

# The Federalization of Local Police

Article

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**“The Federalization of Local Police”**  
*Is it Time to Reshape American Police?*

During the 108<sup>th</sup> Congressional Session, Representative Charles Norwood (R-GA) introduced legislation intended to address the issue of illegal immigrants in the United States. The “Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act of 2003” did not rely on hiring more federal border patrol agents to stop illegal immigration at the border. Nor did it rely on hiring more immigration agents to detect illegal aliens already in this country, or on tightening security around our borders to thwart illegal border crossings. No, the new tool to combat illegal aliens would be the local cop working a beat in any city across America.

CLEAR would have required the Department of Homeland Security to provide training to local law enforcement officers to identify and detain criminal aliens. How did the Act propose to engage local police in this effort? The lure was money. State or local agencies that did not comply with the Act would not receive federal funding for the incarceration of criminal aliens. Debate about the CLEAR Act was fierce among advocates on both sides of the immigration issue. Interestingly some “law and order” constituents staunchly opposed the Act, including most major organizations representing local police. The following summarizes the concerns of local police:

*“Many law enforcement executives believe that state and local law enforcement should not be involved in the enforcement of civil immigration laws since such involvement would likely have a chilling effect on both legal and illegal aliens reporting criminal activity or*

*assisting police in criminal investigations. They believe that this lack of cooperation could diminish the ability of law enforcement agencies to effectively police their communities and protect the public they serve.”*<sup>1</sup>

There was no subtlety in the CLEAR Act about its intent to involve local police in the enforcement of federal laws. It was but another effort by the federal government to influence, or federalize, the activities of local police agencies. Federalization is placing mandates or other requirements on local law enforcement through funding or other methods by the federal government. Is this effort to “federalize” local police a good idea? What impacts would this have on the way we police American cities? To examine the struggle between local control and federal intervention into the work of the police we begin with a brief look at history.

## **HISTORICAL PERSPECTIVE**

Policing in America has its roots in the work of Sir Robert Peel, the 19<sup>th</sup> century founder of the London Metropolitan Police. Sir Robert authored nine principles for modern policing that have guided British and American forces for most of the 20<sup>th</sup> century. “Peel’s Principles” emphasized that the primary mission of police officers is to “prevent crime and disorder.” His principles also recognized that police could not function in a free society without the support of the community. Scholarly studies of police work often cite and validate Peel’s principles. An early study of police work in America concluded, “The heart of police work is the contact of the individual policeman with the citizen...”<sup>2</sup>

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<sup>1</sup> *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement*, (IACP 2004) p. 1

<sup>2</sup> Raymond B. Fosdick, *American Police Systems* (The Century Co., 1920) p. 306

In keeping with Peel's principles, the primary responsibility for keeping people safe from crime in America has rested with those closest to the community, local government. The federal government, through the Constitution and amendments as interpreted by federal courts, has established the foundation for law enforcement in America. State governments establish the laws and designate who has authority to provide law enforcement. However, local government is the one to staff police departments in accordance with the expectations and demands of their local communities.

### **CHANGING TIMES**

The American policing model has undergone constant evolution but a dramatic shift has been occurring over the past forty or so years. The 1960's saw a sharp rise in crime in communities across the United States, especially in crimes of violence. "Burgeoning crime rates, rapid social change and massive unrest have catapulted our police agencies from relative obscurity into the American spotlight",<sup>3</sup> said Roy Roberg in 1976, describing the impact of this period on local police. This attention prompted several federal inquiries into American law enforcement.

President Lyndon B. Johnson appointed a President's Commission on Law Enforcement and Administration of Justice. The Commission issued a report in 1967 titled "*The Challenge of Crime in a Free Society*". The Commission's report criticized the "criminal justice system" and recommended an overhaul of the "system", stressing the need for better coordination and cooperation among its various components. The report prompted legislation that ultimately established the Law Enforcement Assistance

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<sup>3</sup> Roy R. Roberg, *The Changing Police Role*, (Justice Systems Development, Inc. San Jose, CA., 1976 ) p. 3

Administration (LEAA) in 1968. The primary mission of LEAA was research and development to improve local criminal justice systems across America and to train American police officers. Thus LEAA, a federal agency, became involved in functions previously left to state and local governments.

