

# *Miranda* and the Evolution of Policing

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## INTRODUCTION

Fifty years after the landmark *Miranda v. Arizona* decision by the United States Supreme Court, one can safely wonder how much progress has been made by the American criminal justice system generally, and American policing specifically. Each generation of our nation's police officers is better selected, better trained, and better equipped than the previous one. In spite of the advancement of police practice over the past five decades, we are still facing the same issues: finding effective tactics to reduce crime, fear, and disorder while avoiding alienating the victims of that very same crime, fear, and disorder.

While tracing the arc of policing through my career, I discuss *Miranda* and its parallels with the President's Commission on Law Enforcement and Administration of Justice: both were based on a close reading of scholarship; were heavily influenced by practical considerations brought forth by practitioners themselves; and were focused on improving not just police practices but systemic practices throughout the criminal justice arena. This article examines how modern era police reform post-*Miranda* was fueled by the President's Commission report, the Law Enforcement Assistance Administration and similar programs that poured massive resources into local governments, and a bevy of scholars who produced foundational bodies of research that examined and explained the crucial social institution of police. The article details the results: generations of reduced crime, use of force, and complaints against the police that coincided with the virtual elimination of the urban disturbance phenomenon.

Beginning in the late 1960s, there has been dramatic and persistent progress in the training, standards, leadership, and accountability of professionalized policing in the United States. This progress has resulted in significant, positive impacts on the levels of crime in our cities and throughout the country, the frequency with which police use force, the willingness of residents to engage with their police, and the openness of the profession to anticipate, develop, and implement innovation. At the same time, the nation appropriately calls for continuation of this progress, reflecting the reality that there is no ultimate goal for police leaders; there is no "solution" to be achieved. Indeed, general dissatisfaction and perspective on the social realities faced by American police will spur the next evolution of policing.

From the perspective of a police executive who received his recruit training just six years after *Miranda* was decided, this article will briefly address the genesis of the *Miranda* case, place the decision in the context of

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the social, practical, and scholarly frames of the era, and detail the progressive reform that has transpired in American policing in terms of practice and leadership. The article goes on to discuss whether *Miranda's* critical focus on the value of individual rights has overshadowed notions of community and communal rights, in addition to how the next iteration of judicial guidance may help to protect the whole of society by focusing on the individual rights of both offenders and victims.

This essay is a personal reflection on my professional experience covering forty-five of the fifty years since the United States Supreme Court ruling in the case of *Miranda v. Arizona*. My career was affected by the *Miranda* ruling before I entered the policing profession. But, I would argue that this ruling, as important as it was to the guarantee of procedural due process and individual rights, was but a part of a broader trend that included a commitment to research and analysis to provide a thorough understanding of the American criminal justice system.

Remarkable change occurred in the practice of policing, but it was uneven given the extraordinary fragmentation of law enforcement authority in the United States. As a society founded on distrust of government authority, it was inevitable that police power would be widely dispersed. Nowhere in the world, however, is it as widely dispersed as in the United States. Although some would argue this allows for a closer relationship to interested communities, as well as local control of the police, it has also resulted in extreme disparities of police competence, professionalism, integrity, and equity. Nonetheless, progress has been made. The presidents' commissions that studied criminal justice, as well as the causes of civil disorders made many important recommendations. Moreover, these recommendations were accompanied by significant federal financial investments.<sup>1</sup> Despite the fact that all law enforcement is local, there appeared to be a strong national consensus that all Americans, regardless of where they lived, deserved a base level of competent and trained law enforcement services.

The policing field's willingness to experiment based on scholarship and a comparison of this pace to the rest of the pieces of our criminal justice system is noteworthy. The evolution of police practice encompasses the launching of philosophies like problem-oriented and community-based policing, the technological advents from 911 centers to electronic control devices, and the present passion for body-worn cameras. Data and analysis related to the national and urban occurrence of crime, victimization and incarceration rates provide context to the reformation efforts in the field. While acknowledging that national reform of tens of thousands of local agencies is not easily accomplished, the detachment from political machines, the broad and evolving focus on the appropriate exercise of police discre-

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<sup>1</sup> From 1969 to 1977, over \$340 million was dedicated to higher education and training for law enforcement under the Law Enforcement Assistance Administration. See U.S. GOV'T ACCOUNTABILITY OFF., GGD-78-21, OVERVIEW OF ACTIVITIES FUNDED BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION 37 (1977) [hereinafter ACTIVITIES FUNDED BY LEAA], <http://www.gao.gov/assets/80/79046.pdf> [<http://perma.cc/L53U-8ZGH>].

tion, and the strong strides in officer selection, training, policy guidance, supervision, discipline and leadership have shaped modern day policing.

I experienced these changes personally in the practice of my profession. I had the opportunity to participate in policing during a time of great social upheaval. Thanks to the investments made in police education by the federal government,<sup>2</sup> I was able to study my profession and observe it with some detachment even as I practiced it during a very stressful era. My goal here is to share with the reader what that looked and felt like and ultimately to note that the controversies of today are the echoes of the controversies of fifty years ago. Despite the fact that many positive changes occur in a diverse democracy, it will never be perceived as fast or complete enough.

The *Miranda* decision codified norms regarding individual rights into actual legal rights, prompting much research and reform. This reform was phlegmatic, and police departments are consistently reformed in the face of changing sources of threat (e.g., 9/11). However, *Miranda* served as a guidepost throughout my experience on the force and continues to serve as a model for what individuals expect from law enforcement.

## I. POLICING AND THE CIVIL RIGHTS ERA

In 1961, the Supreme Court in *Mapp v. Ohio* extended the use of the exclusionary rule regarding evidence obtained through illegal searches from the federal courts to the state courts.<sup>3</sup> In 1964, the Civil Rights Act was enacted and “law and order” became a major campaign theme of the Republican candidate for president in general election.<sup>4</sup> Between 1964 and 1965, there were civil disturbances in New York City, Philadelphia, and the Watts section of Los Angeles.<sup>5</sup> The year 1965 saw the brutal suppression by police of the Selma to Montgomery, Alabama civil rights marches.<sup>6</sup> It also saw the emergence of campus unrest in response to the escalation of the war in Vietnam.<sup>7</sup> Finally, in response to national concerns about increasing crime rates in the cities of America, President Johnson established the Commission on Law Enforcement and the Administration of Justice that same year.<sup>8</sup> And, in

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<sup>2</sup> See generally *id.* at 37–47.

<sup>3</sup> See *Mapp v. Ohio*, 367 U.S. 643, 660 (1961). The exclusionary rule states that illegally obtained evidence, which constitutes a violation of the Fourth Amendment, may not be used against a defendant during trial. *Id.* at 648.

<sup>4</sup> See James O. Finckenaue, *Crime as a National Political Issue: 1964–76*, 24 CRIME & DELINQ. 13–27 (1978).

<sup>5</sup> See William J. Collins & Robert A. Margo, *The Economic Aftermath of the 1960s Riots in American Cities: Evidence from Property Values*, 67 J. ECON. HIST. 849, 854 (2007).

