



US Department of Justice

National Domestic Communications Assistance Center
Executive Advisory Board
Meeting Minutes
November 19, 2019



The Executive Advisory Board (EAB) of the National Domestic Communications Assistance Center (NDCAC) convened for its seventh meeting (See Appendix A) at 10 a.m. on November 19, 2019, at the Hilton Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

The meeting was called to order by Ms. Alice Bardney-Boose, NDCAC EAB Designated Federal Officer (DFO). Ms. Bardney-Boose welcomed all attendees to the NDCAC EAB's seventh meeting and provided a brief overview of meeting logistics. Mr. Preston Grubbs made opening remarks as the outgoing EAB Chairman. NDCAC Director Marybeth Paglino was congratulated for being approved for a second three-year term, following the EAB's re-nomination to the Attorney General. Mr. Al Cannon, the incoming Chairman, acknowledged the service of Mr. Grubbs, as well as NDCAC Director Paglino.

NDCAC Update - Marybeth Paglino, NDCAC Director

Director Paglino presented an NDCAC update that included activities that transpired since the last EAB meeting, as well as an overview of future projects. Director Paglino stated the NDCAC Technical Resource Group (TRG) is its primary interface to the law enforcement community. There are more than 24,000 validated law enforcement clients of the NDCAC secure website. Over the last six months, there has been an increase of 3,500 NDCAC accounts. The types of calls handled by the TRG include secure website access requests; questions regarding NDCAC services, tools, or website; interpretation of provider call detail records, cell tower and geo-location records; questions regarding social media record access and interpretation; assistance in correlating service provider information; and locating legal demand templates. Director Paglino remarked that over the last six months, over 88 percent of the 7,691 assistance requests made to the TRG were made via the NDCAC secure website. This method is a dramatic change in how agencies reach out to NDCAC.

At the last EAB meeting, Director Paglino announced the approval of a Legal Demand Service (LDS) project. This project was developed and undertaken in response to NDCAC's law enforcement clients' necessity to gain a timely response from providers. At this time, the LDS project is consulting with a working group of several law enforcement agencies. Additionally, initial industry outreach has begun to engage major mobile providers. LDS Phase I, a single sign-on solution, will enable streamlined authenticated access to industry law enforcement portals. Phase I is targeted to launch with the first provider in May 2020.

Director Paglino commented that the cornerstone of NDCAC services is training—as the overall training mission is to raise the NDCAC's clients' technical awareness to understand the challenges presented by advancing and newly emerging communications services and technologies. In response to this need, during FY19, NDCAC provided training to more than 2,700 law enforcement representatives. The NDCAC internally developed a new course entitled "Internet of Things Awareness for Law Enforcement." Director Paglino noted this new course provides insight into many modern devices that connect to the

Internet. NDCAC provided proactive outreach in the following locations: Hershey, PA; Columbus, OH; Savanna, GA; Albuquerque, NM; Knoxville, TN; Charleston, SC; San Francisco, CA; Alexandria, VA; Cleveland, TN. The training team participated in the following forums: Fusion Center Association; Homeland Security Task Force Officers' Training; New Jersey State Analyst Conference; International Homicide Investigators Association; Pennsylvania State Police Training; Safe Streets Gang Unit Staff Operations Specialists; and the Southwest Gang Conference.

Director Paglino detailed the wide variety of products and services offered online to the 24,000 clients of the NDCAC secure website. The site shares 4,000 service provider points of contact; hosts 150,000 law enforcement portal visits annually; 8,000 downloads of tools; and informs law enforcement on 135 apps.

Director Paglino remarked that law enforcement communities continue to learn about the NDCAC primarily by word of mouth. Law enforcement discovers NDCAC in the following manner: 49 percent are referred by a law enforcement colleague; 19 percent found the NDCAC logo on the Law Enforcement Enterprise Portal (LEEP); 18 percent from a law enforcement conference; 11 percent from NDCAC regional training; and 3 percent are referred by a service provider. Director Paglino announced that NDCAC marketing material is being prepared for agencies who may not have had a prior introduction to the center's capabilities.

Finally, Director Paglino announced the NDCAC successfully chose a law enforcement partner to participate in the NDCAC fellowship program. Currently, a New Jersey State Trooper is going through the background process and will come to the NDCAC for a fellowship.

Following Director Paglino's remarks, she was asked what actions the Board can take to increase the use of NDCAC. Director Paglino indicated when Board members interact with organizations and associations which may have heard what NDCAC was planning to do—update them as to what NDCAC has done, as well as the plans for future activity. Director Paglino was asked to share any existing marketing tools, success stories (preferably, in video form), and testimonials with Board members. Director Paglino was also asked to provide statistics regarding the demographic of the NDCAC customer base (e.g., small, medium, large, state, or local). Director Paglino acknowledged it is a daunting task to get the marketing information to the right law enforcement audience—but she will take action on how this targeting might be accomplished.