The federal government became more intertwined with local police departments during the '80's and 90's. During this period task forces were created in response to increasing crime rates related to drugs, organized crime, and street gangs. These task forces partnered local and state police with federal law enforcement agents in units such as Safe Streets Task Forces, formed by the FBI in 1992 to combat gangs and violence in local communities, and High Intensity Drug Trafficking Area (HIDTA) task forces, designed to target drug trafficking in specific regions. These programs, which continue today, increased direct interaction between federal and local law enforcement officers and thus broke down previously perceived barriers.

The Community Oriented Policing Services (COPS) program created by the 1994 Crime Act represented a significant entry by the federal government into local policing. President Clinton's goal for the program was to add 100,000 front line officers to local law enforcement agencies, providing funding to agencies that adopted community policing programs as defined by the federal government.<sup>4</sup> In this way COPS was clearly an effort by the federal government to reshape the delivery of local police services.

The terrorist attacks of September 11, 2001 caused the federal government to re-direct funding from COPS to the newly-created Department of Homeland Security. This funding shift reshaped federal priorities for local police. Instead of federalizing criminal

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<sup>4</sup> Community Oriented Policing Services, U.S. Department of Justice  
<http://www.communitypolicing.org/about3.html>

acts that were already covered by state law as was done in the 1980's and 90's, the federal government began looking at legislation and incentives to engage local police agencies in activities previously reserved for the federal government. This foundation of increasing federal intervention into the staffing, funding and goals of local agencies brought us to the CLEAR Act of 2003 and the building debate over the federal government's efforts to be more involved with local law enforcement.

### **THE FEDERALIZATION OF LOCAL POLICE**

The federalization of local police stimulates much debate. Former U.S. Attorney General Edwin Meese III observed that in the 1950's there was virtually no involvement by the Federal government in local law enforcement issues. During the 1980s and '90s, however, the federal government passed federal sanctions enforcing crimes, such as carjacking and church burning, previously left up to the states. These federal laws were enacted as "political choices rather than a matter of criminal justice policy." Meese argued that the Constitution clearly intended that the states bear the responsibility for public safety, not the federal government.<sup>5</sup> On the other side, former Assistant Attorney General Richard K. Willard conceded that many of the federal criminal statutes passed in the '80s and '90s were duplicative of state law but argued that the federal government had legitimate interests in protecting their constituents from crime. Mr. Willard suggested the debate should not be whether the federal government should enact laws

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<sup>5</sup> Edwin Meese III, (The Federalist Society For Law and Public Policy Studies, 2001) <http://www.fed-soc.org/Publications/practicegroupnewsletters/criminallaw/cl020102.htm>

prohibiting crimes traditionally covered by state law, but how best to allocate federal, state, and local resources to combat crime in our communities.<sup>6</sup>

The public may agree with Mr. Willard. A public opinion survey, summarized in the September 1997 edition of the NIJ Journal<sup>7</sup>, indicated that eight out of 10 Americans feel “reducing crime” is a top priority for Congress, with 57 percent giving it the highest possible priority rating (Hart and Teeter Research Companies, December 1996)<sup>8</sup>. These survey results seem to indicate that the public wants the federal government involved with local law enforcement.

