REAL RISK MANAGEMENT
An exclusive article series brought to you by Lexipol
By Gordon Graham

Part 2:
• Lack of Compliance Creates Instant Liability
• Seeing the Future
• Getting to the Root of the Problem
Welcome back! In Part 1 of this series, we introduced you to the concept of real risk management—the idea that effectively mitigating risk in public safety organizations requires far more than a safety program. We also outlined the 10 Families of Risk:

1. External Risks
2. Legal and Regulatory Risks
3. Strategic Risks
4. Organizational Risks
5. Operational Risks
6. Information Risks
7. Human Resources Risks
8. Technology Risks
9. Financial and Administrative Risks
10. Political Risks

We left off with an exploration of External Risks and the importance of vigilance and “random irregularity.”

In Part 2, we will move through Legal and Regulatory Risks and Strategic Risks before beginning a deep dive into Family Four: Organizational Risks. This body of risks is broad and multifaceted, and includes many of the risks public safety leaders face every day. Therefore, our discussion around Family Four will extend into future installments, as we explore the root causes of organizational risks and provide you with strategies to mitigate them.

We hope you enjoy the articles in Part 2 of this series, and encourage you to follow along as we publish additional installments.

Remember: Predictable is preventable.
About the Author

Gordon Graham is a 33-year veteran of law enforcement and is the co-founder of Lexipol, where he serves on the current board of directors. He is a risk management expert and a practicing attorney and has presented a commonsense approach to risk management to hundreds of thousands of public safety professionals around the world.

During his law enforcement career, Graham served as a motorcycle officer and a sergeant before being assigned to a headquarters office staff position. He helped design the department’s first DUI task force, assisted in the development of the DRE (drug recognition program), was an instructor in the initial “Mod I and II” Haz Mat program and wrote many technical papers. Graham also revolutionized law enforcement training in California with his SROVT program: Solid, Realistic, Ongoing, Verifiable Training, for which he was awarded the California Governor’s award for excellence in law enforcement training. Graham held his law enforcement headquarters assignment until his service retirement in 2006. In 2008, he was awarded the Lifetime Achievement Award from California POST.

During the 1990s Graham began delivering risk management training programs to private sector organizations, including those involved in commercial real estate, hospital operations, manufacturing companies, aerospace operations, nuclear power plants, auto racing operations and many others. He co-founded Lexipol in 2002 with Bruce Praet. Today, the company is the nation’s leading provider of state-specific policy and training for public safety organizations.

Graham also expanded his efforts to assist other public safety organizations and in 2002 worked with Chief Billy Goldfeder to develop FireFighterCloseCalls.com, which is now recognized as an essential source for information about firefighter safety. He later assisted the International Association of Fire Chiefs with a similar effort—the development of the FireFighterNearMiss.com safety site. In 2005, the IAFC awarded Graham the Presidential Award for Excellence for his lifelong work in improving firefighter safety and performance.

Graham holds a master’s degree in Safety and Systems Management from University of Southern California and a Juris Doctorate from Western State University.
Gordon Graham here. Thanks for taking the time to read this piece. This is the fourth piece in an ongoing series to expand your knowledge and understanding on the breadth and depth of the discipline of real risk management.

In my introductory piece to this series, I commented on the bias that so many people have regarding risk management. It is more than safety. It is more than ergonomics. It is more than insurance. Everything you do involves a level of risk. What I have tried to do over the last several decades is to make risk management more understandable by taking all the risks you face and putting them into 10 Families.

In our last piece I spoke about Family One—the External Risks that every public safety agency (and employee) faces in their operations. This brief writing concerns the second of the 10 Families of Risk—Legal and Regulatory Risks.

Regardless of what type of public safety agency you work for, there are laws and regulations that control your existence as an organization. I am always amazed (and simultaneously disappointed) when I see how many public safety agencies are not in compliance with these laws and regulations. This lack of knowledge can cause you a lot of future grief. That is when you will get your lawyers involved. I am strongly recommending instead that you get in compliance today.