One Board member inquired if the NDCAC had considered attending the Communications Equipment Support (CES) Government conference, which is scheduled for January 9-11, 2020 in Las Vegas, NV. Director Paglino indicated that if the Board believes the CES Government conference would be a value-added opportunity for NDCAC then she could consider sending someone. One other Board member asked for an update of a document previously sent to the EAB that was a fact sheet with talking points for Board members to weave into speaking engagements or other opportunities. Director Paglino agreed an update of this document would be provided.

Report on Smartphone Encryption and Public Safety - Kenn Kern, Manhattan District Attorney's Office

Chairman Cannon introduced Mr. Kenn Kern, of the Manhattan District Attorney's Office. Mr. Kern summarized the October 2019 Report on Smartphone Encryption and Public Safety (See Appendix B). Mr. Kern began his presentation by providing sourced quotes indicating modern devices are specifically engineered such that the manufacturer cannot unlock the devices and, therefore, cannot comply with the legal process that requests access to locked devices.

Mr. Kern shared that there has been a sharp uptick of lawfully obtained, smartphones that are locked or inaccessible when seized. The inaccessible devices could be used to adjudicate crimes that cannot

otherwise be thoroughly investigated without unlocking the devices—including homicide, child sex abuse, human sex trafficking, assault, cybercrime, and identity theft. Mr. Kern’s presentation outlined cases where the value of accessing devices led to the exoneration and mitigation of cases that relied on circumstantial evidence.

The Manhattan District Attorney’s Office report also provided specific case examples that quantify the effect of encryption and identify the value of accessing devices—especially in sex crimes, child pornography, and murder cases.

Mr. Kern advised that the Senate Judiciary Committee Hearing scheduled a hearing on lawful access on December 10, 2019. Currently, Apple and Facebook are expected to participate.

In response to a board member’s question about who will attend the hearing, Mr. Kern indicated a forensic expert from academia who attests to the possible solutions for engineering lawful access would attend. Another board member asked, concerning the Australian AAB, whether there is a way to comply with the law. Mr. Kern indicated the AAB law has yet to be tested—there has not been enough data to share. Mr. Kern closed by reminding the group the Attorney General’s recent comments regarding going dark focused on the most vulnerable in society.

Lawful Access—State and Local Perspective - Ben Bawden from Brooks, Bawden & Moore

Mr. Bawden stated his government consulting firm represents several of the organizations on the NDCAC EAB. Mr. Bawden’s organization consults regarding both short-term, long-term, and ad hoc solutions for law enforcement problem-solving, as well as legislative solutions.

Mr. Bawden referenced the Australia AAB. He suggested U.S. law enforcement would benefit from learning about the experience of the Australian AAB legislators who achieved the law while working with many of the same challenges that exist in United States legislation. The Australian AAB legislators developed language that was acceptable for government interests, private sector interests, and privacy protection agencies. Mr. Bawden suggested that either NDCAC or law enforcement groups on the EAB would glean lessons learned from this group of legislators.

Regarding the upcoming Senate Judiciary Hearing that Mr. Kern discussed, Mr. Bawden indicated that the local enforcement perspective was represented (with the participation of District Attorney Cyrus R. Vance, Manhattan District Attorney’s Office) but noted the broader state law enforcement community did not have a representative scheduled to attend. Mr. Bawden remarked that these events create space for productive conversations to happen.

Mr. Bawden discussed three other opportunities to engage for law enforcement and, specifically, NDCAC.

Mr. Bawden commented that lawmakers and the public tend to consider the topic of going dark to be too complicated to evaluate or address. Mr. Bawden instructed that whenever law enforcement is invited to engage on this topic, the focus needs to be the level of impact—show how innocents are left unprotected.

The second opportunity that Mr. Bawden named was October 28, 2019, Executive Order that President Trump tasked the Commission on Law Enforcement and Administration of Justice. The assignment is to produce a report within a year that addresses a broad scope. However, specifically named in the tasking is the identification of challenges surrounding digital evidence and recommendations for legislation that addresses these challenges. Mr. Bawden suggested that members of the NDCAC EAB volunteer to support this effort by connecting directly with members of this commission. As this report is to be delivered within one year from the tasking, Mr. Bawden suggested that making connections and an impact on this effort must happen quickly.