## **RECENT TRENDS**

To study any possible impacts of federalization on medium size local law enforcement agencies, the author gathered a group in October 2004 to provide informed input on the issues surrounding federalization. This group process, called a Nominal Group Technique or NGT<sup>9</sup>, pulled together persons with knowledge and experiences relevant to the topic, including:

- Special Agent-in-Charge, Federal Bureau of Investigation field office
- Assistant Special Agent-in-Charge, Bureau of Customs and Immigration Enforcement field office
- Local Police Chief of a mid-size California City with a population between 50,000 and 75,000
- Law Enforcement Coordinator, U.S. Attorney’s District Office
- Representative of a local non-profit legal program with a focus on housing issues
- A Muslim-American and member of a national organization promoting understanding and improved relationship with Muslim citizens

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<sup>6</sup> William H. Jordan, (The Federalist Society For Law and Public Policy Studies, 2001) <http://www.fed-soc.org/Publications/practicegroupnewsletters/criminallaw/cl020105.htm>

<sup>7</sup> Jean Johnson, Americans Views on Crime and Law Enforcement, (National Institute of Justice Journal, vol. 233, September 1997), p. 10

<sup>8</sup> Ibid, p.10

<sup>9</sup> André L. Delbecq, Andrew H. Van de Ven and David H. Gustafson, Group Techniques for Program Planning: A Guide to Nominal Group and Delphi Processes, Scott-Foresman, 1975.

- Elected member of a local community college district board and local Hispanic community member and leader
- Representative of local businesses
- Retired editor of local newspaper

The NGT panelists represented a variety of backgrounds, interests and expertise, and included two females and seven males. The group identified trends and events, then evaluated the impact of these trends and events on the future of law enforcement.<sup>10</sup>

Some of the more significant trends were:

- An underlying sense of fear that exists in American society driven by the media;
- A continuing and divisive debate over immigration;
- A positive trend of trust in law enforcement;
- A growing dependence by local governments on state and federal funds; and
- Technological advances that could lead to integration of multi-level government databases.

The NGT panelists analyzed potential events in the coming decade that might affect the federalization of local police. The group identified several different events stemming from criminal conduct, natural disasters, and manmade catastrophes, including the potential for future acts of terrorism perpetrated by ideological extremists. As a consequence of the September 11, 2001 attacks and the fear that followed, the group believed an initial public reaction to any such event, including some natural disasters and accidents, would be to question whether it was a terrorist act. This view emphasized a greater need in the future for more effective law enforcement at all levels of government.

A dominant theme emerged from the group dialogue that the role of law enforcement in the United States has changed forever because of the terrorist attacks of September 11, 2001. Law enforcement in America is now the first line of defense against

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<sup>10</sup> Sullivan, Carey F. (2005) *What Will Be the Effect of "Federalization" On Medium Size Law Enforcement Agencies In 2014?*, Unpublished Research Paper, CA POST Command College-Class 37, Oxnard, CA

domestic terrorist attacks. This reality was not without dissention. For some, the improved coordination of efforts by various law enforcement agencies meant better protection for the country, but others viewed it as an alignment of government agencies that could further restrict freedoms. Regardless of their individual perspectives, the consensus was that an evolution of American law enforcement would continue.

The new threats we face, changing public and political expectations and advances in technologies demand more collaboration and cooperation among law enforcement agencies at all levels of government. A 1995 study showed that a majority of the public (58%) had confidence in the police.<sup>11</sup> If federalization efforts continue, will the affect be to distance the police from communities they serve and thereby erode that confidence?

This research was not intended to answer whether federalization is good or bad, but how can the evolution of the past forty years continue, including enhancing law enforcement's ability to combat terrorism, while still maintaining the public's confidence in law enforcement.

## **A LOOK TO THE FUTURE**

From traffic enforcement<sup>12</sup> to combating gun violence,<sup>13</sup> law enforcement administrators have learned that being proactive is more effective than being reactive. A proactive approach using the transitional change model would be most effective to help alter the roles of law enforcement at the federal and local level. This model is

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<sup>11</sup> Johnson, Op. cit., p. 10

<sup>12</sup> Looking Beyond The Ticket: Traffic Law Enforcement and Beyond, (National Highway Traffic Safety Administration) [www.nhtsa.dot.gov/people/injury/enforce/Beyond/beyond.htm](http://www.nhtsa.dot.gov/people/injury/enforce/Beyond/beyond.htm)

<sup>13</sup> Lawrence W. Sherman, James W. Shaw, and Dennis P. Rogan (The Kansas City Gun Experiment) National Institute of Justice – Research in Brief, Jan. 1995

characterized by an established plan, a clear direction by the leadership of the organization, and a prescribed timeline.<sup>14</sup> Another aspect of the transitional model is the opportunity for organizational leaders and public policy makers to monitor the impacts of any proposed change as it progresses and redirect the change as needed. Developing such a plan on the federalization of local police will provide more efficient change and greater control over the impacts.