Let’s start at the federal level. You have heard the reference to the “alphabet soup” regulations including but not limited to ADA, FLSA, EEOC, FMLA, FCRA and HIPAA. In fact, there are many, many more—and each of these laws and regulations has numerous subsections that require or prohibit actions on behalf of your employees and people in your community.

For those of you who are clients of Lexipol, you know there are federal laws regarding dealing with people with hearing disabilities and limited English proficiency. However, when I am invited to look at law enforcement policy...
manuals for non-Lexipol departments, I am saddened that too many police agencies are not in compliance with these federal mandates, which have been in place for a long time.

Similarly, I am very disappointed to still see shooting policies that apply the Tennessee v. Garner standard rather than the most current case law addressing this serious issue. And I am shocked to see complex shooting policies that reference some ancient use-of-force continuum for officers to use when considering using force against a suspect.

For those of you who have this continuum in place in your policy manual, you have created a document subject to discovery downstream in litigation. When a plaintiff’s lawyers see this, you have just made their day—and set yourself up for a major financial loss.

If you are not in full compliance with the federal and state laws that apply to your organization and someone suffers a harm or loss, it is “instant” liability.

Let’s move to the state level. I have been fortunate enough to have worked with public safety agencies in every state in the nation, and I am continually amazed at the variety of laws that exist in every state. Are you in compliance with the training standards (hours and frequency) required by your state for sworn personnel? Are you in compliance with your state’s public records act?

Please do not view this as legal advice, but if you are not in full compliance with the federal and state laws that apply to your organization and someone suffers a harm or loss, it is “instant” liability. In my home state of California, I can show you many cases involving police pursuits (a high-liability area for every police agency in the country) because a policy was not in compliance with the state law.

If the law requires your policy to say “XYZ” and the department policy only covers “X and Y” and the suspect ends up crashing and killing a third party, the lack of “Z” in your policy could be very, very expensive.

Finally, let me talk about the discipline process in a police department. Many states have created a peace officer bill of rights (POBR) to protect cops beyond the federal Law Enforcement Officers’ Bill of Rights. When I was a young cop in the 1970s, California developed a POBR that was specific in terms of how many supervisors could question an officer and what time requirements applied to the investigation process. I read the new law in 1975 when I was a union representative, but apparently no one in supervision or management did—and I won a lot of cases as a defense representative simply because they did not follow the written rules. Are your policies reflective of your state’s POBR?

I look forward to writing the next piece dealing with Family Three—Strategic Risks. Until then, thanks for all you do to make things better in our world.
Gordon Graham here. Thanks for taking the time to read more about real risk management. In this iteration, I will cover Family Three—Strategic Risks.

First, a bit of a teaser: This family of risks is of great concern to me because if it is not taken seriously, it can threaten the very existence of your organization.

Strategic Risk Management requires looking into the future and identifying the risks that may cause your organization to be “redundant” or “unnecessary,” resulting in the demise of your specific organization/department/agency—or perhaps even your entire profession.

**Buggy Whips and Summer School**

Throughout history, we have seen people who did not look into the future, and as a result their livelihood disappeared. Just in my lifetime I have seen countless demonstrations of very bad outcomes due to a failure to think strategically.

You have probably heard a joking reference to “buggy whips” and the demise of that industry. Prior to the rise of the automobile, people moved around in carriages pulled by horses. The driver used the buggy whip to direct the performance of the horses during the movement of the carriage.

With the advent of the automobile in the late 19th century, this product was no longer needed in high volume, and the business collapsed. Except, that is, for the few companies who recognized they were not in the buggy whip business, but rather in the “transportation” or “equestrian” industry (both much bigger markets). Those forward-thinking companies developed other products to fit customer needs in those markets.
I had my own early experience with strategic risk management. Back in the early 1960s, my mother was concerned that “an idle mind is the devil’s playground,” so I had to go to summer school. Summer school was a code phrase for “you are so stupid that you can’t move with your class until you get Cs, and that requires you to go to school during your vacation.” I was doing well in school, so I did not need remediation. But Mom enrolled me in typing classes.