Finally, Mr. Bawden cited the issue of threats to life—including schools, community, terrorism, self-harm. Since social media has consistently been used to plan, announce, or threaten citizens with these types of crimes, Mr. Bawden asserted that NDCAC has a role to play in the discussion and legislation to support law enforcement. NDCAC needs to participate in addressing the national vision for these threats, which total 1000s per day, is to determine how and when these threats should be reported.

A board member asked how NDCAC can get in the middle of this problem-solving effort for the nation. Mr. Bawden indicated that NDCAC needs to seek out these discussions and present NDCAC capabilities to these groups. A current hindrance to NDCAC's ability to advise or address these issues is that NDCAC is not an authorized, established entity—which needs to happen to increase credibility and authority to those who would benefit from NDCAC services.

Report of the Administrative Subcommittee - Delegate Speaker, Michael Sachs, for Hank Stawinski, Subcommittee Chair

Mr. Sachs announced that on November 5, 2019, the Attorney General approved the changes to the membership of the EAB. Mr. Sachs identified the following changes: for the Drug Enforcement Administration (DEA), Mr. Timothy Plancon replaced Mr. Preston Grubbs; for the US Marshals Service (USMS), Mr. Jeffrey Tyler replaced Mr. Derrick Driscoll; and for the FBI Attorney, Mr. Marc LeBreche replaced Mr. Christopher Bubb. With respect to the management of the NDCAC, the Attorney General approved Ms. Marybeth Paglino, FBI, for an additional three-year term as the NDCAC Director and Mr. Tommy Flowers, DEA, for an initial three-year term as NDCAC Deputy Director.

Mr. Sachs noted that due to the Attorney General's approval of Mr. Plancon, Mr. Grubbs is no longer a Board Member and can no longer serve as Chairman. Based on the EAB bylaws, Mr. Al Cannon ascends from Vice-Chair to Chair. The EAB Vice-Chair position will be vacant and must be filled by a Federal representative from the Board. Mr. Plancon volunteered for the Vice-Chair role and board members voted to approve.

Mr. Sachs identified an Administrative Subcommittee position vacancy. Based on the Attorney General's approval of Mr. Tyler, USMS, Mr. Driscoll will no longer be a member of the EAB. As a member of the Administrative Subcommittee, Mr. Driscoll's departure leaves a vacancy and remaining members can be solicited to participate going forward. With Chief Stawinski agreeing to take over the Subcommittee chairmanship, one or more additional members would help round out the subcommittee. The duties of Administrative Subcommittee Members were read aloud and described by Mr. Sachs so that Board members who were interested in the subcommittee role might have an idea of the position requirements. Mr. Tyler volunteered for the Administrative Subcommittee role and board members voted to approve.

Mr. Sachs reminded Board members the current EAB Charter (See Appendix C) is set to expire mid-year, in June 2020. The NDCAC staff will work with DOJ to ensure continuity of the Charter. The Administrative Subcommittee needs to know if there are any substantive changes members would like to incorporate into the next iteration of the EAB Charter that will be effective from June 2020 through June 2022.

Mr. Sachs noted the EAB currently has the action to prepare the next Report to the Attorney General. This action includes the development and articulation of an NDCAC EAB position on potential legislation. EAB members agreed a description of a consensus legislative framework would be helpful in informing the Attorney General of the importance of the issue to the entire law enforcement community. Further, members stated the Report could highlight how a legislative approach could mitigate challenges that were unique to state and local law enforcement. Mr. Sachs requested that if EAB members have input for this report, they please submit them to Chief Stawinski.

“Report of the Technology Subcommittee” Michael Sachs, Subcommittee Chairman

Mr. Sachs began the Technology Subcommittee report by noting that the Center for Strategic and International Studies (CSIS) Report (entitled “Low-Hanging Fruit: Evidence-Based Solutions to the Digital Evidence Challenge”) issued last year identified several recommendations aimed at addressing a range of issues that limit law enforcement access to digital evidence.

Mr. Sachs noted that a primary interest to the Technology Subcommittee was its recommendation regarding the “Authentication of Requesting Law Enforcement Identity.” The CSIS Report rightly recognized that service providers’ “use of online portals and other online data request mechanisms” presented challenges with respect to the authenticity of the requester.

Mr. Sachs summarized that the CSIS report emphasized service provider apprehension—given that absent some mechanism to “...verify that a requester is truly a member of law enforcement working a legitimate case, there is a risk that data will be disclosed to inappropriate individuals.” Meanwhile, law enforcement’s perspective is slightly different in that having its identity challenged results in delay. Delays in receiving requested information may be the difference between a successful investigation and one that languishes. Any steps that could be taken would undoubtedly be seen by law enforcement as movement in the right direction. With that as background, Mr. Sachs said that the NDCAC enlisted the assistance of law enforcement representatives from six agencies to provide insights into the most effective way to mitigate this problem.