Planning will first require initiative by political leaders at all levels of government, and of course the involvement of law enforcement leaders. Other outside participants that need to be involved include community advocates and business leaders; senior citizens, taxpayer groups, representatives of ethnic communities, and crime prevention groups; educational leaders; and advocacy organizations such as civil liberty groups, immigrant support groups, and immigration reform groups. These stakeholders will work to redefine the relationship among law enforcement agencies and develop a plan for moving these agencies to the newly defined state. Below is a possible vision statement that could describe the newly defined state:

*“Law enforcement agencies from federal, state, and local agencies share a common mission to protect and serve the needs of the citizens, and work to achieve that mission through a recognition of the distinct roles that each agency has in their communities and through the best application of the varied skills, knowledge, abilities and resources available in any of the agencies to a particular problem or issue.”<sup>15</sup>*

This “vision statement” recognizes that law enforcement, whether it is at the federal, state, or local level, exists first to protect the public from harm. It acknowledges the

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<sup>14</sup> Linda S. Ackerman-Anderson (Development, Transition or Transformation-The Question of Change in Organizations) *OD Practitioner*, 1996, 28(4),5-16

<sup>15</sup> Sullivan, op. cit., p. 41

fundamental principle that American policing is responsive to the citizens - not the government.

A set of clear goals and measurable objectives should accompany the vision statement. The goals and objectives established must be applicable to law enforcement agencies at all levels of government. Some promising goals and objectives that grew out of the NGT process appear below:

**Goal 1: Well defined roles for federal, state, and local law enforcement agencies that are mutually understood and accepted by all levels of government**

Objectives

- *To work with state and federal agencies, and professional associations, to establish a commission to define roles of law enforcement agencies at various levels of government.*
- *The commission to solicit input from stakeholders*
- *The commission to develop a set of proposed definitions*
- *The commission to obtain feedback on proposed definitions*
- *The commission to publicize the adopted definitions*
- *Establishment of multi-agency, multi-level working group to develop mutual understanding of roles and develop working protocols*

**Goal 2: Open and timely communications among federal, state and local law enforcement agencies**

Objectives

- *Review legislation limiting communications between law enforcement agencies at all levels of government and recommend amendments as warranted*
- *Eliminate any jurisdictional territorialism that may inhibit communications between law enforcement agencies at all levels of government*
- *Develop and/or implement communication protocols for sharing information between law enforcement agencies at all levels of government*
- *Develop and/or implement fixed methods for sharing information as permitted*
- *Develop and/or implement a dispute resolution process to clear up mishandling of communications*

**Goal 3: Shared resources at all levels of law enforcement**

Objectives

- *Review legislation limiting the sharing of resources between law enforcement agencies at all levels of government and recommend amendments as warranted*
- *Develop and/or implement a comprehensive resource list held by each agency*
- *Develop and/or implement agreements that establish procedures and responsibilities for the sharing of resources among law enforcement agencies*
- *Provide cross training as necessary to share resources*
- *Develop and/or implement a resource plan to efficiently locate resources where needed and eliminate duplicative purchasing*

**Goal 4: Appropriate shared operations by local, state and federal public safety agencies**

*Objectives*

- *Review legislation limiting the sharing operations between law enforcement agencies at all levels of government and recommend amendments as warranted*
- *Develop and/or implement a list of typical operations to be shared among law enforcement agencies at all levels of government*
- *Develop and/or implement a process to review other circumstances which may lend themselves to shared operations but are not part of the standard list*
- *Define or adopt operational control structure for shared operations*
- *Establish and/or participate on joint task forces for on-going shared operations*<sup>16</sup>

The intent of these goals and objectives is to provide seamless safety services to the community, not to create another level of government or bureaucracy. The commission to define these roles would be ad-hoc but may be reconstituted from time to time to validate the definitions. Under these well-defined roles, law enforcement at each level would establish procedures to carry out their specific duties and to work efficiently with other agencies. This model would provide communities with better, more expedient service and likely more overall confidence in policing and its practitioners.