<sup>6</sup> See The Learning Network, *Civil Rights Marchers Attacked in Selma, March 7, 1965*, N.Y. TIMES (Mar. 7, 2012), <http://learning.blogs.nytimes.com/2012/03/07/march-7-1965-civil-rights-marchers-attacked-in-selma/> [http://perma.cc/VMN4-5HAM].

<sup>7</sup> See PRESIDENT’S COMM’N ON CAMPUS UNREST, THE REPORT OF THE PRESIDENT’S COMMISSION ON CAMPUS UNREST 29 (1970) [hereinafter CAMPUS UNREST], <http://files.eric.ed.gov/fulltext/ED083899.pdf> [http://perma.cc/AN9T-K9DJ].

<sup>8</sup> See Nicholas deB. Katzenbach, *Foreword* to PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY

1966, the United States Supreme Court issued its landmark decision, *Miranda v. Arizona*.<sup>9</sup>

But the 1960s were not done with law enforcement. In February 1967, the year after *Miranda* was decided, the President's Commission issued its comprehensive report *The Challenge of Crime in a Free Society*.<sup>10</sup> This report identified serious problems in America's criminal justice system and made wide-ranging recommendations for improvements in policing, prosecutions, the courts, corrections, and numerous other areas directly affecting crime control.<sup>11</sup> Nonetheless, crime continued to increase, and that summer witnessed devastating riots in Newark and Detroit.<sup>12</sup> National concern about the causes and prevention of civil unrest resulted in the appointment of the National Advisory Commission on Civil Disorders, chaired by Otto Kerner.<sup>13</sup> Their report, issued in 1968, identified police practices as one of the causes of the disturbances.<sup>14</sup> Police, as the most visible representatives of government, were an ever-present reminder of an accumulated sense of disadvantage, oppression, and discrimination.

In 1968, the Safe Streets Act included provisions that created the Law Enforcement Assistance Administration (LEAA).<sup>15</sup> The LEAA provided funding to state and local governments to improve law enforcement agencies, increase professionalism, acquire technology, enhance training, and fund research.<sup>16</sup> One crucial component of the Safe Streets Act was to create the Law Enforcement Education Program (LEEP), which provided grants and loans to police officers enabling them to secure undergraduate and graduate degrees in criminal justice.<sup>17</sup>

It has become commonplace to assert that the sixties were a time of tumultuous change in America. Nowhere was there more turmoil than in law enforcement and the administration of justice. Yet, the lessons learned from the events that transpired during this era would serve as an awakening for those committed to transforming the police profession. Indeed, *Miranda* would ultimately set the stage for police reform.

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(1970) [hereinafter CHALLENGE OF CRIME], <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> [<https://perma.cc/6NZP-GWGZ>].

<sup>9</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>10</sup> CHALLENGE OF CRIME, *supra* note 8.

<sup>11</sup> See *id.*

<sup>12</sup> See NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL COMMISSION ON CIVIL DISORDERS 2-4 (1968) [hereinafter CIVIL DISORDERS], <https://www.ncjrs.gov/pdffiles/Digitization/3073NCJRS.pdf> [<http://perma.cc/J2C7-GTLF>].

<sup>13</sup> See *id.*; see also Colton Johnson, *July 28, 1967*, in A DOCUMENTARY CHRONICLE OF VASSAR COLLEGE, <http://chronology.vassar.edu/records/1967/1967-07-28-federal-disorders-committee.html> [<http://perma.cc/L8LE-6DWF>].

<sup>14</sup> See CIVIL DISORDERS, *supra* note 12, at 4-5.

<sup>15</sup> See OFF. OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, 30 YEARS OF FEDERAL SUPPORT TO STATE AND LOCAL CRIMINAL JUSTICE 1 (1996), <https://www.ncjrs.gov/pdffiles1/nij/164509.pdf> [<http://perma.cc/752E-BPAH>].

<sup>16</sup> See generally ACTIVITIES FUNDED BY LEAA, *supra* note 1.

<sup>17</sup> *Id.* at 37.

II. POLICING WITH *MIRANDA*

The 1966 *Miranda* decision was only five years old when my police career began. Sitting in the Jersey City police academy, our instructors made it clear to us the recent court decisions affecting search and seizure as well as interrogation were making the job of the police more difficult. Their straightforward recitation of the lesson plan was frequently interrupted by the many examples of clearly guilty criminals “getting away with it” because of judicial interpretations of Supreme Court precedents. What we knew—or thought we knew—was that we were part of the first generation of police officers whose careers would be affected by a higher level of judicial scrutiny than had ever been applied to local law enforcement.

My recruit training lasted eight weeks. Although only a third as long as most police academies are today,<sup>18</sup> at the time, it was a dramatic increase in the level of basic police training offered to new officers. The subsequent expansion of recruit training may be attributed to the report by the President’s Commission, *The Challenge of Crime in a Free Society*, which recommended a minimum of 400 hours of classroom work over a period of four to six months.<sup>19</sup> The executive order creating the President’s Commission was signed a year before *Miranda*, and the published report emerged a year after *Miranda*.<sup>20</sup> The report reflected the same undercurrents as *Miranda*: how little police practice had progressed since the last presidential report published in 1931.<sup>21</sup> The Wickersham Commission, a precursor to the President’s Crime Commission, issued the Report on Lawlessness in Law Enforcement, which decried the manner in which the police garnered confessions or admissions.<sup>22</sup> In the parlance of the era, the police were known to use “the third degree,” or excessive force to extract confessions.<sup>23</sup> The *Miranda* decision in the application of the suppression doctrine to local law enforcement slammed the door on these coercive police practices. The President’s Report of 1967 endorsed the decision and encouraged American law enforcement to dramatically increase the amount of basic training police officers received

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<sup>18</sup> See generally John Connolly, *Rethinking Police Training*, THE POLICE CHIEF (Nov. 2008), [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=1667&issue\\_id=112008](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1667&issue_id=112008) [<http://perma.cc/AEY8-LLKL>] (discussing changes in the policing model in the 20th century).

<sup>19</sup> See CHALLENGE OF CRIME, *supra* note 8, at 112.

<sup>20</sup> See *id.* at Foreword.

<sup>21</sup> See generally NAT’L COMM’N ON LAW OBSERVANCE & ENF’T, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT (1931) (discussing the findings of the Commission’s inquiry into the shortcomings of the administration of justice in the United States).

<sup>22</sup> See RESEARCH COLLECTIONS IN AM. LEGAL HISTORY, RECORDS OF THE WICKERSHAM COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT V (Samuel Walker et al. eds., 1997), [http://www.lexisnexis.com/documents/academic/upa\\_cis/1965\\_WickershamCommPt1.pdf](http://www.lexisnexis.com/documents/academic/upa_cis/1965_WickershamCommPt1.pdf) [<http://perma.cc/BH5R-LEQG>].