For those of you who weren’t around then (and I do not say this to be disrespectful or sexist), typing was regarded as a girls’ class, because at that time typing skills were necessary for a young woman to get a job as a secretary or other administrative assistant—which, in many cases, were the only opportunities available to her.

So I dutifully sat in the class of 20 students (19 of whom were female) and learned to type. On my school Remington with blank keys (commonly used to teach touch-typing) I could soon type 50 words per minute—which was, I might add, faster than some of the girls!

Although I didn’t see it then, in retrospect I view my mom as a strategic risk manager. Typing is a skill I use every day. Sure, the hardware changed over time—the typewriter became the word processor which in turn became the personal computer—but the skill persists. Long before I needed to type, my mom saw the value in developing that skill.
Strategic Risks to Public Safety

Some of you will remember other products that went the way of the buggy whip, including the VCR, the pay phone, the Yellow Pages, Kodak film—there are countless others.

But it’s not just products—it’s also services. I was getting my car smog-tested last week and wondered (not out loud) how much longer will smog testing exist. How long before these high-tech cars will monitor and report their own emissions?

Similarly, I was recently talking with a retired detective from San Francisco Police Department and he jokingly commented about the impact Craig’s List (and other social sites) has had on the world of “madams and pimps.”

So what does all this have to do with public safety? First, let’s consider the fire service. My guess is that if you were to create a fire department today, you would not call it the “fire department” but rather an “all-risk department”—because that name better reflects the evolving nature of the calls firefighters respond to.

Technological advances such as smoke detectors and sprinklers, as well as comprehensive building and safety codes, have drastically reduced the incidence of fire. Smart people in the fire service identified this strategic risk back in the late 1960s and started to move into EMS operations. Today, EMS calls make up 80 percent or more of many fire department call loads.

And the evolution continues. Today, smart people in the fire service recognize that the lessons from *Who Moved My Cheese* (Johnson and Blanchard) are applicable to them and now they are moving into the role of community health providers, addressing medical issues before they manifest in an event that requires an EMS response.

With respect to law enforcement operations, I am concerned with four strategic risks:

1. **Regionalization**
   As I travel around the United States, I see a lot of regionalization in dispatch operations, jail operations, SWAT, vehicle and equipment purchasing and maintenance, and many others. Have you considered this approach and how it might change your policies and procedures?

2. **Technology**
   The “tech” stuff is truly changing our job, from predictive policing to crime analysis. Are your recruitment efforts and your job descriptions keeping pace? Are you looking for officer candidates with different educational backgrounds?

3. **Outsourcing**
   I saw this coming in the mid-80s with the Freeway Service Patrol in downtown Los Angeles. My cops were ecstatic that they did not have to help people who had broken down, but simultaneously some smart people were asking, “How many other things does the CHP do that could be done by non-sworn (read: less expensive) personnel?” Agencies need to be asking themselves the same question.

4. **Consolidation**
   Combining police services across communities, or combining police and fire, is often touted as a cost-saving measure. If the consolidation wave overtakes your community, how will that change what your department does and how it does it?
What Does Your Future Look Like?

You must start looking into your future and, more specifically, the future of your department. For too many people in public safety, the future is “Friday” and the distant future is “next Friday.” I encourage all of you to get involved in a “futures thinking group.” A quick Google search will show you all sorts of groups, some specific to government and many others more general in nature.

For too many people in public safety, the future is “Friday” and the distant future is “next Friday.”

For my law enforcement friends reading this, I encourage you to visit the Police Futurists International website (www.policefuturists.org). Some of the contributors to this site were talking about things in the early 90s that were dismissed as “idiocy” then, but are now viewed as ahead of their time.

In my next article, we’ll start to delve into the vast expanse of Family Four—Organizational Risks.

Until then, please start thinking about how risk management can help you improve the quality of your operations.
Gordon Graham here—thanks for tuning back in.