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<sup>16</sup> Ibid, pp. 42-43

## **START SMALL – THINK BIG**

The enormity of the change needed to affect the way law enforcement agencies at federal, state, and local levels work can be very intimidating, and ultimately dissuade efforts to effect the change. However, the development of a manageable implementation strategy would facilitate such a change.

The number and size of the organizations involved necessitates finding an implementation strategy that allows the change to start out small and spread as the roots of change take hold. Such humble beginnings could be using a regional approach that builds on relationships that already exist to initiate discussions.

The federal judicial districts that exist in each state are one possible alignment to define the regions. Within a region, law enforcement leaders would propose definitions for the roles of the federal, state, and local agencies that exist in that region. These leaders would identify local stakeholders to provide input on proposed changes. An important task for these regional meetings would be to list resources available within the region, and develop for shared use of these regional resources. Another task would be to design and implement communication links, particularly involving federal agencies, which might be less complicated under a regional approach though special project legislation may be required.

The regional approach provides a model for other collaborations to duplicate. As the different law enforcement jurisdictions begin to operate with standard roles and responsibilities, the community should see effective and efficient law enforcement agencies at all levels of government that remain responsive to their unique communities. Surveys could be utilized to measure community satisfaction with any changes, while

measures that are more specific would evaluate operational effectiveness. Below are some possible measures that directly reflect the goals and objectives:

- The number of multi-agency (federal, state, local) operational units as opposed to “task forces”
- The availability and frequency of use of multi-agency resource pools
- The number of integrated multi-agency (federal, state, local) investigations
- The number of communication links between federal, state, and local agencies
- The number jurisdictional disputes between federal, state, and local law enforcement agencies

Another key indicator of success would be the level of trust existing between federal, state and local law enforcement agencies. Surveys of current employees in the affected agencies would measure the level of trust pre and post change.

## **CONCLUSION**

Traditionally, local police has had the primary responsibility to protect people from street crimes and other criminal acts, and the federal government had little to do with these types of threats. Since the 1960’s, the federal government has become more involved in local policing, referred to as federalization. “Federalization shifts accountability and confuses citizens about who is in charge of protection for their local community,” said former Attorney General Meese. “They (citizens) don’t know to talk to their local; chief of police, the local sheriff, the local legislator or to write their congressman....”<sup>17</sup> The CLEAR Act debate shows us that federalization could be a challenge to one of Sir Robert Peel’s basic principals “that in a free society, the police cannot police without the support of their community.”

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<sup>17</sup> Edwin Meese III, (The Federalist Society For Law and Public Policy Studies, 2001) <http://www.fed-soc.org/Publications/practicegroupnewsletters/criminallaw/cl020102.htm>

Federalization up to now has been reactionary with little or no comprehensive planning. We can choose to remain reactionary, or to use strategic planning and transition management to reshape American police organizations. Clearly, the latter is preferred.

To have significant success enacting such monumental change, executives from federal, state and local agencies need to gather in regional forums to begin the discussion. For success to be realized effective planning and the use of a transitional change model is the best strategy. Sir Robert Peel provides the basic tenet for any vision adopted as a part of an effort to reshape American police; the "...police are the public and the public are the police." Whatever changes are implemented, direct communications with and responsiveness to the public must remain essential components of effective policing. Properly designed and implemented, a plan to reshape law enforcement agencies at the federal, state, and local levels; and to share resources and communications links would improve local police services. The result would be law enforcement that is more responsive to their communities, and through more efficient, effective and integrated services enhance the safety and security of every person.

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