<sup>23</sup> *Id.* at ix.

not only in their craft, but also in the application of the criminal law and strict adherence to its rule.<sup>24</sup>

As a young officer, my background was considered unusual. I was entering the police service in possession of a baccalaureate degree. The majority of my recruit class consisted of military veterans, many of whom had served in Vietnam. But a surprising number of recruits had at least some college and a few even had degrees. I hasten to emphasize that possessing a degree did not entitle a recruit to any special consideration. If anything, it exposed the recruit to some ridicule and disdain. As we were frequently reminded, “you don’t need college to do this job but you do need common sense.” It would take me a while to realize that common sense was in short supply.

I was attracted to police work for some of the reasons my contemporaries were attracted to it. It was an exciting time to be in police work for a young person. Policing was in the headlines every day as crime continued to escalate in the United States.<sup>25</sup> It was a new and exciting subject for social research and a number of influential books were being published.<sup>26</sup> And, no matter how far removed from reality they sometimes seem to be, cop shows dominated the television set. So I was intrigued and attracted by a career that offered excitement, social relevance, and the possibility that I could personally make a difference.

I thought my passion and education would prepare me for life on the streets. I had a lot to learn. A liberal arts background gave me some perspective; my police training provided me with some skills. But neither alone, nor both in combination, adequately prepared me for my collision with reality. I was taken aback by what I encountered.

I was also shocked to discover how seldom the criminal law applied in trying to sort through the many problems presented to me by the people who dialed 911. Even though I carefully carried in my hat the business sized card with the *Miranda* warning that I had also committed to memory, I found I very seldom needed it. And, although I policed the highest crime precinct in Jersey City, I spent the bulk of my time dealing with disputes, family troubles, and a wide variety of problems related to various forms of substance abuse and mental illness.

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<sup>24</sup> See generally CHALLENGE OF CRIME, *supra* note 8 (discussing the major findings drawn by the Commission through their examination of crime and law enforcement in America).

<sup>25</sup> See generally Fed. Bureau of Investigation, U.S. Dep’t of Justice, *State by State and National Crime Estimates by Year(s)*, UCRDATATOOL.GOV (Mar. 29, 2010), <http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm> [<http://perma.cc/8PM9-MRZN>] (providing crime estimates by year and state).

<sup>26</sup> See generally JAMES Q. WILSON, *VARIETIES IN POLICE BEHAVIOR* (1968) (describing the problems faced by patrolmen that arise from constraints imposed by law, politics, public opinion, and the expectations of superiors); HERMAN GOLDSTEIN, *POLICING A FREE SOCIETY* (1977) (exploring ideas of what the police do by uncovering the practices and strategies of contemporary policing).

I was surprised to learn that most of the time police officers tried to do everything they could to *not* arrest people. More often than not, the use of arrest was simply a tool to quickly resolve a problem by removing the cause of the disturbance from the scene. The fact that most of the time the charges would be dismissed because of lack of victim appearance was not a concern to us. We had few tools at our disposal other than our ability to talk and our ability to periodically invoke the law. I was surprised to learn just how much discretion I had in the interpretation of law on the street. In fact, most people who called upon me just wanted me to temporarily make things better. When I did have to use the criminal law in response to a real crime,<sup>27</sup> I was again surprised to learn that I neither needed to seek nor to gain a statement from the person I arrested. The vast majority of the time I arrested someone it was in the midst of the criminal act itself. In those cases, my testimony and whatever evidence I secured at the scene were more than enough probable cause for the arrest and generally to convict without securing a statement from the arrestee. Only in the most serious crimes was a statement ever thought necessary. In those cases, I would remove my hat and recite the *Miranda* warnings and then turn over the suspect to the detectives to interview. In the wake of the *Miranda* decision, we seldom used the case that was meant to dramatically change the policing landscape.

### III. TENSION BETWEEN POLICE SCHOLARSHIP AND PRACTICE

*Miranda v. Arizona* was but one part of a significant change in the history of American law enforcement. The events of the late 1960s and society's response to those events created a tipping point phenomenon. A number of societal and legal changes, coupled with a significant effort by the federal government to fund thoughtful research with a view towards identifying the problem, had an extraordinary impact on the state of police practice. But none of this happened quickly. Although the need for change may be identified quickly and dramatically by urban disorder or rising crime rates, institutional and bureaucratic change comes slowly. Habits of thought, commonly accepted practices, bureaucratic organizations, and the people who inhabit them often only accept change grudgingly, and only after much resistance.

Change in policing has a long gestation period. Young practitioners open to new ideas can only use those ideas to inform their personal practice until they gradually work their way up the chain of command. My contemporaries and I were no exception. Exposed to the concept of criminal justice as a legitimate academic subject, we understood the value of research and welcomed its unfolding.

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<sup>27</sup> "Real crime," as I've seen the term used, refers to incidents that rise to the level of a criminal offense, as well as serious crimes, such as index offenses.

The legacy of the 1960s deepened my understanding of the environment I policed, and enabled me to embrace the positive aspects of the police subculture while rejecting those aspects that were self-defeating. The President's Commission on Law Enforcement and the Administration of Justice spawned the Law Enforcement Assistance Administration (LEAA).<sup>28</sup> Its funding of the law enforcement education program had a profound impact upon me personally and upon a generation of police officers who rose to prominence in the 1990s. Many officers combined their LEEP money with their veteran's benefits. Thousands of officers achieved educational degrees in criminal justice because of this program.<sup>29</sup> I was one of them. I attended John Jay College of Criminal Justice in New York City. There, I was exposed to the writings of many of the most thoughtful scholars in America on criminal justice and policing while studying for my master's degree. Indeed, a number of those scholars had served as consultants or advisors to the President's Commission.<sup>30</sup>

When reviewing *The Challenge of Crime in a Free Society*, the names appear of many authors of the books that would later serve as a core part of the curriculum to which I was exposed: Egon Bittner, Robert Fogelson, Albert J. Reese, Jr., Jerome Skolnik, Marvin Wolfgang, Herman Goldstein, Patrick Murphy, and James Q. Wilson.<sup>31</sup> These individuals all contributed to the movement of police reform. Reading their works and the works of other scholars whose research was frequently funded by the LEAA broadened my thinking and inoculated me against the effects of a nascent cynicism I was experiencing, as I dealt with what seemed to be intractable social problems. Hundreds of thousands of young police officers were exposed to these and other social scientists.

Academia allowed me to put my experience into a broader perspective. It also raised the level of critical thinking about crime, justice, and society. For example, there was an inherent tension between a due process model of criminal justice and a crime control model. That stress mirrored the stress between insistence on the protection of the right of the individual and the protection of communities. These tensions may never be perfectly resolved. But, it was essential for police to honor the due process model whenever they used their power of arrest because their failure to do so could create two forms of injustice. On the one hand was the possible injustice of convicting an innocent man. On the other hand was the equally, if not more common form of injustice, when a guilty man goes free because of police error, it is not the police who suffer the consequences, but the community to which that offender returns.

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<sup>28</sup> See generally CHALLENGE OF CRIME, *supra* note 8 (discussing the major findings drawn by the Commission through their examination of crime and law enforcement in America).

