POLICING ACCOUNTABILITY: AN EMPIRICAL INVESTIGATION OF STATE-SPONSORED POLICE REFORM IN RIVERSIDE, CALIFORNIA

by

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Epigraph

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country."

- Winston Churchill, speech to the House of Commons, July 20, 1910

Dedication

To my wife and children: Catherine, James, John, and Mariana

In Memoriam

Nila Caridad Gonzalez Gomez

(1938-2006)

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Abstract

The police have the ability to detain, arrest, and use force when necessary. Police accountability is thus of paramount concern to the public. Numerous examples of police misconduct, including cases of excessive force, brutality, and corruption, appear regularly via the news media. These incidents often evidence systemic organizational problems in law enforcement agencies. Scholars have observed that attempts at police reform have placed too much emphasis on individuals behaving badly, rather than on the systemic problems of the police department.

Beginning in the second half of the 1990s, federal and state Attorneys General began employing institutional reform litigation, in the form of consent decrees, to reform law enforcement agencies and enhance police accountability. The consent decrees were crafted to address systemic organizational dysfunction in local police departments. The United States Department of Justice (USDOJ) conducted most of these reform interventions. However, a notable exception was the settlement agreement between the Attorney General of the State of California and the City of Riverside, California.

There has been little research on the efficacy of these efforts to rehabilitate law enforcement agencies. This analysis is a case study of the effectiveness of the institutional reform intervention by the California Attorney General into the Riverside Police Department (RPD). The detailed examination revealed that the intervention produced constructive changes in the way the RPD conducts its

business. The RPD became more professional, effective, transparent and accountable as it implemented the provisions of the consent decree, demonstrating that institutional reform litigation can result in meaningful police reform. The shadow of the law was ever present, encouraging an ethos of cooperation and exerting pressure for meaningful organizational change. The Riverside experience suggests that a facilitative oversight style produces constructive collaboration between the parties, improving the likelihood of durable police reform. Moreover, consent decrees to correct systemic police misconduct should not be the exclusive purview of the USDOJ. State Attorneys General can effectively initiate police reform and in some cases state intervention is a more appropriate alternative.

Chapter 1

Introduction

The officers from the Riverside Police Department (RPD) arrived at the scene early Monday morning, December 28, 1998, around 2 a.m. Tyisha Miller, a 19-year old African American woman, had spent the previous day and evening relaxing with her friends. Tyisha had her aunt's car and would drive the group all day. In the morning, she and a friend did some housecleaning and made a trip to a store. Later, they joined another friend to get ready to go to the Tyler Mall Galleria. They washed and ironed their clothes and left for the mall.

The teenagers arrived at the mall sometime after 3 p.m. They drank brandy in the parking lot, before leaving for the nearby Castle Amusement Park, where they enjoyed some rides. Tyisha and some of the girls filled out applications for employment. Afterwards they had something to eat at Taco Bell and then congregated in the parking lot of the Roller City 2001 skating rink. In the evening they visited the homes of several girlfriends, had another bite to eat at Taco Bell, and drank gin in a park. Tyisha dropped most of the girls off at their homes around midnight. Tyisha and one of the girls then changed clothes to go to a party in Los Angeles. They never made it to Los Angeles. Instead, Tyisha ended up in the parking lot of a 76 gas station with a flat tire that was beyond repair.

Tyisha's friend left her at the gas station alone and went to get assistance. She was able to reach Tyisha's family. Tyisha's cousin and a friend drove to the gas station to help and found her asleep or unconscious in the locked vehicle with the

engine on, the radio blaring loudly, the hazard lights on, and a gun on her lap. She appeared to be twitching and drooling, and her eyes were rolled back. After trying unsuccessfully to rouse Tyisha and fearing for her safety, the girls called 911. They explained to the dispatcher that she was in a locked car with a gun, unconscious, and in need of medical attention. They requested an ambulance for her.

A total of four RPD officers responded to the scene. The girls told the officers that Tyisha was in distress. The young officers (ages 23, 24, 25, and 27) pounded on the car and yelled at Tyisha to get up. Unable to wake her, the inexperienced officers[1] formulated a plan to smash the driver's side window with a baton and reach in and grab the gun on Tyisha's lap. A sergeant arrived at the scene as the officers were developing their plan, but he failed to intervene or take command of the unfolding incident. One of the officers struck the car window with his baton, shattering it. Almost instantaneously, the four officers opened fire on Miller. She was killed in a salvo of 24 bullets; 12 shots hitting her, including four to the head and five to her back.

Initially, the officers and the RPD claimed she had shot at them. However, this was proven to be false. It was later revealed that RPD officers made racial and sexist remarks after the shooting. The tragedy prompted an extensive investigation of the RPD, culminating in a court order directing sweeping police reforms in the department (District Attorney's Report 1999).

[1] Two of the officers were still on probation, with less than a year of experience. The other two officers had two and three years of experience, respectively.

Police Accountability

The faint wail of a siren grows louder, and her heart skips a beat as she peers into her rearview mirror. She slows her car down and hopes that the flashing lights and sirens are not directed at her. As the police car races past her, anxiety turns to relief.

This indirect encounter with "the law," and the visceral response to it, illustrate the overwhelming impact law enforcement has on people's daily lives, and the importance of maintaining a police force that is effective, responsible and untainted by corruption, bias or prejudice. Indeed, Bayley and Mendelsohn suggest that the police officer's "uniform, badge, gun, and nightstick" symbolize the full force and power of the state (1969, 1). They explain that "this power frightens people and they therefore hope, possibly expect, that the men who wield this power are several cuts above the average" (2).

Law enforcement has the ability to detain, arrest and use force when necessary, including deadly force.[2] Police accountability is thus of paramount concern to American society. Police officers are Michael Lipsky's prototypical "street-level bureaucrats" working in "street-level bureaucracies" where they have a significant degree of discretion regarding how they perform their duties, and thus they have a great deal of control over the public (1980, 3-4). When this power is abused, the legitimacy of democratic society is called into question. Public

[2] Indeed, police officers do not bear this mantle lightly; a study of the Los Angeles Police Department revealed that more police officers commit suicide than are killed in the line of duty (Adelman 2008).

confidence in the police, the most visible symbol of government, is central to public perception of government fairness and performance.

No other agent of government exercises more individual discretion than the police officer. Law enforcement officers make decisions every day that affect the quality of people's lives and the vitality of their liberty. An officer is legally authorized to use force, even lethal force if necessary, to protect the community and its people. Society depends on officers to use good judgment when performing their responsibilities, and they are expected to be fair, honest and professional. They must respect the dignity of all the individuals they serve, treating all people equitably, and upholding the highest standards of integrity. In short, police must treat people "properly, legally, and morally" (Bayley 1994, 79).

Numerous examples of police corruption, excessive use of force, brutality and torture suggest that considerable reform is necessary to secure police accountability. Misconduct by police weakens the public's confidence in law enforcement. Reports of police misconduct are often broadcast instantaneously by the media and also appear on the Internet. One of the most high profile and extreme examples of police abuse includes the videotaped beating of Rodney King by police officers of the Los Angeles Police Department, which precipitated one of the most devastating episodes of civil unrest in the history of the United States. This unrest in Los Angeles left 56 people dead, more than 2,300 people injured, more than 1,100 buildings destroyed, and over $1 billion in damages (Gray 2007; Gutierrez et al. 2002). Equally horrific was the torture of Abner Louima in a police precinct

bathroom by New York Police Department officers. These officers beat and sodomized Louima with the wooden handle of a toilet plunger (Kocieniewski 1997, B1).

Stories of alleged police abuse and other misconduct appear in the news regularly. There have been some high profile examples during the past few years. In November of 2006, after lying to obtain a no-knock search warrant and charging through her door unannounced, Atlanta police officers shot and killed 92-year-old Kathryn Johnston in a barrage of 39 bullets (Jarvie 2008, A22). Also in November of 2006, 23-year-old Sean Bell was shot and killed in a hail of 50 bullets by three New York City police officers. Bell was unarmed and was to be married that same day. In April 2008, the three officers were acquitted in the shooting death of Bell. The shooting was reminiscent of the 41-shot killing of another unarmed man, Amadou Diallo, by New York police in 1999. The officers involved in that shooting were also acquitted (Wilson 2008).

On May 11, 2008, Michael Byoune, an unarmed 19-year-old, was killed when two Inglewood, California, police officers fired shots into his car. The officers apparently erroneously believed shots were being fired from Byoune's car (Bloomekatz 2008, B5). In Chicago, seven police officers from the Special Operations Section of the Chicago Police Department were charged for, among other things, robbery, kidnapping, fabricating police reports, and murder-for-hire. The officers were accused of false arrests, stealing from drug dealers, home robberies, and kidnapping innocent citizens. The leader of the ring was accused of plotting to

hire a gang member or hit man to kill two fellow police officers he believed were going to testify against him (Conlon 2008; Coen 2007).

A former Maywood, California, police officer has been charged with punching 30-year-old Jose Bernal several times and banging his head against a wall, breaking his nose and partially paralyzing his face. The officer has also been accused of filing a false police report and coaching another officer to write a false report (Leonard 2008b, B1). Another Maywood officer was charged with rape, assault by a public officer, burglary, and several counts of sexual assault. The alleged crimes were all committed while he was on duty (Leonard 2008a, B1). A study by the *Los Angeles Times* revealed that about a third of the Maywood Police Department had either quit other police agencies under dubious circumstances or had legal issues while working for the department (Lait and Glover 2007, A1).[3]

Extreme examples like these frequently evidence systemic problems in police agencies. For example, the shootings, beatings and framings of innocent people uncovered during the Rampart scandal in the Los Angeles Police Department resulted in an estimated $125 million in lawsuit settlement costs to the city and over 100 criminal convictions being overturned (Young 2001; Barrett 2004). These and other highly publicized incidents of police misconduct have led many to conclude there is a crisis in police accountability. Indeed, two well-respected international human rights organizations have established campaigns and programs to monitor

[3] The Federal Bureau of Investigation (FBI), the Los Angeles District Attorney, and the California State Attorney General are actively investigating the Maywood Police Department.

police conduct and implement change. In a comprehensive report detailing police misconduct in the United States, Amnesty International declared:

> There is a widespread and persistent problem of police brutality across the USA. Thousands of individual complaints about police abuse are reported each year and local authorities pay out millions of dollars to victims in damages after lawsuits. Police officers have beaten and shot unresisting suspects; they have misused batons, chemical sprays and electro-shock weapons; they have injured or killed people by placing them in dangerous restraint holds. (1998)

Similarly, Human Rights Watch, in an exhaustive report on police brutality in the United States based on research conducted in fourteen cities across the country, concluded "Police brutality is one of the most serious, enduring, and divisive human rights violations in the United States. The problem is nationwide, and its nature is institutionalized" (1998, 1).

What is meant by police accountability? How does society ensure police accountability given the "street-level" police officer's inherent discretion and autonomy in actions (Lipsky 1980, 13)? Samuel Walker defines police accountability as having two components:

> holding law enforcement agencies accountable for the basic services they deliver: crime control, order maintenance, and miscellaneous services to people and communities. . . . it also refers to holding individual officers accountable for how they treat individual citizens, particularly with regard to the use of force, equal treatment of all groups, and respect for the dignity of individuals. (Walker 2005, 7)

He adds that research on police accountability in the United States has been "disturbingly scant" (196).[4] In fact, his definition is gleaned from the Independent

[4] For an examination of police misconduct across cultures, see Klockars, Ivkovic, and Haberfeld, (Eds.), *The Contours of Police Integrity* (2004).

Commission on Policing in Northern Ireland, also known as the Patten Commission (Walker 2005, 196).