First, a quick recap. After some introductory comments in the first article in this series about the 10 Families of Risk, we covered:

- **Family One**
  - External Risks

- **Family Two**
  - Legal and Regulatory Risks

- **Family Three**
  - Strategic Risks

As you go through each of these families of risk, ask yourself, “What are the three greatest risks we face in our department in each of these families, and what control measures (policies, procedures, systems) do we have in place to properly manage those risks?”

Our piece today focuses on Family Four—Organizational Risks. You may know that I am a lawyer. Lawyers handle tragedies. When something goes wrong, in any occupation or profession, lawyers do a great job of fixing it.

Please recall, though, that before I went to law school, I did my graduate work at the USC Institute of Safety and Systems Management. In this program I learned about the big difference between “proximate cause” and “the problems lying in wait” that really cause the tragedy. I call these problems lying in wait the “root cause” of the tragedy.

### TIMELY TAKEAWAY

Many of you have been involved in a tragedy similar to the one outlined in this article. And many of you have lived through “peeling back the layers of the onion” after the fact by the lawyers, the investigators and the news media. When that happens, we repeatedly see the same problems lying in wait, and we discover that a lot of people knew about them and yet no one took action. The profession you have chosen is filled with risk—please take these risks seriously.
I have now spent more than half my life studying tragedies in public safety operations. And while there are thousands of proximate causes (the event that instantly preceded the tragedy), there are many fewer “root causes.” As noted in the chart above, in public safety operations the five most common root causes are PEOPLE, POLICY, TRAINING, SUPERVISION and DISCIPLINE. Sometimes it is only one of these, sometimes more than one and sometimes all five of these root causes get involved in a single event and end up in tragedy.

**Root Causes Illustrated**

The number one cause of death in law enforcement operations is the same as the number two cause of death in fire service operations—traffic collisions. So, let’s use an example to show how root causes contribute to this proximate cause.

An emergency vehicle (police or fire) is en route to some low-level call for service—let’s use the example of a family pet stuck in a tree. The vehicle operator runs a red light and kills a child on a Vespa while simultaneously being ejected from the vehicle.

This is indeed a tragedy, and from this event will flow the death of the child, injury to your operator, organizational embarrassment and loss of reputation, an internal investigation, civil liability and possibly a criminal filing against your vehicle operator.

**While there are thousands of proximate causes (the event that instantly preceded the tragedy), there are many fewer “root causes.”**
Too often, when I ask people in the industry (law enforcement or fire) what caused the tragedy, they will default to the event that instantly preceded the tragedy and respond “the operator ran the red light.” To be fair, that act of running the red light ultimately led to the involved tragedy, but what is the real cause?

The post-collision investigation lays out the findings of the investigators:

- **People:** The involved operator had an expired driver license, and in the last three years had been involved in four other preventable collisions. Yet on his performance evaluations for the last three years, he received accolades for good driving and “always setting the proper example.”

- **Policy:** The policy manual the officer had access to in the report-writing room states that when responding to call, always “proceed with due regard for your safety and safety of others” but says nothing specific about what to do when there is a red light ahead. During the investigation it is learned that the chief had recently modified the policy to address red lights, but it was never updated in the policy manual located in the report-writing room.

- **Training:** There had been no formal training on vehicle operations in the past three years. Supervisors “discussed it with officers” during scheduled ride-alongs, but there was no written documentation of that discussion.

- **Supervision:** The involved operator had a history of wanting to be first-in (the first person to get to the scene of the event). He also had a prior collision while rolling to a call. His supervisor says he discussed this bad driving with the employee several times.

- **Discipline:** Not one member of the department has ever been disciplined for an event related to vehicle operations. The involved department has the “worst claim record” in the insurance pool to which the organization belongs.

So there you have it, ladies and gentlemen. In future articles, we will spend some time on each of these root causes so that you can see the value of proactively addressing the problems lying in wait—prior to tragedy.

Thanks again for reading, and please work safely.