<sup>29</sup> See ACTIVITIES FUNDED BY LEAA, *supra* note 1, at 40.

<sup>30</sup> See CHALLENGE OF CRIME, *supra* note 8, at 313–25 (listing advisors and consultants to the Commission).

<sup>31</sup> See *id.*

The experience of the courts in a practical sense had been validated by scholarly discourse. Notwithstanding the importance of due process, the vast majority of criminal arrests never resulted in a trial. Urban courts faced an overwhelming case volume, which inherently resulted in seemingly ruthless decisions at the prosecutor's review level to dismiss charges or offer plea bargains in exchange for reduced charges. As frustrating as it might have felt for the arresting officer, there was simply no other practical way to keep the system functioning. Related to this was an understanding that the police role was not a simple, technical function in applying the common law, but was in fact very complex. Police discretion in the enforcement of the law was as essential as prosecutorial discretion. The challenge for law enforcement was that discretion be exercised in an ethical, fair, and consistent manner. But first, it had to be acknowledged that it existed.

That formal acknowledgment was very much a product of the findings of the President's Commission and the subsequent research it stimulated. We were also required to study the National Advisory Commission on Civil Disorders Report, which analyzed the causes of the riots that afflicted our nation's cities in the 1960s.<sup>32</sup> This allowed a better understanding of the tension between the community that called upon police for assistance but was suspicious upon arrival.

The National Advisory Report and related research helped clarify for me the root causes of resentment in communities. The Commission identified the fact that the police were frequently seen as a source of maltreatment and that they visibly represented a society seen as unjust.<sup>33</sup> It was clear that many conventional police practices seemingly effective in fighting crime were also causing resentment among those who bore the brunt of those practices. It was significant that although the police were frequently the flashpoint of a riot, they were not the fundamental cause. Disadvantaged communities living in conditions caused by generations of poverty, unemployment, and inadequate housing bore resentment and suspicion. Those issues were as important to confront as were concerns about the state of police practice, if not more so.

Although the LEAA would be abolished in 1982,<sup>34</sup> the millions of dollars it spent sponsoring research and its legacy agencies such as the Bureau of Justice Assistance and the National Institute of Justice had a great impact on our understanding of what worked and did not work in policing.<sup>35</sup> By the time I was promoted to the rank of sergeant in the Jersey City Police Department in 1977, research had been conducted that found that the conventional police strategy in dealing with crime was ineffective. It also illustrated that

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<sup>32</sup> See generally CIVIL DISORDERS, *supra* note 12.

<sup>33</sup> See *id.* at 5.

<sup>34</sup> See Records of the Law Enforcement Assistance Administration § 423.1 (1965–77), <http://www.archives.gov/research/guide-fed-records/groups/423.html> [<http://perma.cc/XM7V-QYTJ>].

<sup>35</sup> See ACTIVITIES FUNDED BY LEAA, *supra* note 1, at 48–50.

random patrol did not make people feel safe and indicated that rapid response to calls for assistance seldom resulted in arrest.<sup>36</sup> In addition, research showed that the bulk of detective work consisted of preparing cases for court rather than intuitively solving crimes.<sup>37</sup> And finally, research indicated that foot patrol made people feel safer regardless of whether or not it had an effect on crime.<sup>38</sup> The notion that fear of crime governed conduct in public spaces as much or more than the reality of crime came as a surprise to many. But gradually it elevated the importance of personal contact between police officers and individual citizens on the street. In fact, it was the beginning of community oriented policing.

Change came slowly if at all in actual police practice. The logic of these findings would not be acted upon for years, predominantly by those younger midcareer officers when they were subsequently promoted. As a lieutenant during the early 1980s, I found myself in command of the street crime unit. This plainclothes unit was considered a prestigious assignment because unit members got to do what was deemed real police work. That meant catching bad guys committing crimes and not responding to the myriad of disputatious situations that resulted in police cars basically chasing the radio. Instead, our unit, driving unobtrusive cars secured from the pound, worked in the highest crime areas.

There were two methods used to make high-quality arrests. One was to identify individuals that were either recognized as having been arrested for prior robberies or who appeared to be engaging in suspicious precursor activity that, according to our training, could lead to a robbery. For example, following a number of individuals, a suspect might suddenly alter his or her direction of travel if a third party came upon the scene. We learned that on the streets of the city only two kinds of people seem to be actively aware of their environment and paying attention to it: criminals and police officers.

We never questioned the importance of our work. We were catching bad guys. And we were delivering them to the criminal justice system. We considered ourselves successful. We made quality arrests because we waited for the crime to occur before moving in and arresting the suspect. The fact that we were watching a crime in progress seemed to us but a necessary evil

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<sup>36</sup> See KELLING ET AL., *THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT* v–vi (1974), <https://www.ncjrs.gov/pdffiles1/Digitization/42537NCJRS.pdf> [<https://perma.cc/JSV6-PBFK>]; see also WILLIAM SPELMAN & DALE K. BROWN, *CALLING THE POLICE: CITIZEN REPORTING OF SERIOUS CRIME* xix–xx (1984), <https://www.ncjrs.gov/pdffiles1/Digitization/82276NCJRS.pdf> [<https://perma.cc/Q8PP-SNSP>].

<sup>37</sup> See BRAGA ET AL., *MOVING THE WORK OF CRIMINAL INVESTIGATORS TOWARDS CRIME CONTROL* 5 fig. 1 (2011), <http://www.hks.harvard.edu/content/download/67524/1242906/version/1/file/NPIP-MovingtheWorkofCriminalInvestigatorsTowardsCrimeControl-03-11.pdf> [<http://perma.cc/RB9B-NUJC>] (summarizing past research).

<sup>38</sup> See POLICE FOUND., *THE NEWARK FOOT PATROL EXPERIMENT* 4–6 (1981) [hereinafter *NEWARK FOOT PATROL*], <http://www.policefoundation.org/wp-content/uploads/2015/07/144273499-The-Newark-Foot-Patrol-Experiment.pdf> [<http://perma.cc/DYB2-XVAL>] (finding that “while foot patrol may not have a significant effect on crime, it does affect citizens’ fear of crime . . . and the perceived safety of their neighborhoods”).

in order to bring a criminal to justice. Furthermore, since we were trying to prevent a crime by stopping and questioning a suspicious looking person, we avoided the potential unpleasantness generated by a citizen complaint by someone claiming to be harassed by the police. Finally, we were excellent witnesses guaranteed to show up for court and thereby secure a conviction. By the standards of the day, in which success was measured by arrests and convictions, we were successful and effective.