The news media, government, academia, the courts, community groups, and the police department and its personnel all share in controlling police behavior and ensuring accountability. All have played meaningful roles in limiting the misconduct of police. The media and interest groups have each exposed police misdeeds that, in some instances, have led to important reforms. In addition, landmark decisions by the courts and government rulemaking have imposed definitions of what is appropriate police behavior, thus constraining improper police activity. Academic researchers, working with progressive police chiefs and enlightened police officers, have also developed significant innovations. This has led to a consensus of opinion as to what constitute best practices. They have contributed greatly to enhancing police accountability and efficiency (Walker 2003, 6).

A leading scholar, Samuel Walker, distilled many of these best practices into a concise and practical punch list designed to facilitate police reform (2005, 12-17). These strategies are based on the 2001 Department of Justice report, *Principles for Promoting Police Integrity*. These include (a) "use of force and other critical incident reporting;" (b) "open and accessible citizen complaint procedures;" (c) "early intervention systems;" and (d) "external citizen oversight" (12-14). Training is critical to the success of these strategies. The tools are based on the idea of police reform as organizational change. The focus is not on individual "rogue" officers or

explanations of police misconduct as isolated incidents by a small number of personnel. Previous attempts at police reform have placed too much emphasis on individuals behaving badly, rather than on the systemic problems of the police organization (4).

Scholars have observed that poor behavior on the part of law enforcement reflects institutional failures. For example, Barbara Armacost argues that police misconduct is not the result of "factual and moral judgments made by officers functioning merely as individuals," but rather the result of "a distinctive and influential organizational culture" (2004, 455). Accordingly, any successful reform effort must address the rules, policies, norms and culture of the police agency that often create an atmosphere where misconduct is possible. Indeed, research suggests that police misconduct is often driven by the ethos of the police organization (456). Thus, attempts at police reform should move beyond the "rotten apples" and target the "rotten barrels" (457-459).

One promising method of instilling the value of these best practices and thus enhancing police accountability is the use of institutional reform litigation—the direct governmental intervention in the reform of a police agency. Walker has called this innovative approach "the new paradigm of police accountability . . . a significant advance in the long effort to achieve higher standards of police accountability" (Walker 2003, 3). Livingston views the new approach as representing "a new remedial tool . . . that may prove to have an extremely important impact on the operation of police departments" (1999, 817-822). She adds that the strategy not

only significantly augments existing remedies available to deal with pervasive police misconduct, but it may also result in more widespread reform as police departments not under consent decrees change their policies and procedures to avoid outside intervention. Further, institutional intervention may have the valuable effect of generating dialogue on administrative standards and best practices in policing and, as a result, establishing national guidelines for professional policing (844-846).

Given that the legitimacy of police conduct is regularly questioned, that there are frequent calls for police reform throughout the country, and the significance of integrity in policing to American civilization, there has been remarkably little academic scholarship on federal and state police reform intervention. Notable exceptions include the work of Livingston (1999), Davis et al. (2002), and Walker (2003; 2005). Institutional reform litigation is considered a promising new strategy for effectuating police reform and is the only law enforcement reform strategy designed to address holistic organizational and cultural accountability problems, yet there is a disappointing absence of attention to the subject. Of more importance, however, is the lack of evaluative analysis of the efficacy of consent decree intervention on police reform. Does institutional reform litigation that leads to negotiated settlements, often in the form of consent decrees, facilitate the implementation of best practices in a police agency?

To date, only the Pittsburgh Police Bureau (PPB) federal consent decree has received attention (Davis et al. 2002). This evaluation, sponsored by the Vera Institute of Justice, found that reform intervention in Pittsburgh generally enhanced

police accountability and improved policing (62-63). The study provides a useful account of what other localities can learn from the Pittsburgh experience. Since there are at least 24 other police departments with some form of federal or state intervention, and which have the benefit of the Pittsburgh assessment, it is critical that further evaluation take place. In fact, the federal consent decree in Pittsburgh was the first by a federal or state department of justice. The Pittsburgh decree was dissolved in 2002, and the Vera study was published in 2002.

A multi-layered analysis of more consent decree reform efforts would be illuminating and instructive, particularly of police departments with different characteristics and an alternative configuration of settlement participants. Much of the research on policing in the United States is conducted in large police departments, while relatively little research focuses on medium and small police agencies despite the fact that most law enforcement agencies are not large (Walker 1999, 53). At the start of the Pittsburgh Police Bureau's consent decree, the agency had over 1,000 police officers. The smaller Riverside Police Department, which is the subject of this study, had a little more than 300 officers when the agency began its consent decree compliance.

This research is an effort at assessing new modes of improving policing in the United States. I evaluate the efficacy of institutional reform litigation, initiated by prosecutorial agencies, on rehabilitating police departments and enhancing police accountability. Specifically, this study will examine the efficacy of the State of California-initiated intervention into the police department in the City of Riverside.

An evaluation of the Riverside Police Department (RPD) case is an important next step in the assessment of consent decree[5] intervention for several reasons.

First, the RPD consent decree is similar in many respects in its content and structure to other consent decrees involving police departments, yet it provides for extensive local participation and innovation. Second, like all of these consent agreements, it embodies much of the consensus understanding of best practices, and stipulates various changes in police department operations and practices to achieve institutional reform. Therefore, an evaluation of the RPD provides findings and lessons applicable to other settings.

Finally, as Livingston suggests, experimentation and review are necessary to establish the appropriate processes to employ in the development of consent decrees by intervention agencies (Livingston 1999, 846-847). Unfortunately, there has been inadequate analysis of these instruments of reform. Several unique features of the RPD case provide insights for future intervention authorities. It is one of only two negotiated agreements that have been initiated by state Attorneys General.[6] This is a significant point given the fluid nature of politics. For example, budget constraints, shifting agendas or new executive philosophy at the federal level can impede efforts to intervene in the affairs of local police agencies. In this situation, state intervention

[5] When referring to the RPD consent decree, various terms are used interchangeably with consent decree, including stipulated judgment and settlement agreement.

[6] The Attorney General of New York negotiated the other state-initiated consent decree with the Town of Wallkill (New York) Police Department.

may be the only option available, or vice versa, federal intervention may be the only option.

Moreover, the parties to the consent decree, in this case the California Department of Justice (CalDOJ) and the City of Riverside, worked collaboratively to implement RPD reform – a complicated challenge to be sure. Cooperation can be difficult when implementing police reform. A newsletter of the Police Executive Research Forum (PERF), summarizing opinions by police chiefs regarding federal intervention of local law enforcement agencies, reported complaints by some chiefs of the consent decree process. They viewed it as "costly, apparently never-ending, and bureaucratic, slowing down the efforts of reform-minded chiefs" (Police Executive Research Forum 2008, 1). In addition, the chiefs criticized court-appointed monitors who "seem to get out of control, demanding reforms even after the Justice Department is ready to give a local police agency a clean bill of health and end its involvement" (Police Executive Research Forum 2008, 1). The process in Riverside was a partnership. It was the result of a *facilitative* style of monitoring and implementation by the CalDOJ. Is a facilitative method of oversight effective, or even possible given the adversarial nature of the consent decree process?

Additionally, the RPD consent decree is the only agreement entered into in a state court rather than federal court. More significantly, state action has produced the only agreement that has the consent-decree compliance monitor[7] reporting directly to the intervening authority, in this case the California Attorney General

[7] This role is variously called monitor, special master, consultant, receiver, or auditor.

(CalAG).[8] In all other instances, the monitor reports to the court. Is this reporting arrangement more effective? These issues suggest that an evaluation of the RPD intervention experience may afford investigators and policy makers with instructive lessons on not just whether intervention can succeed, but also on who can or should do it, and how to do it.

If the results of the Pittsburgh evaluation are replicated in Riverside, then a case can be made that legal intervention can produce social change. That finding would run counter to influential arguments that scholars such as Horowitz (1977) and Rosenberg (1993) have advanced regarding the failure of litigation to produce social change.[9] Rosenberg derisively views the courts as "'fly-paper' for social reformers who succumb to 'the lure of litigation'" (Rosenberg 1991, 341). He contends that reformers' efforts to produce social change through litigation are a "hollow hope" based more on emotion than evidence. Empirical data that police agencies can be reformed using litigation would provide a counterpoint to Rosenberg and encourage progressive reformers who see promise in the use of legal action to realize social change.

From 1999 to 2007 I had a unique vantage point from which to observe, analyze, and evaluate police reform in the Riverside Police Department. During this period I served as a senior advisor to the California Attorney General, providing me great access to a trove of data on the RPD institutional reform story. I was fortunate

[8] California Attorney General and Department of Justice are used interchangeably.

[9] See David A. Schultz, (Ed.), *Leveraging the Law: Using the Courts to Achieve Social Change* (1998), for the spirited debate on the ability of courts to effect social change.

to be a participant observer during the entire duration of the RPD institutional reform intervention, allowing me to develop a deep understanding of the organizations, people, politics, and processes involved in reforming the Riverside Police Department. In this study of police reform within the RPD, I employed an eclectic methodology that can best be described as a qualitative multi-method evaluative case study. The qualitative methodology I applied in this evaluative case study included ethnography, document review, interviews, and direct observation. What was important to this study was not so much technique as the quality and implications of holistic understanding (Greene 2000, 987).

I analyzed relevant documents pertaining to the development and implementation of the consent decree, including investigative reports, comparable police reform agreements, monitor-consultant compliance reports, newspaper articles, police records and reports, minutes of the City Council, minutes of the Community Police Review Commission, and other pertinent written communications. I also interviewed people (on and off the record) with insights into the inner workings, atmosphere and climate of the police department, and the perceptions of the communities it serves. Finally, I attended RPD meetings, examined police equipment and facilities, and rode along with Riverside police officers on patrol.

The resulting analysis is organized into five chapters, including this introduction. Chapter two is a survey of the historical evolution of policing and reform efforts in the United States, tracing the evolution of American policing from

its roots in nineteenth century Britain to the contemporary period, including the impact of legal intervention on police reform, specifically the use of negotiated agreements such as consent decrees on effectuating change in policing. Chapter three begins by recounting the shooting of Tyisha Miller by Riverside Police Department officers and the ensuing public reaction and ramifications to the incident. Further, chapter three contains the narrative of the police reform intervention by the state Attorney General, including the investigation of the RPD and the negotiations leading to the reform agreement. Chapter four is an interpretative evaluative analysis of the RPD's compliance with the mandated reforms articulated in the consent decree. Finally, chapter five concludes with a discussion of lessons learned and recommendations from the Riverside police reform experience.

Chapter 2

The Evolution of Police Reform in the United States

The evolution of police reform in the United States has been influenced by a variety of external and internal forces. In its nascent days, American policing was modeled after the "quasi-military" police organization first developed in England (Walker 1998, 53; Walker 1999, 21). Police departments then evolved from institutions where corruption was rampant and police officers were relatively unchecked in their discretion, to institutions whose practices were the subject of tremendous scrutiny, criticism and ultimately reform. Along the way, many technological advances improved the capacity and quality of policing. These advances, along with the establishment of specialized education programs, as well as the implementation of forward-looking policies, have helped to develop a more professional law enforcement.

The impetus for these reforms included administrative and institutional constraints (i.e., changes implemented from within, by police departments), court decisions curbing individual discretion in an effort to protect constitutionally guaranteed rights, private litigation challenging police misconduct, and often, public outrage over corruption or scandalous behavior by officers and their departments. In addition, over the last hundred years, considerable innovations, driven by the research of policing scholars, practitioners, foundations, and blue-ribbon panels commissioned by government, have changed the landscape of policing. Over the last decade, consent decrees mandating institutional reforms have been employed to

correct systemic problems in law enforcement agencies. In the next section, I summarize the evolution of modern American policing and the reforms mentioned above.

The Development of American Policing Practice

The British Parliament formed the first modern policing agency, the London Metropolitan Police, in 1829.[10] Walker has described it as a locally controlled "quasi-military" public police organization, a concept that endures to this day in the United States (Walker 1998, 53; Walker 1999, 21). Although social science research and popular perceptions of the police as unchanging and "tradition bound" are common, there has been considerable police reform over the last two hundred years (Walker 1977, ix; Walker 1999, 20).

