police actions; when and how police are disciplined; the use of body-worn cameras; the types and completeness of information made available for public scrutiny; and reporting of data on use-of-force and other practices. When investigations into police conduct are carried out by police agencies themselves — often limited by collective-bargaining requirements — their objectivity is questionable, at best.

The addition of uniform accountability measures, including national baselines for reporting, standardized protocols for independent investigations, an accessible database of disciplinary actions, and mandates for the use of accountability technology such as bodycams and dashcams, can do a great deal to elevate public trust through such transparency. Bodycams, for example, shed light on, and provide incontrovertible documentation of police conduct, both when it is reasonable and justified as well as when it is excessive. The use of this technology should be mandatory in all jurisdictions, and a national standard should be established for its appropriate use and implementation. Intentionally turning off a bodycam should be a federal obstruction of justice violation, and officers should face a rebuttable presumption of guilt and a requirement to explain why it was not on.

### *Reporting*

Data on police killings is challenging to find, making it difficult to quantify the scope and nature of citizen deaths at the hands of police. Law enforcement agencies face few sanctions for failing to report such information and have little incentive to transparently report data on police activity, especially the use of deadly force. This lack of reporting allows excessive use of force to continue while, simultaneously, further undermining public trust. Government officials in general, and law enforcement agencies in particular, should be troubled that the news media has expended more resources investigating officer-involved shooting deaths than have police departments or the federal government. This is a national

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embarrassment. The work being done by the Citizens Police Data Project in covering complaints against Chicago police officers presents an example of what a national data clearinghouse could look like.

The FBI operates a voluntary program through which law enforcement agencies may submit their annual count of “justifiable homicides” (which it narrowly defines as “the killing of a felon in the line of duty”). However, it can be argued that this non-mandatory system of reporting is, in fact, less valuable than having no system at all — as fluctuations in the number of agencies choosing to report, plus faulty reporting by those agencies that do so, have resulted in partially informed news coverage that points misleadingly to trends that may or may not in fact exist. Compounding this issue is the reality that those agencies with the worst problems with excessive use of force are the least likely to participate in this voluntary system.

Between 2005 and 2012, just 1,100 law enforcement agencies — a small fraction of America’s 18,000 police agencies — reported a “justifiable homicide” to the FBI. The FBI system included 461 justifiable homicides by law enforcement in 2013, the latest year for which data are available. Crowdsourced counts, however, identified almost 300 additional fatalities during that one year. The Counted, an investigation by the publication The Guardian into the true number of people killed by law enforcement, reported when it launched on June 1, 2015, that it had already found close to that “annual” number of killings in just the first five months of 2015. The Washington Post runs a similar study tracking the number of fatal police shootings and has found that the FBI undercounts fatal police shootings by more than half. The Washington Post’s own research over the past five years has discovered that around 1,000 fatal police shootings occur every year.

## *Accountability and Qualified Immunity*

The concept of qualified immunity provides legal protection for police officers, shielding them from civil lawsuits unless plaintiffs can show that the officer violated a clearly established statutory or constitutional right of which a reasonable person should have known. Simply put, it far too often serves as a get-out-of-jail-free card for offending officers who would otherwise be prosecuted if the same actions had been made by a citizen. Qualified Immunity has protected officers from facing consequences for actions where the use of force has not been justified and citizens have been injured or killed as a result of an officer’s excessive behavior. In many such cases, justice — both civil and criminal — has eluded those who deserve it most.

Police officers who behave outside the bounds of the law should face consequences for their actions. Therefore, we propose elimination of

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qualified immunity. Further, there should be a clear federal definition of what constitutes a “reasonable” police officer, to ensure that the same standard is applied everywhere and to avoid misinterpretation or varied interpretation at the local level.

We recommend adoption of:

- Creation of a National Police Accountability Oversight Task Force to set consistent standards and expectations.
  - A mandatory permanent and public national database of officer misconduct, to provide transparency and consistency.
  - Uniform reporting standards by agencies to generate reliable data and understand trends in policing.
  - Uniform use of body-worn cameras and policies to provide documentation of citizen encounters with officers.
  - Intentionally turning off a bodycam should be a federal obstruction of justice violation with a rebuttable presumption of guilt for officers who turn off a bodycam in a case involving the death of a citizen.
  - A standard, independent investigatory process for impartial inquiries of officer misconduct allegations.
  - Removal of qualified immunity protections to create full accountability and increase community trust.
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# 3.

## REFRAME THE ROLE OF POLICE *with* AIM TO PRESERVE LIFE

### *Militarization of law enforcement*

U.S. law enforcement has become increasingly militarized over the past 40 years, in large part due to its association with the war on drugs and efforts to combat terrorism, as well as the availability of surplus military gear from decades of overseas wars. U.S. military activity since 9/11 has also created a new generation of younger military veterans seeking civilian work in law enforcement. This has altered the relationship between officers and the communities they police and has led to an exponential increase in the use of lethal force.