#### IV. TRANSFORMING TO MODERN POLICING

This was 1982. And, it was about this time an article was published in the *Atlantic Monthly* magazine, “Broken Windows,” by George Kelling and James Q. Wilson.<sup>39</sup> I had been exposed to Wilson’s work in graduate school. One of his books, *Varieties of Police Behavior*, left a strong impression.<sup>40</sup> Wilson noted that although there are similarities in police cultures across jurisdictions, there are also significant differences in local organizational culture that are the direct result of the local historical, social, and political context.<sup>41</sup> I knew of Kelling through his work on the Kansas City Preventive Patrol Experiment<sup>42</sup> and the Newark Foot Patrol Experiment.<sup>43</sup> As far I am aware, the implications of the Kansas City Preventive Patrol Experiment had not been acted upon by much of law enforcement nearly ten years after its completion.<sup>44</sup> The foot patrol study resonated with me because I had been a beat officer in Jersey City under the same program, funded by the state of New Jersey, and Kelling had studied in Newark. Although I had personally found foot patrol frustrating as I did not have much opportunity to do what I considered real police work, Kelling’s study was instructive. He pointed out one thing I had experienced firsthand: neighborhoods really liked and valued foot patrol.<sup>45</sup> It made them feel safe. And they did not seem to mind at all that I could not rapidly respond to calls for service nor could I carry much equipment with me. My presence alone mattered to them. And this was

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<sup>39</sup> See generally George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC MONTHLY (Mar. 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> [<http://perma.cc/34DW-VKUX>].

<sup>40</sup> See generally JAMES Q. WILSON, *VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW AND ORDER IN EIGHT COMMUNITIES* (1968).

<sup>41</sup> See *id.*

<sup>42</sup> See generally KELLING ET AL., *supra* note 36.

<sup>43</sup> See NEWARK FOOT PATROL, *supra* note 38.

<sup>44</sup> In government generally, and policing particularly, there is nothing safer than failing conventionally. As long as conventional wisdom (even if contradicted by research) is honored, critical incidents are viewed as inevitable. But, when conventional wisdom is challenged, and research findings are used to change the state of practice, the risk incurred is considerable, as critical incidents may be seen as a product of the innovation and by no means inevitable. Even now, fifty years after *Miranda*, much seminal research has been conducted challenging the myths associated with rapid response, and the criminal investigation process remains fraught with political risk.

<sup>45</sup> See NEWARK FOOT PATROL, *supra* note 38, at 123.

equally true regardless of the demographic characteristics of the neighborhood I was patrolling.

I had what can only be characterized as a Socratic moment reading their *Atlantic Monthly* article. Two respected writers were articulating experiences I had as an officer, but which I could not describe. For example, during different times in my career, I would be sent to attend a local neighborhood meeting of residents and police officials. The precinct commander would present data on the number of arrests police had made for serious crimes in the neighborhood. He would inform the neighborhood of patterns and trends of serious crime. Then, the floor would be open for questions. Inevitably, regardless of the crime rate, the neighborhood residents would complain of unruly youth, double parked cars, abandoned cars, graffiti, aggressive pan-handlers, late-night noise, marijuana smoking in the hallways, and loud music. We would sit in the back of the room looking at each other raising our eyebrows and muttering the residents did not seem to know what was important. How could they expect us to deal with all these minor issues and still fight real crime?

The residents possessed more wisdom than I. I knew that most of them would not be victimized by a serious crime, but all of them were victimized by unchecked disorder, which was ruining their quality of life and driving out local businesses, homeowners, and longtime renters. I was always frustrated by the fact that no matter how hard we worked and how many arrests we made, many of our neighborhoods continued their spiral of decline.

Researchers reminded us that a fundamental responsibility of police was not just to rapidly respond to calls nor apprehend criminals in the midst of committing their offenses. Dating back to Sir Robert Peel of the London Metropolitan Police in 1829, cops had a crucial role to play in helping neighborhoods successfully exert informal social control over the behaviors that threatened the stability of communal life.<sup>46</sup> Disorder mattered. And the notion that the police could quell disorder and thereby stabilize neighborhoods to make them more resistant to serious crime, although very old, now felt new. It is important to note that Kelling and Wilson's theory did not rely on the notion of police making a lot of arrests for disorderly behavior. What mattered was that the police paid attention; that they did not ignore the instabilities that were making public space unusable for the inhabitants of neighborhoods.<sup>47</sup> By paying attention, they would in fact be doing the will of the community.

Working almost exclusively in poor, minority neighborhoods, the overwhelming majority of 911 calls were for disorderly conditions. Angry residents felt police were tolerating disorder in their neighborhoods that they

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<sup>46</sup> See *The Metropolitan Police: How it All Began*, METRO. POLICE, <http://content.met.police.uk/Article/The-Metropolitan-Police-how-it-all-began/1400015336362/1400015336362> [<http://perma.cc/GT5S-YR7Q>].

<sup>47</sup> See Kelling & Wilson, *supra* note 39.

would not tolerate in a middle class neighborhood. Kelling and Wilson provided academic proof that the vast majority of people, regardless of economic conditions, wanted safe and peaceful public spaces.<sup>48</sup> The article certainly addressed the unease I experienced in having been part of a unit whose core strategy was to wait for crimes to occur and make an arrest, when in fact, thoughtful attention to the expressed concerns of neighborhoods might in the long term make them safer.

In the 1980s for the Jersey City Police Department, as in most urban agencies, the focus remained on “real crime” regardless of the fact that most of our actual work was order maintenance. In 1985, the National Institute of Justice began funding an executive session on policing at Harvard’s Kennedy School of Government.<sup>49</sup> There, leading researchers, including Kelling and Wilson, met with top police chief executives to discuss the future of American law enforcement. These meetings would result in the publication of seventeen reports entitled *Perspectives on Policing*.<sup>50</sup> The reports were published between 1988 and 1993.<sup>51</sup> In my opinion, the significance of these reports cannot be overstated. In them were the beginnings of the community policing movement. They influenced a generation of police officials. Their publications coincided with my first and second police chief jobs. Furthermore, they provided an intellectual framework for the second major intervention by the federal government in local policing. This intervention was the linear descendant of the federal intervention triggered by *The Challenge of Crime in a Free Society*.<sup>52</sup>

#### V. THE 1990S: THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES

In 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act.<sup>53</sup> It was the largest crime bill in U.S. history.<sup>54</sup> Although funding would be provided for prisons and prevention programs, much attention was focused on the bill’s provision for the hiring of 100,000 new police officers.<sup>55</sup>

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<sup>48</sup> See *id.*

<sup>49</sup> See George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, 4 PERSPECTIVES ON POLICING 1 (1988).

<sup>50</sup> See *Past Executive Session on Policing*, NAT’L INST. OF JUSTICE (Mar. 4, 2009), <http://nij.gov/topics/law-enforcement/administration/executive-sessions/Pages/past.aspx> [<http://perma.cc/QSP7-W8XC>].

<sup>51</sup> See *id.*

<sup>52</sup> See David H. Bayley & Christine Nixon, *The Changing Environment for Policing, 1985–2008*, NEW PERSPECTIVES ON POLICING 1 (2010).

<sup>53</sup> Violent Crime and Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994).

<sup>54</sup> U.S. DEP’T OF JUSTICE, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 FACT SHEET (1994) [hereinafter CRIME CONTROL ACT FACT SHEET], <https://www.ncjrs.gov/txtfiles/billfs.txt> [<https://perma.cc/TEF7-7C62>].