Kelling and Moore (1991) have divided the history of American policing into three periods. They classify the three periods as the *political era*, the *reform era*, and the *community era* (6). The political era, also known as the patronage or machine era, began in the 1830s with the development of the first American police agencies and continued through the early 1900s (Kelling and Moore 1991, 6). The reform era, also referred to as the police professionalization movement, began in the early 1900s as the progressive era was emerging in American politics, and it lasted until the early 1980s (Kelling and Moore 1991, 6, 12). The community era commenced in the 1980s and is ongoing (Kelling and Moore 1991, 6; Skogan 2004, xvii).

[10] Sir Robert Peel is responsible for establishing the London Metropolitan Police (Walker 1999, 21). The terms "bobbies" and "peelers" used to refer to police in Britain are derived from his name (Walker 1998, 53; Walker 1999, 21). Peel would later become Prime Minister of England.

The emergence of legal institutional reform intervention in local police agencies began in the mid-1990s and is the latest innovation in police reform practice. As discussed below, the principles of community policing developed in the community era paved the way for the reforms that police departments are currently undergoing. These modern reforms have at times been motivated by government intervention, via consent decrees or other types of agreements with federal and state prosecutors, into the policies and procedures of police departments. Below, I summarize the history of policing reform in the United States.

Machine Politics, Patronage and Policing

The first era of policing was called the political era because police were often appendages of the local political organization, directly involved in servicing citizen needs (Kelling and Moore 1991, 7; Fogelson 1977, 13-39; Walker 1977). In addition to their peacekeeping and crime prevention roles, the police were "a major social welfare institution" (Walker 1999, 25) that operated soup kitchens, lodged the homeless and newly arrived immigrants, and helped ward leaders with job placement assistance for immigrants (Walker 1998, 60; Walker 1999, 25; Kelling and Moore 1991, 7). During election season, the police reminded citizens of the favors provided by the local machine, including the social services supplied by the police. Ward leaders and the police worked closely to ensure their mutual survival by "getting out the vote" and sometimes by "fixing" elections (Kelling and Moore 1991, 7-9; Fogelson 1977, 19-20; Walker 1999; Walker 1977). Indeed, Fogelson described the police as electoral enforcers, deployed by their machine benefactors to guarantee

success on election day, and thus preserve the machine's control over the spoils of victory:

> Empowered to preserve order at the polls, the patrolmen decided whether or not to eject repeaters from the lines, protect voters from thugs, and respond to complaints by poll watchers and ballot clerks. If the officers abused their authority, the citizenry had little or no recourse: the local judges were usually in sympathy with the organization. . . . Whoever dominated the police could assign to the polls hundreds of tough, well-armed, if not necessarily well-disciplined men, whose jobs, the politicians reminded them, depended on the outcome. (20)

Police officer recruitment and selection during the political era was predicated on a candidate's links to the local political organization (Walker 1999, 24). As Walker notes, "Illiteracy, poor health, chronic drunkenness, or a criminal record were no barriers to a job as a police officer" (Walker 1998, 55). The only requirement was loyalty to the political machine and frequently cash, as demonstrated by the $300 required by Tammany Hall in order to be hired as a police officer, $1,600 to be promoted to sergeant, and $12,000 to $15,000 for promotion to captain (Walker 1998, 62; Fogelson 1977, 29; Berman 1987). Since police employment was a significant source of patronage, utilized to reward or punish, police officers could be dismissed at any time. Occasionally, following elections, the new group in power would replace a sizable number of the police force (Walker 1998, 55; Walker 1999, 24). However, because officers often earned double that of industrial laborers, police work was highly sought after by the working class of large cities (Walker 1999, 24).

Machine era police departments were highly inefficient and corrupt operations (Walker 1998, 61; Walker 1999, 25-26; Kelling and Moore 1991, 9). Officers received no formal training, lacked supervision, patrolled on foot, and lacked few means of communicating with each other, headquarters, or the public (Walker 1977, 12; Walker 1998, 57; Walker 1999, 25). Walker observes that, as a result of this absence of supervision and communication, officers had wide discretion as to the ways in which they performed their duties, if at all (Walker 1998, 58). Police officers "easily evaded duty and spent much of their time in saloons and barber shops" (Walker 1999, 25) and "official records . . . indicate that many police officers had serious drinking problems and frequently used excessive physical force" (Walker 1999, 26).

The police regularly took bribes in return for looking the other way when laws were violated, and had to give bribes in order to be promoted, which then allowed them to receive even greater payoffs (Walker 1999, 26; Berman 1987). "Jobs on police departments were often treated as franchises and sold as investment opportunities" (Walker 1998, 62). In the 1890s, a corrupt detective working for the New York Police Department was able to accumulate over $350,000 in payoffs from Wall Street bankers by regulating the pickpocket trade from an office in New York's financial district. Many officers had illicit business interests with criminals (Walker 1998, 59, 61; Richardson 1970, 210; Haller 1976, 311). Mark Haller describes the police in Chicago between 1890 and 1925 as only minimally concerned with legal

norms or professionalism. The police were more interested in bringing in extra money and resources for themselves and the political machine (1976).

Furthermore, police investigators were used to probe political opponents and to antagonize personal enemies (Kelling and Moore 1991, 8). It was common for officers to use excessive force, and the "third degree"[11] was often employed while questioning suspects (Kelling and Moore 1991, 8; Walker 1999, 26; Report of the National Advisory Commission on Civil Disorders 1968 ["Kerner Report"], 301). The police on the streets of the neighborhoods adjudicated disputes or violations of law by force or "curbstone justice" if necessary (Kelling and Moore 1991, 9). New York police officer Alexander "Clubber" Williams, an associate of Tammany Hall, expressed his department's law enforcement philosophy by observing that "there is more law in the end of a policeman's nightstick than in all of the decisions of the courts" (Walker 1998, 62).[12] As the influential Kerner Report noted, looking retrospectively on past police practices:

> In an earlier era third-degree interrogations were widespread, indiscriminate arrest on suspicion were generally accepted, and "alley justice" dispensed with the nightstick was common (Report of the National Advisory Commission on Civil Disorders 1968, 301).

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[11] The "third degree" refers to "the employment of methods which inflict suffering, physical or mental, upon a person in order to obtain information about a crime" (National Commission on Law Observance and Enforcement 1931 ["Wickersham Commission Report"], 19). The exact origin of this term is unknown; nevertheless, Skolnick and Fyfe note that "[w]hatever its origin, the term third degree signifies a prime occasion for police brutality" (Skolnick and Fyfe 1993, 43).

[12] The origin for various permutations of this quote appears multifold. Walker attributes one variant of this sentiment to New York City police officer Thomas Byrnes (Walker 1977, 8) and then later to Alexander "Clubber" Williams (Walker 1998, 62). The popular phrase was most likely utilized by various individuals, but the prevailing contemporary attribution is to "Clubber" Williams. See also Paul Chevigny, "Police Brutality," the Encyclopedia of Violence, Peace and Conflict 2008 [first proof], Elsevier Inc., p. 3.

Progressive Reform and Professionalism in Policing

In the wake of this widespread corruption and rampant excessive use of force by police officers, reformers at the turn of the century sought to sever the inefficient and corrupt relationship between the police and politicians. Walker describes the social and political context that spawned this police professionalization movement:

> Police reform was part of a much broader political movement known as progressivism between 1900 and 1917. Progressive reformers sought to regulate big business, eliminate child labor, improve social welfare services, reform local government, as well as professionalize the police. (Walker 1999, 28)

An important progressive police reformer was future United States President Theodore Roosevelt, who served as New York City Police Commissioner from 1895 to 1897. He attempted to reform the New York City police department by reprimanding officers engaged in misconduct and by improving personnel standards and training for police officers (Walker 1998, 64-65; Walker 1999, 27). Progressives nationwide pushed civil service standards for the employment and termination of police officers and succeeded in loosening machine control over the personnel process. In Los Angeles and Cincinnati, reformers were able to change the way the police chief was selected, creating a civil service position requiring an examination. The terms of the police chief and mayor in Boston ended at different times to ensure the chief was free from political influence. Similarly, the chief of police in Milwaukee was given life tenure (Kelling and Moore 1991, 10).

Improving personnel standards was but one platform of the reform agenda. Other ambitious goals included "eliminat[ing] political influence, appoint[ing]

qualified chief executives; defin[ing] a mission of nonpartisan public service, develop[ing] specialized units, and introduc[ing] principles of scientific management" (Walker 1998, 28). In particular, progressives adopted the influential scientific management principles of Frederick W. Taylor to improve the quality of the police workforce (Kelling and Moore 1991, 11). Taylor's ideas of administration were based on the belief that employees could be made to perform to their maximum efficiency through a process of experimentation and evaluation of work. The results of these experiments[13] would yield "one best way" of performing the work (Denhardt 2004, 50-53). Taylor believed "the best management is a true science, resting upon clearly defined laws, rules, and principles" (Taylor 1923, 7; Denhardt 2004, 51). This theoretical framework was attractive to police reformers because it thrust political influences aside in favor of a police science concerned with best practices that a highly trained and expert professional elite would determine and implement.

August Vollmer, the police chief in Berkeley, California, from 1905 to 1932, is credited with conceptualizing some of the first principles of contemporary police management. Vollmer urged police executives to develop professionalized police agencies of honorable and committed crime fighters with specialized training, who would use science and technology to increase police effectiveness. The Berkeley Police Department became a model for police agencies motivated to reform and

[13] To demonstrate, Taylor developed a "science of shoveling" that determined through experimentation that the optimal weight that a worker should lift in a shovel was twenty-one pounds, and therefore shovels should be designed so that they could hold twenty-one pounds of whatever was being shoveled to maximize productivity (Denhardt 2004, 52; Taylor 1923, 64).

professionalize their operations. Vollmer promoted university education for law enforcement and recruited officers from the University of California's Berkeley campus. Skolnick and Fyfe and others note that Vollmer was responsible for many policing innovations, including signal boxes and bicycle and motorcycle patrols. His department was the first in the nation to use automobiles. In addition, Vollmer installed the first patrol car radios and created the first forensic science laboratory. Upon his retirement from the police department, Vollmer became a Professor of Police Administration at the University of California at Berkeley, where he launched the first criminology program in the United States (Skolnick and Fyfe 1993, 174-175; Walker 1977, 72-73; Walker 1998, 132-133; Walker 1999, 28, 33). His vision of police professionalization was articulated in his classic book *The Police and Modern Society* (1936), which served as a treatise for police reformers. Vollmer advocated reform, portraying the political patronage period of American policing as "an era of incivility, ignorance, brutality and graft" (Walker 1998, 54).

Improvements in communications technology and the introduction of automobiles used for patrol radically changed approaches to policing during the reform era. The patrol car enhanced police mobility and response time, while the two-way radio permitted the rapid deployment of police officers in response to calls for service. The two-way radio also provided police administrators with a means of monitoring patrol officers by remaining in constant contact with them and thus improving supervision (Walker 1993, 32). Although patrol cars enabled officers to cover wider areas and respond more quickly to service calls, and two-way radios

resulted in heightened supervision, these improvements in technology also arguably alienated police officers from the citizens they were protecting. Officers accustomed to walking their beats and interacting with citizens directly, left the sidewalks and got behind the wheel of patrol cars, therefore separating themselves from and diminishing face-to-face contact with the public (Walker 1993, 31). As Kelling and Moore note, during the 1930s and 1940s, "patrol cars became the symbol of policing" (1991, 15).