As we reframe the role of civilian law enforcement in American society, we must make explicitly clear this premise: All human life has dignity and value, and police should take life only as a last resort when their own lives or the lives of other citizens are actively and imminently threatened.

### *Use of lethal force*

Wide differences currently exist in determining whether an incident meets the threshold for the use of deadly force, and whether and how such force must be reported and investigated. Progress in this important area of policing will require, among other factors, a common understanding regarding the definition and use of deadly force.

Some agencies categorize the use of lethal force based on whether the officer fires a service weapon, regardless of whether a subject is actually killed or injured, while others apply the term even if an officer points a firearm at a subject without discharging it. Some report lethal force incidents to the FBI Uniform Crime Report (UCR), while others do not. Many use-of-force reports use boilerplate language incorporating such buzzwords as “I was in fear for my life,” rather than actually detailing the behavior that caused such fear within the officer. Supervisors in turn allow this vague language to proceed up the chain of command, enabling officers to evade any meaningful explanation of their actions. In some jurisdictions, post-event interviews allow officers to justify their actions by claiming that the incident was “rapid, tense, and uncertain,” words specifically designed to satisfy the objective reasonableness standard established in 1989’s *Graham v. Connor*.

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Establishing a common understanding of what constitutes and justifies the use of lethal force, determining when it should be reported and to whom, and adopting a process for unbiased interviews all are critical steps on the path toward arriving at the truth. Determination should be made regarding the incremental use of force to maim versus shooting to kill, and if so under what circumstances force and firearms should be used and escalated.

## *Restraints*

Although air chokes have been banned since the 1980s, the public continues to see – and be outraged by – deaths from positional restraint asphyxia, in which body position interferes with the subject’s ability to breathe. The flashpoint case of George Floyd generated national and then worldwide attention after he died in May 2020 due to restraint or compression asphyxia, which occurred even though he was handcuffed, on the ground and posed no threat to the attendant officers. As long ago as June 1995 – more than a quarter-century ago – the U.S. Department of Justice warned law enforcement agencies, “In a recent analysis of in-custody deaths, we discovered evidence that unexplained in-custody deaths are caused more often than is generally known by a little-known phenomenon called positional asphyxia.” The document, a bulletin from the National Law Enforcement Technology Center, detailed the basic physiology of a struggle, noting that suspects are often perceived to be resisting when in fact they are struggling to breathe.

Additionally, standardized training on use and risks associated with restraints, electronic control weapons, tasers, and impact weapons is needed to prevent unnecessary deaths in police custody. Because such training would likely mean changing the common practices of officers who have used such techniques for years or even decades, a robust, repeated, and hands-on training protocol would be required to bring about effective and meaningful change.

## *Encountering citizens with mental health concerns*

An estimated 25% to 50% of people who are shot and killed by law enforcement were experiencing a mental health crisis when officers were called. A key part of reframing the role of police is to provide the necessary professional supports for cases that involve a suspect with a mental illness. In many cases, these encounters require skill to analyze, de-escalate, and provide medical/mental health care. Police dispatchers and 911 operators must receive ongoing training so they are able to ascertain if an individual is mentally ill and/or experiencing a mental crisis, as well as whether the person is off or on psychotropic medication, is under the care/treatment

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of a mental health professional, is self-medicating with illegal controlled substances such as methamphetamine, or had prior 72-hour holds. The information derived from the initial call often contains the most critical intelligence to be provided to first responders, as it can — and often should — trigger a co-response from a mental health professional.

Far too often we see officers issue repeated staccato commands to persons suffering from a mental health crisis, who can have challenges processing and responding appropriately, which leads to a misunderstanding and escalation of force. Police and government agencies need to discuss ways in which they can provide a more fulsome and compassionate response — one that does not simply use force to subdue a person in the midst of a mental health crisis — to bring an appropriate and peaceful resolution whenever possible.

We recommend:

- The demilitarization of policing to emphasize the sanctity and preservation of human life.
- A common curriculum in de-escalation.
- Continuous training in de-escalation techniques to provide an ongoing learning environment and to ensure that officers' skills and responses are appropriate and up-to-date.
- Additional mental health supports to ensure that appropriate resources and a humane approach are used with those in crisis.

**Conclusion:** A tumultuous 2020 exposed longstanding fissures in our society in the relationship between police and the communities they serve. The cases and circumstances that increased the public's consciousness can and should be used for the greater good and be a rally cry for meaningful and positive police reform. We believe the pillars of standardizing and professionalizing policing, creating greater accountability and transparency, and reframing the role of police to preserve life are essential to our progress and health as a nation. Change of this magnitude will require time, expertise, the investment of dollars and some difficult emotional and cultural work to come together and move forward to rebuild trust. We acknowledge that hard work and the need for federal lawmakers to embrace the historic opportunity here, listening to public insistence for change while also having law enforcement leaders at the table to be fully engaged in the transformation. We call for all of these stakeholders to hold the first of a series of roundtable discussions in the first quarter of 2021 to move this critical societal issue from momentum to meaningful reform.

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