<sup>55</sup> See *id.*

At that time, I was the police chief in Chelsea, Massachusetts, a city that was densely populated and afflicted with high rates of violent crime. Chelsea had also been placed in receivership by the Commonwealth of Massachusetts due to a pattern of financial misconduct.<sup>56</sup> The city had a significant population of immigrants from El Salvador who had fled the ravages of civil war. The police department had been historically underfunded and inhabited a condemned building. Against this backdrop, the interest of the federal government in the issue of crime and law enforcement's response to it was welcome and necessary.

As stated previously, at this moment in history, a generation of young chiefs and other senior police officials who benefited from LEEP were prepared for and receptive to the development of the police philosophy known as "community oriented policing." This concept was widely discussed at the Harvard executive sessions on policing and had generated literature that was the focus of scholarly discourse.<sup>57</sup> Based on a problem-oriented approach, its underlying assumption is that residents need to be active participants in the communities they live in to achieve reductions in crime and disorder.<sup>58</sup> The development of partnerships with community members and stakeholders enables police to more effectively combat crime and disorder, while simultaneously improving the quality of life.<sup>59</sup>

The Violent Crime Control and Law Enforcement Act funded the Office of Community Oriented Policing.<sup>60</sup> This office would be responsible for the hiring of the 100,000 police officers, but it would also be charged with creating training based on the concept of community oriented policing.<sup>61</sup> For the first time since the 1960s and 1970s, the muscle of federal dollars would be placed behind a police reform effort geared towards developing closer relationships between police departments and their communities, particularly those communities most afflicted with serious crime.<sup>62</sup>

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<sup>56</sup> See Brian R. Ballou, *From Industrial to Desirable: Rebuilding Chelsea*, BOSTON GLOBE (Nov. 26, 2007), [http://www.boston.com/realestate/news/articles/2007/11/26/from\\_industrial\\_to\\_desirable\\_rebuilding\\_chelsea/?page=full](http://www.boston.com/realestate/news/articles/2007/11/26/from_industrial_to_desirable_rebuilding_chelsea/?page=full) [<https://perma.cc/6WBC-FHVT>].

<sup>57</sup> See, e.g., Lee P. Brown, *Community Policing: A Practical Guide for Police Officials*, 12 PERSPECTIVES ON POLICING 1 (1989).

<sup>58</sup> See Malcolm K. Sparrow, *Implementing Community Policing*, 9 PERSPECTIVES ON POLICING 1 (1988).

<sup>59</sup> See Edward A. Flynn, *Community Policing is Good Policing, Both Today and Tomorrow*, in COMMUNITY POLICING: THE PAST, PRESENT, AND FUTURE 25 (Lorie Fridell & Mary Ann Wycoff eds., 2004).

<sup>60</sup> See NATHAN JAMES, CONG. RESEARCH SERV., RL 33308, COMMUNITY ORIENTED POLICING SERVICES (COPS): BACKGROUND, LEGISLATION, AND FUNDING 1 (2011), <https://www.fas.org/sgp/crs/misc/RL33308.pdf> [<https://perma.cc/34TL-2XS4>].

<sup>61</sup> *Id.* at 1–2; CRIME CONTROL ACT FACT SHEET, *supra* note 54, at 3.

<sup>62</sup> There is no doubt that some police departments engaged in the pretense of community oriented policing, but did not fundamentally change their core strategy. But, it is equally true that many cities benefited from the presence of additional officers in public spaces imbued with the principles of a community oriented policing strategy that understood how important consent was to democratic policing. See, e.g., U.S. DEP'T OF JUSTICE, OFF. OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, UNDERSTANDING COMMUNITY POLICING: A FRAME-

With money from the COPS Office, I was able to bring in a cadre of trainers and expose my entire police department to the precepts embodied in notions of community oriented policing. I was able to bring in leading speakers to put this concept in a broader historical and social perspective. And, we were able to hire additional officers, many of them Spanish-speaking, that allowed a department plagued by high rates of crime and calls for service to engage in foot patrols in neighborhoods that needed a sustained police presence in public spaces.

Furthermore, trust in the police was gained at the “retail” level rather than the “wholesale” level of policing. Minority communities afflicted by high rates of crime and distrust of the police based on either historical experience in America or experience in the country from which they emigrated needed a personalized policing style that developed trust by citizen contact. Community policing recognized the importance of developing support at the neighborhood level, the importance of communication skills in police-citizen interactions, and the necessity of using data not just to identify problems but to fashion intergovernmental responses to them.

The 1990s were a time of police innovation funded and supported by the federal government and quality research. Other dollars funded research and training that brought the work of Herman Goldstein, George Kelling, and other scholars to a wide police audience.<sup>63</sup> Their work emphasized the importance of the police collaborating with other institutions to solve community-based problems that frequently were precursors of more serious criminal behavior.<sup>64</sup> It emphasized the importance of order maintenance to the development and maintenance of secure stable neighborhoods, and it recognized the value of police officers engaging with neighborhoods and actively assisting in their efforts to organize for collective efficacy.<sup>65</sup> But even as the 1990s witnessed widespread police innovation and the movement of community-based, problem-oriented, data-driven strategies into the mainstream attention, the inherent nature of policing within disadvantaged neighborhoods led to controversy over racial profiling.

The notion of profiling based on the observance of specific conduct had been in policing historically. Its emergence as a national issue was directly related to “Operation Pipeline.” State police departments patrolling the Interstate 95 corridor from Florida to the Northeast employed a drug courier profiling interdiction strategy that had been developed by—and taught to

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WORK FOR ACTION (1994), <https://www.ncjrs.gov/pdffiles/commpp.pdf> [<https://perma.cc/GJD9-55SA>].

<sup>63</sup> See, e.g., HERMAN GOLDSTEIN, NAT'L INST. OF JUSTICE, *THE NEW POLICING: CONFRONTING COMPLEXITY* (1993), [https://media.law.wisc.edu/m/bmfdh/new\\_policing\\_confronting\\_complexity.pdf](https://media.law.wisc.edu/m/bmfdh/new_policing_confronting_complexity.pdf) [<https://perma.cc/K3C8-ZBAH>]; GEORGE KELLING, NAT'L INST. OF JUSTICE, “BROKEN WINDOWS” AND POLICE DISCRETION (1999).

<sup>64</sup> See, e.g., GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* (1996); GOLDSTEIN, *supra* note 63; HERMAN GOLDSTEIN, *PROBLEM-ORIENTED POLICING* (1990).

<sup>65</sup> See, e.g., KELLING & COLES, *supra* note 64.

them by—the Drug Enforcement Administration.<sup>66</sup> A profile had been developed based on the vehicles and descriptions of individuals who had been stopped in the past under suspicion of being drug dealers. The problem, of course, is that built into the strategy were the biases of highway patrolman who had made drug arrests in the past. Gradually, in several states, it became abundantly clear that larger numbers of Hispanic and African-American drivers were being stopped and searched on the highways far out of proportion to their representation on those highways. As the result of lawsuits and the clear evidence of research, the practice was discredited and fell into disrepute.