The reform era spanned more than six decades. Police tactics evolved with the times and the advent of technological advances. Later reform era innovations like the 911 system and computer-aided dispatch further altered citizen-police interactions (Kelling and Moore 1991, 13-14). Kelling and Moore note that "[t]he primary tactics of the reform strategy were preventive patrol by automobile and rapid response to calls for service" (1991, 13). O. W. Wilson[14], a progressive police chief in several cities, a student of August Vollmer, and himself one of the most influential policing scholars of the reform era, developed this widely adopted policing strategy of aggressive preventive patrol. As Kelling and Moore explain, preventive patrol theory posited that having officers patrol randomly throughout the city in clearly identified police cars, particularly near high-risk areas such as schools and bars, would reduce crime and comfort citizens by providing a sense of safety. This would create a sense that police were everywhere, making citizens feel safe and preventing

[14] O. W. Wilson authored two of the most influential textbooks on policing, *Police Administration* (1950) and *Police Planning* (1952). Like his mentor, Vollmer, he entered academia, serving as Dean of the University of California at Berkeley's School of Criminology from 1950 to 1960.

criminals from committing crimes (1991, 13-14). Preventive patrol would become one of the most controversial policing strategies in the 1960s, even though its effectiveness would be questioned in the 1970s.

Although there were many technological and managerial innovations during the reform era that were designed to make police more efficient, police behavior was still subject to criticism. The blue-ribbon National Commission on Law Observance and Enforcement (also known as the Wickersham Commission) released its *Report on Lawlessness in Law Enforcement* in 1931, the first national-level analysis critical of police brutality (Walker 1999, 32). Spearheaded by Vollmer, the report, one of fourteen issued by the Commission, was a blistering condemnation of police abuse, complete with vivid details of brutality by police (Walker 1999, 28, 32). Among its findings, officers regularly abused suspects physically and mentally (National Commission on Law Observance and Enforcement 1931, 3-4; Walker 1999, 32). The report found that the use of the "third degree," defined as "the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—is widespread" (National Commission on Law Observance and Enforcement 1931, 4).

The report included numerous graphic examples of police misconduct in cities throughout the country. The report noted that "Street beating or beating in the patrol wagon is said in San Francisco not to be disconnected from the third-degree practices; its effect is to give the arrested person a foretaste of what is to come if he does not incriminate himself" (National Commission on Law Observance and

Enforcement 1931, 148; Walker 1998, 155). The Wickersham Commission Report contains graphic details of common police techniques used in the early part of the 20th century. For example, police dangled a suspect out of a window in order to extract a confession (National Commission on Law Observance and Enforcement 1931; Walker 1998, 155; Walker 1999, 32). In Cleveland, police repeatedly raised an unclothed suspect by his genitals, while in Denver police forced another suspect to sit beside a victim's corpse, all with the intent to coerce incriminating statements from the suspects (National Commission on Law Observance and Enforcement 1931, 118, 141-142; Walker 1998, 155; Walker 1999, 32).

As the Wickersham Commission Report illustrates, reformers faced formidable obstacles in changing police practices in what could be described as a Wild West mentality of police departments in the early 1900s. Cloaked with the imprimatur of authority, both actual and perceived, individual officers often meted out vigilante justice. Although the reform agenda sought to rectify this maverick mentality, through centralization of police authority, greater supervision (aided by two-way radios) and specialized units, policing tactics in the decades following the Wickersham Commission Report were fraught with problems. These problems came to a head in the 1960s, when overly aggressive police officers frequently confronted civil rights and anti-war activists in bloody and increasingly publicized clashes (Kelling and Moore 1991, 16; Walker 1999, 34). Kelling and Moore note that, as a result of these clashes, "The legitimacy of police was questioned: students resisted

police, minorities rioted against them, and the public observing police via live television for the first time questioned their tactics" (Kelling and Moore 1991, 16).

Despite the favorable depiction of the police as crime-fighters beyond reproach in films and on television shows like the 1950s and 1960s *Dragnet*,[15] the misuse of police authority was a reality for many Americans in urban cities. Ironically, it was television that initially brought graphic images of police brutality into America's living rooms (Kelling and Moore 1991, 16). Police abuse against civil rights demonstrators in the South during the 1960s and anti-war demonstrators at the 1968 Democratic Convention provided a striking contrast to the sanitized portrayals of the police on television. During the "long, hot summer" of 1967, civil disorders exploded in more than 150 cities (National Advisory Commission on Civil Disorders 1968, 32; Walker 1998, 195-196). President Lyndon Johnson's National Advisory Commission on Civil Disorders (popularly known as the Kerner Commission), charged with examining the specific causes for the riots, suggested that the dominant policing strategy of aggressive preventive patrol contributed to the police-community tensions that caused the disorders of the 1960s (1968, 304, and generally 301-307). The Commission Report quotes one commentator who observed

[15] In an interview in 1962, Los Angeles Police Chief William H. Parker discussed the influence of *Dragnet*: "The television program Dragnet was one of the great instruments to give the people of the United States a picture of the policeman as he really is. It was most authentic. We participated in the editing of the scripts and in their filming. If we had any objections on technical grounds our objections were met. This program showed the true portrait of the policeman as a hard-working, selfless man, willing to go out and brave all sorts of hazards and work long hours to protect the community" (Skolnick and Fyfe 1993, xi, quoting Parker 1962).

that these patrol practices have ". . . replaced harassment by individual patrolmen with harassment by entire departments" (304).

The widespread use of arbitrary "stop-and-frisk"[16] tactics by police departments in urban neighborhoods was viewed as unwarranted harassment and created deep resentment and an us-versus-them state of affairs (National Advisory Commission on Civil Disorders 1968, 303). Moreover, the report described the motorized patrolman as isolated from the community: "see[ing] the city through a windshield and hear[ing] about it over a police radio. To him, the area increasingly comes to consist only of lawbreakers. To the ghetto resident, the policeman comes increasingly to be only an enforcer" (1968, 305).

Police neglect and overly aggressive and abusive policing in African American communities helped to spark much of the major urban civil unrest of the 1960s. The Kerner Commission determined that "[a]lmost invariably the incident that ignites disorder arises from police action. . . . all the major outbursts of recent years—were precipitated by arrests of Negroes by white police for minor offenses" (National Advisory Commission on Civil Disorders 1968, 206; Hahn and Feagin 1970). The Commission recommended changing police operations to "ensure proper conduct . . . and eliminate abrasive practices," to provide adequate and equitable police protection in African American communities, to establish fair citizen

[16] "Stop and frisk" refers to the patting down of a suspect's outer clothing in search of weapons, narcotics or other contraband. It is also known as a field interview, a field inquiry, or a threshold inquiry. In *Terry v Ohio* (1968), the Supreme Court ruled that police can briefly detain a suspect if an officer has a reasonable suspicion of criminal activity. A patdown or frisk of a suspect is justified if an officer has a reasonable fear that the individual is armed and dangerous.

complaint systems, to develop policies for using force, and to hire and promote more African Americans in policing (National Advisory Commission on Civil Disorders 1968, 17).

Public awareness of police brutality and criticisms by blue-ribbon commissions such as the Kerner Commission prompted calls for change in police practices in the 1960s and 1970s. Equally important was the changing legal landscape. Indeed, several seminal Supreme Court decisions during this time period provided additional impetus to change policing strategies, and continue to impact policing practices to this day (Walker 1999, 34). Perhaps partially in response to police abuses in the late 1950s and 1960s, citizens were granted greater constitutional protections against illegal searches and seizures and self-incrimination, and governmental entities were exposed to liability for police misconduct.

In *Mapp v Ohio* (1961), the Supreme Court held that evidence obtained through an illegal search and seizure was inadmissible in court. *Mapp v Ohio* prompted prosecutors and police departments to improve their policing techniques to ensure evidence was admitted, including obtaining more search warrants prior to conducting searches (Walker 1999, 34; Walker 1998, 183). In *Miranda v Arizona* (1966), the Supreme Court ruled that statements made by a person in police custody cannot be used unless the suspect is advised that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed" (444; Walker 1998, 182). In *Monell v Department of Social Services of the City of New York* (1978), the

Court found that governmental entities could be held liable for acts by its employees that violated a person's constitutional rights. Following this decision, numerous civil rights plaintiffs brought lawsuits against law enforcement agencies for the police misconduct of their officers. *Mapp*, *Miranda* and *Monell* thus collectively served to curb police misbehavior, either through controlling the admissibility of evidence at trial or by imposing liability for their actions.

The attacks leveled at police officers and policing by civil rights leaders and the landmark rulings by the Supreme Court restraining officer discretion provoked calls by rank-and-file officers for police officer unionization (Walker 1998, 199; Walker 1999, 38). Responding to recommendations by civil rights groups, commissions such as the Kerner Commission and policing scholars, reformers attempted to develop citizen review systems and establish police community relations programs across the nation – further antagonizing rank-and-file officers. As a result, nearly all major urban police agencies were unionized by the 1970s, with the exception of those in the south. Police unions secured better wages and benefits for officers, as well as greater protections against arbitrary personnel actions by management. The better wages and benefits facilitated the recruitment and retention of higher quality candidates for police work (Walker 1998, 199-200).

In some ways, however, police unionization was a double-edged sword. Although improving the quality of police candidates, police unions also weakened the authority of police management, elected officials, and community groups over police department operations and reforms (Walker 1998, 200). Moreover, unions

often defended officers against allegations of misconduct and defended white officers over minority officers in disputes. They opposed citizen review panels and programs to improve police-community relations, regularly quarreled with minority leadership, and resisted many policing innovations (Walker 1999, 373). Although their contributions to police reform are somewhat equivocal, police unions emerged in the 1960s as a permanent and powerful fixture in American policing, one that wields significant influence even to this day (Walker 1999, 38, 371-373; Walker 1998, 199-200).

The 1968 Kerner Commission Report was but one of a series of influential reports published by presidential commissions and prominent organizations. The President's Commission on Law Enforcement and Administration of Justice (commonly referred to as the Crime Commission) published *The Challenge of Crime in a Free Society* in 1967, advocating many professionalization reforms, including more efficient administration, heightened personnel standards, and expanded training for officers (Walker 1998, 202; Walker 1999, 35). The report also called for the active engagement of the federal government in providing funding for state and local government and called for increased funding for applied research on policing. Accordingly, the Crime Commission sponsored groundbreaking research, including studies of the behavior of officers in the field and the development of the National Criminal Victimization Survey (Walker 1998, 202). In 1968, in response to the Crime Commission recommendations, Congress created the Law Enforcement Assistance Administration (LEAA) to provide funding and support to local law

enforcement, as well as the Law Enforcement Education Program (LEEP) to provide forgivable college loans to students pursuing criminal justice studies (Walker 1998, 202-205; Walker 1999, 35-37).

The 1970s were a period of remarkable scholarship on policing. The nonprofit Police Foundation was launched in 1970 by a $30 million grant from the Ford Foundation to support innovative police research (Walker 1999, 37). The Police Foundation sponsored the pioneering Kansas City Preventive Patrol Experiment in 1972-1973, which shattered commonly held assumptions about the efficacy of preventive patrol. The study found that this widely employed policing tactic neither increased the public's sense of security nor decreased the level of crime in the community (Kelling et al. 1974, 3-4; Walker 1998, 207; Walker 1999, 36). The Kansas City Preventive Patrol Experiment stimulated further empirical research questioning conventional understandings of policing (Walker 1999, 36).

The Police Foundation also sponsored the equally influential Newark Foot Patrol Experiment in 1978-1979 (Kelling et al. 1981). This study found that, although foot patrols had no significant effect on crime levels, the attitudes of citizens *and* officers changed in significant and profound ways. Citizens in foot patrol areas reported feeling more secure and had more positive views of the police. Likewise, officers had more positive views of citizens and felt that citizens were more supportive of them (Walker 1999, 87). Foot patrol officers also experienced increased job satisfaction and ranked "helping the public" higher (2^{nd}) than motor patrol officers (5^{th}) when asked to rank the importance of job duties (Walker 1999,

87-88). Moreover, citizens in foot patrol areas not only considered crime to be less of a problem but also were less likely to act to protect themselves from crime than people in motor patrol areas (Kelling et al. 1981, 2). Many of these findings were replicated in the Flint [Michigan] Foot Patrol Experiment (Trojanowicz 1982; 1983; Greene and Taylor 1991, 210-211). These foot patrol and preventive patrol experiments served as the theoretical basis for the community policing movement and the community era of policing.