Mr. Sachs reiterated that the NDCAC has more than 24,000 clients that have, for the purposes of accessing the NDCAC’s secure website, been validated as authentic law enforcement agency representatives. Service providers would no longer have to devote as many resources to authenticating incoming requests that originate from an NDCAC client. This authentication process would ensure the NDCAC was not included in the information exchange between law enforcement and a provider. Returns would either go directly to the requesting agency or law enforcement would be notified that information is available on the service provider’s portal.

“Lawful Access and the NDCAC’s Role” David Bowdich, FBI Deputy Director

Chairman Cannon introduced FBI Deputy Director, Mr. David Bowdich. Mr. Bowdich indicated he had read the Board’s most recent report to the Attorney General. He commented that he appreciated the summary of issues that are well known to law enforcement and specifically complimented the inclusion of overwhelming data volume that coincides with new communication technologies. Mr. Bowdich referred to briefs he receives within the FBI about how new communications services and technologies negatively impact investigations.

Mr. Bowdich commented that sharing information and resources between agencies is another point from the Board’s report to the Attorney General with which he agrees. Mr. Bowdich noted the FBI is looking to hire more data scientists, which because of the competitive market, is becoming a government-wide issue.

Mr. Bowdich also agreed with the assertion in the Board’s report to the Attorney General that easing the tension between government agencies and the private sector is as essential as it is difficult. Mr. Bowdich commented the FBI considering how to re-approach this issue. Mr. Bowdich also noted there are several representatives from industry who work with law enforcement on standardizing information. This cooperative relationship is important and must continue. Mr. Bowdich suggested there may be an option for a well-developed, well-defined event, such as an “Industry Day,” where law enforcement could present its challenges and ask for problem-solving help.

Mr. Bowdich announced that Assistant Director (AD) Darrin Jones will head the FBI's Lawful Access Office. Mr. Bowdich indicated that he is giving serious consideration to moving NDCAC under AD Jones within this new organization. Mr. Bowdich is still reviewing this decision with stakeholders and indicated that he plans to decide on this potential reorganization quickly.

Regarding NDCAC funding, Mr. Bowdich indicated that regardless of legacy decision-making on the subject, he would address the budget issue and the fix would be significant.

Regarding Lawful Access, Mr. Bowdich indicated the government needs to speak with a unified voice on the issue. Mr. Bowdich believes law enforcement is already unified—and other components of the government are quickly reaching the same conclusions regarding the severity of the issue. Mr. Bowdich indicated the momentum for addressing the issue and funding is going to slow down in the upcoming election year—therefore, getting as much done in the near-term is very important.

A board member asked Mr. Bowdich how the NDCAC can support training on critical topics essential for modernizing law enforcement. Mr. Bowdich agreed training is essential and the need for training extends throughout the law enforcement community. Mr. Bowdich committed to learning more about how the NDCAC is training and make suggestions on how the NDCAC might contribute in the future.

Another board member asked whether the NDCAC could play a role in assisting state and local law enforcement agencies with managing “threat to life” events when they find the information is kept overseas. Could the NDCAC be a connection point to support law enforcement in this instance? Or could the NDCAC develop a learning pathway to help law enforcement know how to proceed in gathering evidence that invokes the Cloud Act. Mr. Bowdich agreed this was a good suggestion and that he will confer with AD Jones.

Acknowledgement of Submitted Comments

Vice-Chair Placon moved to the last item on the agenda, the acknowledgement of comments submitted by interested parties in response to the public notice of the meeting. Ms. Bardney-Boose informed the group that no comments had been received. Vice-Chair Placon thanked the members for their attendance, engagement, and continued support of the NDCAC EAB.

Establishing EAB Schedule of Future Meetings

Ms. Bardney-Boose briefly discussed administrative items including possible dates for the next EAB meeting. The posed dates for the Spring EAB Meeting are May 5 or 6, 2020. The posed dates for the Fall EAB Meeting are November 16 or 17, 2020. Ms. Bardney-Boose said that “Save the Date” calendar confirmation will be sent out to the Board.

Ms. Bardney-Boose adjourned the meeting.

Appendices

Appendix A: Meeting Agenda, National Domestic Communications Assistance Center, Executive Advisory Board (EAB), November 19, 2019; and list of EAB members.

Appendix B: Manhattan District Attorney Office, Report on Smartphone Encryption and Public Safety, Slide presentation of the October 2019's update of the initial November 2018 report.

Appendix C: EAB Charter