The problem for urban policing, particularly those embracing community-based strategies, was that the term “racial profiling” came to stand for every disparity generated by police citizen contacts. The irony was that many of these contacts, if not most, in community oriented policing were at the behest of neighborhoods afflicted with high rates of crime and disorder. It is certainly well known that poor, minority residents are victimized by violence at much higher rates. And economically disadvantaged residents generally live in distressed neighborhoods where disorder makes the public spaces unavailable, if not downright dangerous. It could certainly be said that police departments that responded to the concerns of their neighborhoods would be generating data that might well be used against them as evidence of racial profiling. This problem was exacerbated by the fact that no one could agree on the appropriate denominator to use in determining a disparity. If the denominator chosen was the general population then a disparity would exist in every city. If the denominator was the victim population that disparity would certainly greatly narrow, as it would if the denominator were the described suspect information. It was frustrating for police officials to find that their attempts to do the community’s will could generate controversy not terribly different than that generated by policing in the 1960s, which was predicated on the efficacy of aggressive tactics rather than community support.

## VI. THE 2000s: 9/11 AND HOMELAND SECURITY

On that fateful day of September 11, 2001, I had the privilege of being the police chief of the Arlington, Virginia Police Department. Over the ensuing weeks, I led the department as it participated in the recovery efforts at the Pentagon after the terrorist attack. To those of us in local law enforcement, there were obvious lessons to be learned. First, although terrorists

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<sup>66</sup> See *U.S. Wrote Outline for Race Profiling, New Jersey Argues*, N.Y. TIMES (Nov. 29, 2000), <http://www.nytimes.com/2000/11/29/nyregion/29FEDS.html?pagewanted=all> [<http://perma.cc/7KX9-68JD>]; Mark Vosburgh, *I-95: Drug Pipeline for Eastern U.S.*, ORLANDO SENTINEL (Jan. 15, 1989), [http://articles.orlandosentinel.com/1989-01-15/news/8901150233\\_1\\_florida-highway-patrol-drug-trafficking-drugs-seized](http://articles.orlandosentinel.com/1989-01-15/news/8901150233_1_florida-highway-patrol-drug-trafficking-drugs-seized) [<http://perma.cc/4LD5-XDWF>].

thought globally, they carried out their acts locally.<sup>67</sup> In the United States that meant that the smallest units of government and their police departments would be the first responders and incident commanders at the scene of a terrorist attack.

Secondly, it was obvious to us that the successful local government response to the Pentagon attack was the result of years of interagency collaboration, cooperation, and joint training. The Metropolitan D.C. region had for many years engaged in joint preparedness training. Furthermore, there were a finite number of police and fire agencies to coordinate, since most agencies outside the city were countywide in jurisdiction.

Third, as trust is essential in the midst of a crisis, it is important to realize that it cannot necessarily be developed in the midst of crisis but must exist prior to it. Clearly, as had been our experience, this required the development of relationships before an event and not during it.

Fourth, everything the police and fire agencies did at the scene of the terrorist attack arose from their core missions. For the fire department, as dreadful as the attack was, it was fundamentally a plane crash, a building collapse, and a fire. These were all events for which they had trained for their entire careers and were well qualified to deal with. For the police, notwithstanding that this event was triggered by terrorism, our major responsibilities were evacuation, crowd control, traffic control, site protection, evidence collection, and witness interviewing. All of these were skills already in the possession of the police. It seemed obvious to the police and fire personnel that excellence in our core mission was an essential component of dealing with a terrorist event.

Finally, as the evidence was processed from the scene, we would learn that the Arlington Police Department had issued a traffic citation to one of the hijackers.<sup>68</sup> It seemed obvious to us that policing likely had a significant role as first preventers rather than simply first responders. Community-based policing strategies which emphasize the relationships between police and neighborhoods that encourage the police to reach out to new and emerging immigrant groups offered the most obvious avenue toward police officers at the local level in developing useful information that could theoretically prevent another attack.

It would soon become clear that these were not the perspectives of our federal partners. After the shock and horror of the initial attacks had worn off, and the United States government toppled the regime in Afghanistan that was harboring the terrorists, the attention of the federal government turned towards prevention of the next attacks. The Department of Homeland Security (DHS) was created with a view towards coordinating the responses of several federal agencies that had responsibilities for borders and various

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<sup>67</sup> See Flynn, *supra* note 59, at 33.

<sup>68</sup> See, e.g., *Another Hijacker was Stopped for Traffic Violation*, CNN (Jan. 9, 2002), <http://edition.cnn.com/2002/US/01/09/inv.hijacker.traffic.stops/> [http://perma.cc/4LQN-RGQ3].

forms of law enforcement while leading and coordinating the response of state and local government to the terrorist threat.<sup>69</sup> This would be accompanied by significant infusions of money for equipment and training to be provided to local police and fire departments.<sup>70</sup>

A little more than a year later I was named Secretary of Public Safety and Homeland Security for the Commonwealth of Massachusetts. In that capacity, I oversaw many law enforcement and support agencies, including the Massachusetts State Police, the Massachusetts National Guard, the Massachusetts Emergency Management Agency, as well as the Department of Corrections. I was also the governor's principal homeland security advisor and was responsible for administering all federal grants to the state relating to criminal justice and homeland security.

There was significant pressure early on to spend the federal money as rapidly as possible for the purposes of preparing our state for subsequent terrorist attacks. Ironically, the money earmarked for equipment and training was required to be spent before the money allocated for planning. As we rapidly moved to create a regional approach to homeland security in the Commonwealth due to the fact that over 300 cities and towns wanted some of the homeland security money, a disturbing trend became obvious. Criminal justice grant funding was disappearing. Apparently, a decision had been made to fund the federal grants for homeland security with money that had previously been allocated for community policing. I attended several meetings with the governor during which we strenuously argued that local law enforcement had a first preventer's role and community-based policing strategies offered a way to accomplish that goal. The retired generals and admirals advising homeland security were convinced that what we needed was heavy equipment and money for specific terrorist event training. Most of the lessons we had learned at the Pentagon were not lessons some government officials were eager to learn for themselves.

For the next several years, enormous sums of money were expended on some training that was very good, such as incident command training, a version of which we had indeed used at the Pentagon. But there was also a significant proliferation of first responder equipment and communications equipment, as well as equipment for local police departments to develop regional tactical capabilities, as it was clear that in the event of a violent attack involving armed terrorists, local police would be the first to engage with them. But money and training for the development of relationships with

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<sup>69</sup> See GEORGE W. BUSH, U.S. DEP'T OF HOMELAND SEC., PROPOSAL TO CREATE THE DEPARTMENT OF HOMELAND SECURITY (2002), <http://www.dhs.gov/publication/proposal-create-department-homeland-security> [<http://perma.cc/EA84-L594>].