The Emergence of Community and Problem-Oriented Policing

From the 1980s to the present, we have witnessed the development of community policing and problem-oriented policing as the dominant paradigm in law enforcement strategy. These two concepts are often conflated under the general description of community-oriented policing. This model or philosophy grew out of the policing crisis of the 1960s and the research experience of the 1970s, which challenged many misconceptions about policing. As discussed below, this community-oriented policing philosophy took root in various police departments across the nation, initiating important experimentation throughout the 1980s (Walker 1999, 157-183).

The community policing movement received its intellectual foundation from two influential articles: "Improving Policing: A Problem-Oriented Approach" (1979) by Herman Goldstein,[17] and "Broken Windows: The Police and Neighborhood

[17] Goldstein served as a special assistant to O. W. Wilson while Wilson was police chief of Chicago. He also served as a consultant to the Kerner Commission and the President's Commission on Law

Safety" (1982) by James Q. Wilson and George L. Kelling. In "Improving Police," Goldstein argues that police departments get caught up in the "means over ends syndrome" (236), the pursuit of more efficient administration, better equipment, and higher quality staff, to the detriment of the more important concern of outcomes (Goldstein 1979, 236, 238).

Outcomes are not broad categories of crimes, but specific problems that the community wants police to address: neighborhood graffiti, cars speeding near a local elementary school, vacant houses being used by drug dealers, or public intoxication on the beach (Goldstein 1979, 242; Walker 1999, 157-158). Goldstein maintains that police should proactively attack these distinct problems by creating targeted strategies to address each problem rather than just reacting to calls for service (Goldstein 1979). As Walker observes, Goldstein and other experts argue that law enforcement should practice problem-oriented policing to anticipate future citizen policing needs and to "escape the tyranny" of their 911 systems (Goldstein 1979, 237; Walker 1999, 158; Sparrow et al. 1990, 104-108).

In "Broken Windows," Wilson and Kelling explain the limitations of the crime-fighting model of policing and urge a reorientation toward an order maintenance model. The symbol of broken windows is used to represent how a community breaks down when neighborhood problems are neglected. "[O]ne unrepaired window is a signal that no one cares, and so breaking more windows costs nothing" (Wilson and Kelling 1982, par. 11, *2 of 9). As a neighborhood

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Enforcement and Administration of Justice. He further developed his ideas on the problem-oriented approach in *Problem-Oriented Policing* (1990).

deteriorates from neglect, informal social controls collapse. Rowdy teenagers, aggressive panhandlers, public intoxication, and streetwalkers are ignored (par. 13-17, *3 of 9). This disorder causes citizens to fear for their safety, many move to other communities, and the neighborhood quickly descends into a wasteland of higher crime (par. 15-17, *2-5 of 9).

Wilson and Kelling further argue that police must step in at the earliest indication of community neglect or disorder to prevent neighborhood deterioration that leads to crime (*8 of 9). They contend that the best approach for accomplishing order maintenance is the foot patrol strategy outlined in the Newark Foot Patrol Experiment (par. 1-5, *1-2). On foot rather than in automobiles, officers can engage citizens directly, offering citizens the opportunity to communicate what is happening in the neighborhood, and as a result can identify, address, and prevent problems before they lead to disorder and crime (*5). In addition, foot patrol allows the officer and citizen to get to know and trust each other, and this partnership allows them to help each other maintain order in the community (*5).

The community-oriented policing philosophy took root in various police departments across the nation, initiating important experimentation throughout the 1980s. Experiments in Houston, Newark and Newport News, among others, demonstrated the effectiveness of foot patrol, establishing the viability of the "Broken Windows" theory espoused by Wilson and Kelling. For example, the Police Foundation funded the Houston and Newark Fear Reduction Experiments, which examined the effectiveness of various police-community information sharing

and collaboration projects. The *Summary Report* (1986) found that efforts to increase citizen-police interaction improved trust and respect between officers and citizens and there was an improvement in citizen satisfaction of police services. In addition, citizens were more engaged in crime reduction efforts, and fear of crime was reduced (Pate et al. 1986).

The Police Executive Research Forum (PERF), an organization of big city, county, and state police executives, sponsored Eck and Spelman's *Problem-Solving: Problem-Oriented Policing in Newport News* (1987), an examination of a problem-oriented policing effort in Newport News, Virginia. In response to numerous and continuous calls for service regarding burglaries from the New Briarfield apartments, a dilapidated low-income housing project in town where one quarter of the apartments were burglarized each year, the police conducted citizen surveys that determined that the rundown apartment buildings resulted in frequent burglaries. Criminals hid in empty apartments and the decaying conditions of the buildings allowed easy entry into apartments. Further, the environment caused residents to live in constant fear. Police worked with tenants and other local government agencies to repair buildings, clean up the neighborhood, remove abandoned cars and refrigerators, and haul away garbage (Walker 1999, 162-163; Sparrow et al. 1990, 19-20). These interventions caused burglaries to drop by 35 percent, supporting the "Broken Windows" theory (Eck and Spelman 1987, 5-6; Sparrow et al. 1990, 20).

Other community-oriented policing programs that have been evaluated include the Citizen-Oriented Police Enforcement (COPE) in Baltimore County, the

Specialized Multi-Agency Response Team (SMART) in Oakland, and the Chicago Alternative Policing Strategy (CAPS). The Baltimore COPE program's goals were community problem-solving and reducing the fear of crime (Sparrow et al. 1990, 67-70). Sparrow et al. called the program "a fight against fear" (Sparrow et al. 1990, 67). The program had Herman Goldstein as a consultant and received the assistance of the PERF (Sparrow et al. 1990, 68). Cordner opined that "In its problem-oriented form, COPE is at least moderately successful at reducing fear, satisfying citizens and solving neighborhood problems" (Corder 1991, 151; Walker 1999, 169-170). Indeed, in *Beyond 911*, Sparrow et al. note that Baltimore Police Chief Behan saw in COPE "a glimpse of the future of policing" (Sparrow et al. 1990, 70). Behan explained:

> All of the pieces of the puzzle are there . . . The use of a wide range of alternative responses. The engagement of the community. A bigger and more flexible role for individual officers, the de-emphasis of military structure, and a more thoughtful analysis of the problems police are expected to handle. If you fit all these pieces together, you have the beginning of a new vision of what police work could become. If COPE is adopted, it will mean a revolution in policing (Sparrow et al. 1990, 70).

The SMART program in Oakland targeted areas with significant concentrations of drug crimes or "hot spots," employing several agencies to improve the physical conditions of buildings that were being used for drug dealing (Green 1995; Walker 1999, 170-171). The Oakland program utilized enforcement of municipal code violations against owners of dilapidated housing, frequently misused by drug dealers and addicts, to curb narcotics activity. Owners of drug nuisance properties were encouraged to clean up their properties or be forced into court. The

program demonstrated that collaborative multi-agency enforcement, coupled with problem-solving policing strategies, could result in a decline of crime and disorder in areas targeted by SMART (Green 1995, 738; Walker 1999, 170-171).

Experts found that the community-oriented policing CAPS program in Chicago also had efficacious results. Skogan and Hartnett found that the CAPS program in Chicago was effective at reducing the fear of crime and improving public attitudes toward police responsiveness. In addition, over the ten years the program has been in effect, crime has diminished across most categories. Moreover, opinion polls indicate that public confidence in the police has improved across the three categories measured, demeanor, responsiveness, and performance (Skogan et al. 2003; Skogan and Hartnett 1997, 209, 212; Walker 1999, 164-168). In their study of the CAPS program in Chicago, Skogan and Hartnett set forth four principles that define "community policing": (1) organizational decentralization by providing patrol officers with decision-making authority and autonomy; (2) a commitment to "problem-oriented policing"; (3) responsiveness to the particular needs of the community, i.e., looking to the public's perception of its problems, rather than specific incidents of criminal activity; and (4) a commitment to working with the public to solve and prevent crimes, i.e., viewing the public and police as "'coproducers' of safety" (Skogan and Hartnett 1997, 5-9).

According to Walker, community and problem-oriented policing grew into a prevalent ideology among law enforcement during the 1990s. The federal government allocated $8 million to hire 100,000 new police officers to implement

community-policing programs. In addition, a new federal agency, the Office of Community Oriented Police Services (COPS), was created to oversee the funding and provide guidance to local police departments. Walker outlined the fundamental ideas that evolved from this "community policing movement" (Walker 1999, 163). The six principles are:

> (1) deemphasize responding to calls for service; (2) deemphasize crime fighting; (3) concentrate on neighborhood-level disorder; (4) develop closer ties with citizens as coproducers of police services; (5) develop closer ties with other government agencies that have responsibilities for community problems; (6) redefine the police role in terms of problem solving and community organizing (Walker 1999, 163).

These principles can be seen in the various community policing programs that sprang up in the late 1980s and 1990s.

A more aggressive, controversial community policing experiment that has been hailed as a success story took place in New York City, during the tenure of Mayor Rudolph Giuliani. Kelling and Coles call the 1993 campaign for mayor of New York City between incumbent David Dinkins and Rudolph Giuliani the "anti-squeegee campaign . . . when squeegeeing [unrequested washing of car windshields] became a metaphor for all that was wrong with New York City" (Kelling and Coles 1996, 143). Giuliani ran as a tough-on-crime former prosecutor who promised to make New York City safer. Following Giuliani's election as mayor, William Bratton was hired as police commissioner (143). Bratton instituted a tough variation of problem-oriented policing described as "zero-tolerance policing." Walker defines zero-tolerance policing as the aggressive policing of minor offenses based on the

broken windows concept of cracking down on minor infractions—squeegeeing, panhandling, subway fare beating, and graffiti – that bring disorder and lead to more serious crimes if left unchecked (Walker 1999, 172).

During Bratton's tenure as police commissioner, subway felonies declined 75% and robberies 64% (Kelling and Coles 1996, 152), while murder rates plummeted to a 30-year low (Walker 1999, 172). Some commentators contend that this tough enforcement policy resulted in the sharp reduction in crime (Kelling and Coles 1996, 155; Bratton and Knobler 1998, 156). In discussing New York's crackdown on fare evasion, Bratton claims that mobilizing a "Bust Bus" – a "mobile district station" where arrests could be made on the spot – reduced not just the actual crime of fare evasion, but had a broader ameliorative effect (Bratton and Knobler 1998, 155).

> And so crime, disorder and fare evasion began to go down . . . . We had reduced fare evasion, motivated the cops, streamlined the arrest process, and increased police productivity; we had involved the public, increased their attention, and won their approval; we had controlled disorder and achieved a decrease in crime. All from arresting people for a buck-fifteen crime. We were proving the Broken Windows theory (156).

However, opponents of this zero-tolerance policy claim that NYPD's methods led to spikes in public complaints and several well-publicized instances of extreme police brutality, such as the torture of Abner Louima and the forty-one shot killing of Amadou Diallo. Further, most major cities experienced reductions in crime during the same period (Walker 1999, 172-173).