<sup>70</sup> The Urban Area Security Initiative is one example of funding allocated for law enforcement for terrorism prevention. In fiscal year 2014, \$587 million was provided to state and local agencies. Press Release, DHS Announces Grant Guidance For Fiscal Year (2014) Preparedness Grants (Mar. 18, 2014), <http://www.dhs.gov/news/2014/03/18/dhs-announces-grant-guidance-fiscal-year-fy-2014-preparedness-grants> [<http://perma.cc/4HFH-F59C>].

local communities disappeared. I took to calling homeland security, “the monster that ate criminal justice.”

The events of the years after 9/11 bear a direct relationship to the perceived estrangement of local law enforcement from the community and what appear to many to be its militarization. As we have already seen, there have been two prior major federal interventions in local law enforcement. The first occurred in the late 1960s and emphasized the professionalization of policing through higher standards of recruitment, more thorough training, higher education for practitioners, and the development of community relations programs. These reforms had a major impact on the capabilities and capacities of much of American law enforcement, while simultaneously educating its practitioners for future leadership. In the mid-1990s, a second major federal intervention occurred that stemmed from the results of academic research and experimentation and intended to both reduce crime and build strong relationships between police and communities. Unlike the 1960s, community relationship building would move beyond special units and instead be part of the core operating philosophy of the community oriented policing movement. Both of these major interventions saw policing as an essential component of healthy neighborhood life and built off the concept of democratic consent policing based on strong community support as the basic building block of effective law enforcement.

As a result of the trauma induced by the terrorist attacks at the beginning of the twenty-first century, I watched federal engagement shift from a neighborhood focus, and a crime prevention focus, to an emphasis on the notion of police as first responders after an event occurred. In some ways this was an echo of earlier notions of police professionalism, which thought that rapid response to calls for service resulting in arrests and the presentation of cases to the criminal justice system were the most important metrics of police performance. Both conceptions of policing ignored or minimized the key role that police play in crime and terrorism prevention.

This was a missed opportunity. Certainly good came of the dramatic efforts made by DHS and the intent of homeland security grants. Valuable equipment was secured. Public safety agencies received valuable training and incident command systems. Fusion centers, developed primarily for the purpose of analyzing terrorist threats, have in many jurisdictions morphed into real-time crime centers, as the skills necessary for one are equally applicable to the other. Interagency drills took place, enhancing the ability of agencies from different locales to work together in a crisis. But this was at the cost of the loss of a virtual generation of funding that could also have been used to institutionalize community based approaches in local law enforcement agencies that now found themselves stressed by homeland security responsibilities in addition to their traditional roles.

## VII. TWENTY-FIRST CENTURY POLICING

This missed opportunity reverberated in subsequent decades. In 2008, I became Chief of Police in Milwaukee. Similar to every major American city, Milwaukee has assets and liabilities. Its assets include a beautiful lakefront location, a vibrant social and cultural life, a diversified economy with strong health, manufacturing, and higher education sectors, along with a historic tradition of being the home to many famous breweries. And just like so many famous American cities, it has some neighborhoods characterized by very high rates of intergenerational poverty and violent crime. And, it is to these neighborhoods the police are most frequently summoned, most often invoked, most often demanded, and most needed. The intensity of the demands for police service in these neighborhoods is far greater than those that are more prosperous. The police spend the bulk of their time responding to various forms of social and family crisis for which there are few, if any, resources other than dialing 911. They also are responding to the high rates of violent crime victimization. And as has been true for centuries, the people who demand their interventions the most have valid historical reasons for being distrustful. It continues to be the greatest challenge of crime in a free society.

If it is true that “the more things change, the more they stay the same,” then I suppose it is fitting that many of the controversies that defined the beginning of my police career have resurfaced as I near the end of it.

The second decade of the twenty-first century has been characterized by widespread calls for police reform. Cell phone videos of police misconduct are now national news. These videos understandably cause concern and sometimes outrage about conduct assumed to be widespread. News coverage containing armored vehicles deployed at scenes of protest or disorder raise fear of militarization of the police and calls for legislation prohibiting the deployment of such vehicles to local law enforcement agencies.

It seems that the reforms of the past often spark demands for reforming the reforms. In the 1960s, court decisions and blue-ribbon commissions called into question the state of police practice. Those court decisions would ultimately reduce significantly the unlawful gathering of evidence. The commissions recommended widespread changes to police administration and practice that are now considered standard. Thirty years later, the funding of the Office of Community Oriented Policing Services created the impetus for the adoption of strategies intended to secure neighborhood-based support for police activities linked to neighborhood demands and expectations. And the disruption caused by the events of 9/11 pushed military style equipment into the hands of local policing in the expectation that they would be the first responders to a local terror attack.

In response to the controversies of recent years, the President convened a task force on twenty-first century policing.<sup>71</sup> In contrast to the efforts of the 1960s and 1990s, the police alone were singled out for examination and reform. The report is comprehensive in its recommendations. The panel members were experienced and respected individuals.<sup>72</sup> Those who gave testimony, including myself, were individuals with strong academic and professional credentials. The police establishment generally accepted the recommendations in the report. Indeed, the recommendations clearly built on the reforms engendered by earlier efforts in prior decades, which had a formative impact on the perspectives of current police leaders.

#### CONCLUSION

Policing in a dynamic environment will require the continued evolution in the manner in which agents of social control perform their essential work. This evolution will build on the dramatic improvements in American policing over the past fifty years. Education, research, and applied technology will continue to be central. But, above all, the manner in which law enforcement secures the “consent of the governed” and balances communitarian and individual rights will continue to evolve to meet the demands of its multitude of stakeholders. Protecting a society that demands security from terrorism, but insists on privacy, that yearns to be free from violence, while remaining heavily armed will continue to present challenges and opportunities for our democracy’s criminal justice institutions.

Policing a free, diverse country that was founded on the basis of distrust for authority will never be an easy task. Those who make up that society will never be entirely satisfied with the level of police protection they receive and they will retain the right to be harshly critical of their law enforcement authorities. This is as it should be.

But it should be a source of pride for current police officers and those who have gone before them that as contentious as current events are, they are far better positioned to respond to them. Policing today is generally more selective, better trained, more diverse, more restrained in the use of force, and has higher levels of integrity than in any time in its history, and its practitioners are sought by nations around the world to teach the principles of democratic consent policing to new and emerging democracies.

That America’s police have the level of competence they now have, while at the same time remaining open to both criticism and change, is a direct tribute to the era of the *Miranda* decision. The times that created a generation of judges insistent on constitutional police practices also gener-

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<sup>71</sup> See PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, OFF. OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEPT. OF JUSTICE, FINAL REPORT OF PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_final\\_report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_final_report.pdf) [http://perma.cc/DQK6-9ENQ].

<sup>72</sup> See *id.* at v.

ated deep interest in the professional development of policing, and indeed, the entire criminal justice system. The reforms recommended and implemented in that era would reverberate through the years and serve as the foundation of all subsequent reforms. Fifty years later, *Miranda* still matters. Not simply as a landmark court decision, but as an emblem of a time when careful analysis and thoughtful study produced a sea of change in how society viewed its criminal justice system and subsequently set forth to ensure the perpetual evolution of that system.