Various programs calling themselves community-oriented policing are underway in one way or another throughout the nation. Over the last 25 years, community-oriented policing has become the dominant policing paradigm in the United States and many other countries as well, yet the shift to community policing has been uneven and fragmented (Pelfrey 2004, 579; Bayley 1991, 225). Mollie Weatheritt, a British policing expert, remarked that community-oriented policing has "reached the status of an orthodoxy in many English-speaking countries . . . providing a coherent and self-evidently sensible and desirable set of answers to policing problems" (Weatheritt 1991, 153). However, as Bayley (1991) notes, the concept had an assortment of meanings depending on whom you asked. Numerous police departments indicate they are involved in some type of community-oriented policing. Programs such as foot and bike patrols, Neighborhood Watch, satellite police substations, knock-on-door visits, community newsletters, and citizen advisory boards are all called community-oriented policing by program proponents (225).

Moreover, officers in departments that practice some form of community-oriented policing are sometimes in tension with one another. As Wilson and Kelling (1989) have noted, officers in traditional policing units often derisively call community officers "social workers" and accuse them of "going native" if they establish good relations with the community; community officers counter by dubbing them "ghetto blasters" (Wilson and Kelling 1989, par. 43). Skeptics mock community-policing officers as "empty holster guys" (Skogan and Hartnett 1997,

12). Many police officers and law enforcement leaders are resistant to community policing (Pelfrey 2004, 581). Surveying the state of policing programs, David Bayley commented that the implementation of community policing is "very uneven" and the concept sometimes seems more "a set of aspirations wrapped in a slogan . . . more rhetoric than reality" (1991, 225). Pelfrey has called community-policing programs irregular and incomplete (2004, 579-580).

In some instances, community-oriented policing is more philosophy than practice. However it has also transformed and reinvented many police departments. Community-oriented policing is a holistic philosophy that views the community and police as "co-producers" of crime reduction and crime prevention services (Skogan and Hartnett 1997, 3-9; Walker 1999, 163). Those who know what is happening on the street, citizens and patrol officers (preferably by foot or bike), have a greater involvement in decision-making. Moreover, operational planning is shared between the community and the police. Police act as community organizers expected to support neighborhood organization efforts.

A community-oriented policing strategy calls for law enforcement to anticipate neighborhood problems and needs and to devise solutions that address the underlying causes of crime *and* disorder. This type of problem-oriented policing strategy depends on citizen-police collaboration and anticipatory servicing rather than crisis response. The results of community-oriented policing are not gauged strictly by crime reduction, but also by community-police relations, fear abatement, problem solving, consumer satisfaction, and citizen participation. It is difficult to

implement these strategies and shatter old mental models of policing. Although innovation in tradition-bound police departments is challenging, there is abundant evidence that community and problem-oriented policing is possible under committed leadership.

Curtailing Officer Discretion: Responding to Police Misconduct

In addition to community policing and the unionization of police departments, reform efforts in the aftermath of the turbulent 1960s included efforts to "control on-the-street police behavior" (Walker 1999, 37). As Walker notes, these efforts were motivated by Supreme Court decisions curtailing police tactics that violated the Constitution, the wave of civil rights protests that rocked the 1960s, and lawsuits stemming from police misconduct. The increasing coverage of police by the media, particularly in exposing police misconduct, also forced the public and their leaders to respond to police malfeasance. Changes in use-of-force policies, as well as Supreme Court decisions redefining what force was permissible, significantly curtailed an officer's discretion in his or her daily activities (Walker 1999, 37-38). The control of discretion is significant because, as Wilson observed in *Varieties of Police Behavior*, "formally, the police are supposed to have almost no discretion," but in reality "discretion is inevitable" (1968, 7). In fact, Wilson notes that "the lowest-ranking police officer – the patrolman – has the greatest discretion and thus his behavior is of greatest concern to the police administration" (Wilson 1968, 8).

Unchecked officer discretion can have deadly consequences, not just for people subject to police force, but also for the police officers. Given the potential for

injury or death, the impact of administrative rulemaking on officer discretion can be considerable. For example, Alpert found that a change to a more restrictive high-speed pursuit policy reduced the number of police pursuits (279 to 51) in one city, and that a change to a more permissive pursuit policy greatly increased the number of police pursuits (17 to 122) in another city (1997, 4). Similarly, Fyfe examined a 1972 New York City Police Department use-of-force change in policy to test whether clearly articulated departmental policies regarding the use of force reduced officer-involved shootings. He found that officers shot their weapons about thirty percent less (between 1971 and 1975) than before the policy was in place and that there was also a reduction in shootings of police (Fyfe 1979, 322; Walker 1999, 38). A national evaluation of police shootings between 1970 and 1984 found that lethal shootings dropped fifty percent (Walker 1999, 38; Sherman and Cohn 1986; Geller and Scott 1992). Ironically, approximately 25 percent of officers shot while performing their duties are shot by people using the officer's weapon (Skolnick and Fyfe 1993, 41-42).

Officer discretion was further constrained in 1985 after the Supreme Court imposed a restrictive "fleeing felon standard" on the use of lethal force in *Tennessee v Garner* (1985). The Court held that lethal force "may not be used unless it is necessary to prevent the escape [of an apparently armed suspected felon] and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others" (3). Before that decision, Tennessee law did not distinguish between suspects who were dangerous and those

who were not (4-5). A subsequent study of Memphis, Tennessee, demonstrated the remarkable impact of the *Garner* decision—no fleeing suspects were fatally shot by police from 1985 to 1989 (Sparger and Giacopassi 1992, 220, 223).

In 1989, the Supreme Court gave further guidance as to what constitutes permissible force in *Graham v Connor* (1989). In that case, the Supreme Court lowered the standard of what is construed as excessive force by police officers. Specifically, the Court overturned the *Glick* or "shocks the conscience" standard embodied in *Johnson v Glick*, 481 F.2d. 1028 (2d. Cir. 1973). In *Johnson v Glick*, the Court previously held that force would only be considered excessive if it was applied "maliciously and sadistically for the very purpose of causing harm . . . offend[s] even hardened sensibilities, or constitute[s] force that is 'brutal' and 'offensive to human dignity'" (1033). *Graham* abandoned this requirement that force must be malicious or sadistic and intended to cause harm in favor of a lower Fourth Amendment standard of "objective reasonableness" based on the "perspective of a reasonable officer on the scene" (Graham 1989, 396).

Although empirical findings have demonstrated reductions in the misuse of force over time, particularly shootings (Walker 1999, 38; Sherman and Cohn 1986; Geller and Scott 1992; Fyfe 1979, 322), excessive use of force is still a significant problem. It has been estimated that 500,000 people are exposed to police force or a threat of force during a given year (Bureau of Justice Statistics 1996; Walker 1999, 225). It has also been estimated that about one-third of these incidents are excessive — 456 instances of unwarranted force every day (Walker 1999, 225). A 2000

Gallup poll found that 32 percent of Americans believed police brutality existed in their communities (Gallup 2000). Significantly, as with previous polls, perceptions of whites versus non-whites differed dramatically. Fifty percent of non-whites compared to only 28 percent of whites believed police brutality existed in their community (Gallup 2000). Clearly, these perceptions are a major impediment to police-community relations, especially in minority communities.

The state of affairs between the police and racial and ethnic minority communities has been strained for many years. Yet this tension and its underlying causes of police harassment have largely been out of the public eye. However, the rapid amplification of access to news and information in the 1980s and 1990s allowed reports, and sometimes graphic images, of police misconduct to be promptly transmitted across the globe. The establishment of the 24-hour Cable News Network (CNN) in 1980, the subsequent proliferation of cable news outlets, the transformation of AM radio to all news and talk formats, and the development of the Internet permitted the public to pierce the veil of police abuse. The growth of news outlets and the competition between and among networks, and other sources of news such as radio and the World Wide Web guaranteed more cameras, more reporters, and more ways to receive information. Eventually, citizens could document news and record history with a personal video camera or a personal computer, technology common in many American households.

Two of the more spectacular incidents of police abuse during the early period of CNN were the 1979 fatal beating of African American motorcyclist Arthur

McDuffie in Miami, and the 1985 siege and bombing of a house in Philadelphia occupied by the mostly African American anti-government group MOVE (Skolnick and Fyfe 1993, 176-177, 181-184). After McDuffie was beaten with heavy flashlights, police ran over his motorcycle and helmet with a police car so that his injuries seemed to be the result of an accident. Witnesses, including other police officers at the scene, testified to the brutality. Nevertheless, an all-white jury acquitted the officers, setting off the nine-day Liberty City (Miami) riot in May 1980 (181-182). Skolnick and Fyfe describe the riot as "more violent and destructive than any of the American urban disorders of the 1960s" (182). Casualties included 18 deaths, 300 assaults, 16 homes and 71 businesses lost, and $125 million in damage (182). The nascent CNN network, which would go on the air in June 1980, conducted "dress rehearsals"[18] with mock newscasts during the May 1980 riots (Boettcher 2000, par. 9). In Philadelphia, the police dropped an explosive device on the MOVE house, causing a devastating fire that destroyed an entire city block and approximately 60 houses and killing 11 people, including at least four children (Skolnick and Fyfe 1993, 176-177, footnote 10; "Philadelphia" CNN.com 1996). The images of the bombing were broadcast throughout the nation.

Similarly, the 1991 videotaped beating of Rodney King, showing Los Angeles Police Department (LAPD) police delivering more than 60 baton blows and

[18] CNN reporters were shot at as they covered the riots (Boettcher 2000, par. 9).

kicks to the unarmed King shocked the nation.[19] The videotaped beating was shown again and again on television sets across the world (Skolnick and Fyfe 1993, 3). The subsequent trial, verdict, and civil unrest further stunned the nation, including President George H. W. Bush, who said the video was "revolting" and that he "felt anger" and "pain." Bush wondered how he could "explain this to my grandchildren" and he found it "hard to understand how the verdict could possibly square with the video" (12). A *USA Today* poll that found that "86 percent of white Americans and 100 percent of black Americans answered that the King verdict was 'wrong'" (Skolnick and Fyfe 1993, 12; "Agreement on King" May 1, 1992, 4A). The Independent Commission that reviewed the Los Angeles Police Department's practices in the wake of the King beating called the incident a "landmark in the recent history of law enforcement, comparable to the Scottsboro[20] case in 1931 and the Serpico[21] case in 1967" (Christopher Commission Report 1991, I; Skolnick and Fyfe 1993, xvi).

The images caught by an amateur cameraman of police brutally beating King and the ensuing civil disorder altered the public's perceptions of police

[19] King suffered a broken leg, nine skull fractures, a concussion, a shattered eye socket and cheekbone, and nerve damage that left his face partially paralyzed.

[20] In 1931 in Scottsboro, Alabama, nine African American youths were arrested and charged, on the basis of highly questionable evidence, with having raped two white women in a freight car. They were hastily convicted and sentenced to death or life in prison. The U.S. Supreme Court overturned their convictions. The shallow charges, suspect trial, and underlying racism were a major rallying point for civil rights activists, including the Communist Party that provided for the boys' defense (Goodman 1994, x-xi).

[21] Police officer Frank Serpico was a whistleblower who exposed rampant corruption in the New York Police Department in the early 1970s (Skolnick and Fyfe 1993, 178). The scandal received national headlines, and the story was turned into a bestselling book and the hit movie *Serpico* (1973), starring Al Pacino.

accountability and stimulated a renewed examination of police practices in the United States. A group of police chiefs from large American cities proclaimed that "the problem of excessive force in American policing is real" (Christopher Commission Report 1991, i). The president of the influential Police Foundation concurred: "Police use of excessive force is a significant problem in this country, particularly in our inner cities" (i). In the aftermath of the King beating, Los Angeles Mayor Tom Bradley established the Christopher Commission, formally called the Independent Commission on the Los Angeles Police Department, to examine the structure and operations of the LAPD (ii). Understanding the national scope of their work, the Commission took its charge seriously, thoroughly and independently investigating excessive force by the LAPD.

The Christopher Commission's *Report* (1991) was a blunt condemnation of the LAPD. The report found a "significant number of officers in the LAPD who repeatedly use excessive force against the public," and further noted that "the problem of excessive force is aggravated by racism and bias" (iii-iv, xii). The Commission found that officers were brazen in their electronic communications, often crudely discussing beatings or other misconduct and regularly using offensive racial remarks (xii). The results of an LAPD survey indicated that about one-quarter of officers agreed that "racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and community" (xii). The Commission found that the LAPD's aggressive "hardnosed" style of policing produced an organizational culture that valued crime fighting above

crime prevention and that alienated the community: "LAPD officers are encouraged to command and to confront, not to communicate" (xiv-xv). In addition, the report described a citizen complaint system biased against complainants, characterized by obstructive personnel, inadequate investigations, and a pervasive code of silence (xix-xx).

Among the recommendations in the report were for the department to institute tighter control and supervision to ensure officer accountability and to prevent police abuse. The Commission urged the creation of an inspector general's office as a part of the police commission, to be given the task of overseeing the disciplinary process and punishing the most egregious cases of misconduct. The report also called for tighter screening and assessment procedures for recruits and field training officers, and expanded training opportunities, particularly in the areas of cultural awareness, verbal communication, and foreign languages (134-136). The Commission also recommended that the LAPD develop a new policing strategy based on the community-policing model, which focused on problem solving, crime prevention, and police-community cooperation (xiv).

The King beating and Christopher Commission *Report* signaled an important paradigm shift in approaches to ensuring police accountability. The influential document served as a blueprint and reference guide for reformers throughout the 1990s. The unprecedented findings provided a detailed exposé of the problem of police accountability and community-police relations, which was extrapolated to police departments nationally. The Commission's recommendations were

incorporated into proposals to improve the accountability of police, make policing more democratic, and prevent police misconduct, particularly the excessive use of force. The graphic images of the King beating and later riots, coupled with the Christopher Commission findings, gave reformers powerful evidence when arguing for changes with policymakers. Indeed, Congress utilized the Christopher Commission's findings and recommendations, and the wave of public opinion in the wake of the graphic images of the King beating, to craft legislation to address police misconduct and persuade law enforcement to teach community-oriented policing principles within their departments (Livingston 1999, 818).

Federal and State Intervention: A New Response to Local Police Reform

In 1994 Congress passed the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Act). The Crime Act included two initiatives, one a carrot and the other a stick, to modernize police practice and ensure police reform in troubled law enforcement agencies throughout the United States. The "carrot" was the infusion of massive funds to local police departments, for use in hiring more police officers. The "stick" was given to the United States Department of Justice, to use when it found that police departments engaged in a "pattern or practice" of unlawful conduct.

Specifically, Title I of the Crime Act, also known as the "Public Safety Partnership And Community Policing Act of 1994" allocated $9 billion over six years to encourage police departments to hire 100,000 new officers to implement community and problem-oriented policing across the nation (National Institute of

Justice 2000, 1, 5-6). A new agency was created in the United States Justice Department, the Office of Community Oriented Policing Services, to oversee the Community Oriented Policing Services (COPS) program. The COPS program awarded grants to local agencies to boost the number of officers in the field, to promote innovative policing programs, to spawn new technology for decreasing and preventing crime, and most importantly to instill community policing as a guiding philosophy in modern policing (1).

The Crime Act of 1994 had a significant impact on local law enforcement. By the end of 1997, the COPS program disbursed grants to 10,537 agencies, or 55 percent of eligible agencies, allowing police departments to hire an estimated 83,900 officers by 2003 (8, 17, 75). A comprehensive national evaluation of the COPS program found that "COPS funding has helped to accelerate the adoption and broaden the definition of community policing" (National Institute of Justice 2000, 21). However, the evaluators also observed that because program funds were explicitly earmarked for implementing community policing, and "peer pressure" to adopt community policing was strong, a considerable number of police departments stretched "the definition of community policing to include under its semantic umbrella traditional quick-fix enforcement actions, draconian varieties of zero tolerance, long established prevention programs, and citizen advisory councils that are *only* advisory" (National Institute of Justice 2000, 21).

Also enacted within the Crime Act was Title 42 Section 14141, also known as the "Police Accountability Act," which made unlawful a "pattern or practice of

conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" (42 U.S.C. § 14141a; USDOJ Civil Rights Division 2008). The Attorney General of the United States "may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice" (42 U.S.C. § 14141b). The statute forbids law enforcement agencies from engaging in conduct that violates the U.S. Constitution or federal law. Such misconduct includes excessive force, false arrests, unreasonable searches or seizures, and intentional racial or ethnic discrimination. It also prohibits agencies from regularly violating existing protections against police misconduct under federal statutes. Pursuant to Section 14141, a governmental entity is liable for the actions of its law enforcement officers if such actions constitute a pattern or practice of unlawful conduct. Thus, a court can order the entity to take steps to eradicate the unlawful pattern or practice (USDOJ Civil Rights Division 2008).

Section 14141 gave the United States Department of Justice, through its Civil Rights Division Special Litigation Section, significant authority to intervene in the operations of local law enforcement. Section 14141 is comparable to similar laws empowering the Department to step into areas such as schools, prisons, or mental health facilities (Livingston 1999, 818). The history of institutional reform litigation, also referred to as remedial law, originated with the seminal Supreme Court decisions, *Brown v Board of Education I* (1954) and *II* (1955). In *Brown II*, the Court directed lower courts to mandate plans to desegregate public schools. In the

2000s it is common for state and federal courts to intervene in the administration and reform of public agencies when constitutional rights have been violated. The primary remedies granted by courts pursuant to such institutional reform litigation are the appointment of monitors, the creation of receiverships, or the establishment of consent decrees (Wood 1990, x, 3).

It is noteworthy that, prior to the enactment of Section 14141, the Department of Justice was not engaged in efforts to bring about police reform (Skolnick and Fyfe 1993, 211; Livingston 1999, 818). Since Section 14141's passage, however, the Department of Justice has actively employed this statute to effect police reform in several state and local law enforcement agencies. At least 22 agencies have entered into agreements with the Department after "pattern and practice" investigations. Six of these agreements have been consent decrees, which have been filed in federal court. The remainder have been memoranda of agreement or technical assistance letters with recommendations (USDOJ Civil Rights Division 2008). Pattern and practice investigations and litigation have not been the exclusive domain of the United States Department of Justice. Beginning in the late 1990s, state Attorneys General have also initiated actions against local law enforcement agencies seeking police reform. To date, New York and California are the only states that have secured consent decrees with local police departments to remedy constitutional violations.

In April 2001, the Attorney General of New York entered into a consent decree with the City of Wallkill, New York, arising from violations of the New York

and United States Constitutions as well as New York state law. The consent decree, which was entered in federal court, resulted from an investigation of the City of Wallkill's Police Department regarding allegations of gender discrimination, retaliation, and free speech violations. Among other things, the New York Attorney General concluded that police officers engaged in a pattern of traffic stops of women designed to elicit dates and/or sexual favors. Whereas the State of New York and the United States Department of Justice have sued or threatened to sue in federal court to effectuate reform, the State of California sought a different forum.

On March 5, 2001, the California State Attorney General, relying upon powers under the California Constitution and a new California law (Civil Code section 52.3)[22] enacted in 2000 and effective on January 1, 2001, entered into a consent decree[23] with the City of Riverside, California. The complaint that was filed simultaneously with the consent decree alleged that the Riverside Police Department (RPD) violated various provisions of the California Constitution and several California statutes. Because the complaint alleged violations of state law and the

[22] California Civil Code section 52.3 is similar to 42 U.S.C. § 14141 and provides the California Attorney General with comparable authority to file pattern and practice lawsuits to reform law enforcement agencies.

[23] The Riverside agreement is termed a "judgment pursuant to stipulation" and "stipulation for entry of judgment" in court documents and referred to as a "stipulated judgment" by the parties to the agreement. For purposes of this paper, I often utilize the more commonly used term "consent decree," rather than "stipulated judgment." It should be noted, however, that during settlement negotiations, officials of the City of Riverside were very concerned about the stigma that the term "consent decree" implied, given its then recent association with the City of Los Angeles and the high profile LAPD Rampart scandal. Riverside tried to persuade the Attorney General's representatives that an agreement entered in court was unnecessary, and that a "memorandum of understanding" was sufficient. After the City's proposal was denied, they asked that the legal documents not refer to the agreement as a consent decree, and that the parties publicly refer to the agreement as a "stipulated judgment." The Attorney General agreed to this semantic change.

California Constitution, the Attorney General filed the complaint and consent decree in state superior court rather than in federal court.

The emergence of federal and state intervention in local police reform has become the "new paradigm of police accountability" (Walker 2003, 3, 6). This shift in reform methodology marks the advent of a new era in American police reform efforts. Institutional reform litigation has provided a powerful instrument to authorities seeking to overhaul troubled police agencies (Livingston 1999, 822). The threat of litigation, with its attendant adverse publicity and significant expense, is perhaps the strongest driving force prompting local police departments to acquiesce to compelled reforms.

The resulting consent decrees and agreements have incorporated much of the collective contemporary scholarship on police reform. Walker has identified an "emerging consensus of opinion" on the most effective policies for improving police accountability (Walker 2003, 6). Among these are:

> (a) a comprehensive use-of-force reporting system, (b) an open and accessible citizen complaint system, (c) an early intervention (or warning) system to identify potential "problem" officers, and (d) the collection of data on traffic stops for the purpose of curbing racial profiling (Walker 2003, 6-7).

These principles have appeared in one form or another in most if not all of the agreements, and they have been captured in a January 2001 report by the United States Department of Justice entitled *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies* (U.S. Dept. of Justice 2001; Walker 2003, 7).

Walker notes that prior attempts to reform police departments may have been unsuccessful because they failed to address broad organizational dysfunction, instead focusing on specific officers or discrete concerns (Walker 2003, 7). Section 14141, and its California equivalent, Civil Code section 52.3, by contrast, permits intervention against entire police departments. Accordingly, Walker argues that one of the elements in contemporary police reform is the creation of "an overarching conceptual framework." Under this framework, reforms are directed at transforming the values and culture of entire police departments (7). Scholars utilize the "bad apple" metaphor: rather than focusing on a few bad apples, this approach examines what about the barrel makes the apples rot and seeks to repair it (Walker 2005, 3-4; Armacost 2004, 457-459). Section 14141 gives federal and state authorities "enhanced opportunities for the radical reform of lax police administrative practices" (Livingston 1999, 822), by permitting prosecutors to take a holistic view of reform.

One example of state intervention in local police reform is the consent decree into which the California Attorney General entered with the City of Riverside. As with many other reform efforts, a high-profile critical incident of police misconduct prompted the investigation of the Riverside Police Department and subsequent efforts to reform the agency. The Tyisha Miller shooting and its aftermath exposed pervasive organizational dysfunction within the police department, and underscored the antagonism between the community and the police. In the following section, I describe the Riverside case, including the critical incident, investigation, and consent decree.

Chapter 3

From Tragedy to Reform: Policing Accountability in Riverside, California

The City of Riverside, incorporated in 1883, is the largest city in California's fastest growing region, the Inland Empire. The Public Policy Institute of California estimates that the area will continue to lead the state in population and economic expansion into the next decade (Johnson, Reed, and Hayes 2008, 85). According to U.S. Census Bureau data, the County of Riverside's surging population makes it the fastest growing county in California and the second fastest growing county in the country (Yi and Mehta 2005, A1). The City of Riverside serves as the county seat, home to county, state, and federal government offices. It has a diverse economy that includes the largest number of businesses and total jobs in the Inland Empire (Inland Empire Economic Partnership 2001, 105). In addition, Riverside is considered the cultural and educational hub of the Inland Empire, home to the "Downtown of the Inland Empire" and the University of California, Riverside (105).

The Tyisha Miller Shooting and State Intervention to Reform the Riverside Police

On December 28, 1998, a 19-year-old African American woman named Tyisha Miller was sitting alone asleep in a locked vehicle parked at a gas station. She had pulled into the gas station with a flat tire. Friends and family members, concerned because she was unconscious and appeared to be in need of medical assistance, called 911. Four police officers from the Riverside Police Department

(RPD) responded and rushed to the scene. After repeated attempts to rouse her with shouts, the officers smashed a window of the vehicle. Officers claimed that Miller reached for a gun that was cradled in her lap. The officers then opened fire, emptying their weapons at Miller. In total, 24 shots were fired; 12 shots hit Miller, killing her instantly. Initial police accounts suggested that she fired the gun at the officers; this was later determined to be untrue.[24] The response from the public and police critics was swift. The officers' actions were derided as excessive (Gorman 1999a, B3).

Investigating the Riverside Police Department

Following the shooting death of Miller, the Riverside County District Attorney, with the assistance of the California Attorney General's Office, conducted a criminal investigation of the four officers involved in the shooting. The participation of prosecutors from the Attorney General's Office in the investigation and charging decision was unusual and unprecedented. It marked the first and thus far only time that attorneys from both the office's Criminal Division and the then newly formed Civil Rights Section conducted a parallel investigation along with a local District Attorney in determining whether to bring criminal charges in a local criminal investigation (Verdugo 2008). Following a lengthy investigation, neither the District Attorney's Office nor the Attorney General's Office decided to pursue criminal action against the individual officers (Ichinaga 2000, 1). However, the Attorney General questioned the defective methods utilized by these officers in

[24] According to the toxicology report, Miller tested positive for marijuana and had a blood alcohol level of .13, one and a half times the legal limit for driving (Stokes and Danelski 1999, B2).

confronting Miller (1). Attorney General Bill Lockyer called the police actions "unwise and ill-conceived" (Gorman 1999b, A1). After a separate investigation, federal prosecutors also decided not to file federal criminal charges against the four officers ("Prosecutors" 2002).

Numerous residents of Riverside, particularly racial and ethnic minority groups, were deeply disturbed by the shooting and the subsequent decision not to criminally prosecute (Ichinaga 2000, 1). Moreover, many expressed concerns about the police department's practices, specifically its treatment of minorities. An active group of community leaders established the Riverside Coalition for Police Accountability to advocate for police reform (Beeman 2008). There were weekly protests in Riverside and elsewhere, including events drawing more than a thousand demonstrators (Lopez 1999, B1; Stokley 1999, A16). National civil rights leaders and celebrities, including the Reverend Jesse Jackson, the Reverend Al Sharpton, Martin Luther King III, Dick Gregory and Kenneth "Babyface" Edmonds all visited Riverside to express their indignation – Sharpton, King and Gregory were among 46 people arrested during the largest demonstration (Gorman and Ha 1999, B1). Many people, living both in the city and outside the city, urged greater scrutiny of the police department. They advocated immediate reforms.

As stories appeared in network newscasts, national magazines and newspapers throughout the country and world, the shooting of Miller thrust the city into a harsh light of national media attention (Lucas 1999, A1). *The Boston Globe* reported that "suddenly, longstanding tensions between blacks and police were at the

raw surface," (Gorov 1999, A1) and *Newsweek* reported that the city was "testing the limits of tolerance" (Murr 1999, 32). Tensions continued to escalate after the officers involved in the Miller shooting were fired. Officers shaved or cut their hair very short in a showing of solidarity[25] with the four officers who shot Miller (O'Neill Hill 1999a, B1), prompting Congresswoman Maxine Waters to call the officers "skinheads" and declaring that the behavior "sends a signal" that an investigation into the police department is necessary (Murkland 1999, B1).

In response, the California Attorney General traveled to Riverside and conferred with community leaders and concerned citizens to assess the validity of allegations regarding racism in the RPD. One two-an-a-half hour meeting with local and national civil rights leaders took place the afternoon of the largest protest regarding the Tyisha Miller shooting. After the meeting, Anthony West, an aide to Lockyer, told the press that the Attorney General

> has seen where there's a problem of racial bias in the Riverside Police Department. . . . Racism anywhere is bad, but it is especially bad if it comes with a badge and a gun. . . . The attorney general sees himself as someone who can be the voice of moral outrage when appropriate. (Gorman and Ha 1999, B1)

These revealing meetings, coupled with allegations (later confirmed) uncovered during the criminal investigation that RPD officers had made offensive racial slurs following the Miller shooting, prompted the Attorney General to launch a wide-ranging pattern and practice civil rights investigation of the RPD (Ichinaga 2000, 1; Verdugo 2008).

[25] Police Union President Jeffrey Joseph estimated that at least 100 officers cut their hair, roughly a third of the police force (O'Neill Hill 1999b, B1).

According to an extensive memorandum titled "Final Report to the Attorney General on the Riverside Police Department Investigation"[26] written by the attorney charged with overseeing the Tyisha Miller shooting inquiry, a diverse team represented by members of the Attorney General's Office and outside law enforcement experts embarked on a civil rights investigation that broadened as it evolved. The initial phase of the probe, which occurred before the official investigation, coincided with the Riverside Police Department's internal affairs (IA) inquiry into the shooting. Investigators from the Attorney General's Division of Law Enforcement, California Bureau of Investigation monitored the RPD's review. The officers involved in the shooting and the only supervisor at the scene were fired as a result of the RPD's internal investigation (Ichinaga 2000, 2-5; Verdugo 2008).

The next phase of the investigation, which began the official inquiry into the shooting, was the result of a high-level meeting in Sacramento in early July 1999. Participants in the meeting included the Chief Deputy Attorneys General, the two highest-ranking officials in the Attorney General's Office, as well as the heads of the legal Criminal and Civil Divisions. Additionally, the Director of the Division of Law Enforcement and the Chief of the Bureau of Investigation joined the head of the Civil Rights Enforcement Section, two Special Assistants to the Attorney General,

[26] The primary sources of information on the California Department of Justice's investigation and findings were Deputy Attorney General Jon Ichinaga's "Final Report to the Attorney General on the Riverside Police Department Investigation" (2000), and interviews with Ichinaga and Senior Assistant Attorney General Louis Verdugo. Ichinaga was the attorney assigned to the Miller investigation. Verdugo served as the head of the Civil Rights Enforcement Section and was the Attorney General's point person throughout the investigation, drafting and negotiation of the consent decree, and the oversight compliance period.

and the lead attorney investigating the matter at this meeting. At the meeting, participants concluded that an official investigation was warranted to examine the RPD's training, supervision, officer discipline, and citizen complaint policies and procedures (Ichinaga 2000, 2; Verdugo 2008).

The investigation into the RPD was broadened after a front-page article in the *Los Angeles Times* reported that a black Puerto Rican officer, who arrived at the scene shortly after the shooting of Miller, had prepared a 39-page statement containing "detailed allegations of racial profiling of citizens, reports of officers with racist tattoos and descriptions of giving each other high-fives at the scene of the Miller shooting and referring to the victim's grieving relatives as 'animals' having a Kwanza celebration" (O'Connor 1999, A1). The statement was part of a civil rights complaint submitted by RPD officer Rene Rodriguez with the California Department of Fair Employment and Housing.[27] His claims received extensive media coverage including a segment on the national television program "60 Minutes." In a statement released by the RPD in response to the Rodriguez complaint, it insisted that it had

> strong policies that prohibit inappropriate racial speech or behavior on the part of all employees. The department is made up of outstanding individuals who are professional in their speech and conduct. They treat fellow employees and members of the public with equality and respect. (A1)

Police Chief Jerry Carroll added that he had "absolutely zero tolerance for racism and discrimination in the Police Department. Just because somebody makes a statement doesn't mean that it is true" (A1).

[27] Rodriguez settled with the City for $92,260 and a tax-free disability retirement package (O'Neill Hill 2000, A1).

Rodriguez also claimed that he was being retaliated against for disclosing that he witnessed officers making racist comments after the shooting of Miller. He declared that the RPD was

> starving me out, sending a message to people who want to break that code of silence and speak up against officer misconduct. And it's working. They're doing everything they can to cover up for these people instead of just disciplining them and weeding them out (A1).

Approximately one week after the article appeared in the *Los Angeles Times*, officials in the Attorney General's Office met and decided to add Rodriguez's claims to their inquiry. Investigators were directed to interview officers including Rodriguez and the leadership of the RPD (Ichinaga 2000, 2-3; Verdugo 2008).

As the investigation progressed, they discovered evidence that problems in accountability and supervision existed in the RPD. A lieutenant told interviewers, "officers rely too heavily on pretext stops, that sergeants do not properly supervise officers, and that additional training of officers is needed, including training in the area of cultural diversity" (3). Deficiencies were also uncovered in the handling of public complaints against officers, including how police management responded and investigated these complaints. One of the outside policing experts retained by the Attorney General's Office to review the RPD, Dr. Raymond Forsyth, a former police chief and city manager of Visalia, California, expressed a lack of confidence in the competence of the department's supervisors. In a memo to investigators summarizing his findings, he wrote,

> The concern that I have is not restricted to the inappropriate actions on the part of an individual sergeant (field supervisor). I would suggest that this may well be only a manifestation of a deeper underlying problem with, perhaps, a number of field supervisors, well rooted in the culture of the organization. (4)

In response to information discovered as the investigation evolved, the Attorney General's Office again decided to expand the investigation by conducting more interviews, reviewing more documents, and most importantly, conducting a more thorough examination of actual public complaints, including the handling and investigation of complaints. The new round of interviews included former Police Chiefs Ken Fortier and Gerald Carroll.[28] Moreover, several informal off-the-record interviews were conducted, and many documents and materials published or provided by various sources were examined, including research institutes, the city, the Riverside County Grand Jury, the District Attorney, and the Commission on Peace Officer Standards and Training (POST). Investigators also reviewed "about 50,000 pages of citizen complaints going back to around 1991, and . . . approximately 138 actual citizen complaint investigations" (4).

The Attorney General's investigation concluded that many RPD practices had the "potential to be discriminatory, [and] facilitate, cause, or result in an unreasonable risk that the rights guaranteed by the California Constitution . . . will be violated," and that the RPD was in violation of various state statutes (Ichinaga 2000,

[28] Carroll was Police Chief from 1997 until he resigned on January 7, 2000. He led the RPD during the Tyisha Miller shooting and aftermath. His tenure as Chief was controversial, particularly after the Miller shooting. His resignation resulted from the pressures of the Miller investigation and tensions between Carroll and the City's leadership. In addition, the Riverside Police Officers' Association, the union representing RPD officers, was extremely hostile toward Carroll.

30-31). The most significant investigatory finding was the presence of a dysfunctional organizational culture, deficient in supervision and accountability. The culture dissuaded officers from reporting officer misconduct by a "pattern of intimidation, retribution, and harassment, some of it illegal" (5).

Examples cited in the investigative report described the harassment of a whistleblower, the cover-up of relevant evidence pertaining to the Tyisha Miller shooting, and retaliatory threats against officers who report misconduct. For exposing police misconduct, one whistleblower was regularly denied backup assistance when requested (a common practice when an officer breaks the "code of silence"[29]), potentially jeopardizing that officer's safety. In addition, the officer received frequent hang-up telephone calls, stink bombs were detonated in his vehicle and front yard, a dead frog was placed in his vehicle, and he struggled to communicate over the police radio as other officers spoke over him,[30] again endangering the officer's safety (16-17).

In addition, the Lieutenant who brought to light the racial slurs that were uttered immediately following the Miller shooting, and who cooperated with the District Attorney's investigators, experienced retaliatory acts of violence including

[29] Also referred to as the "Blue Code of Silence," the "Blue Wall of Silence," and the "Thin Blue Line." According to Samuel Walker, "For decades, experts on police misconduct have argued that the greatest single obstacle to investigating alleged misconduct incidents and achieving accountability is the refusal of other officers to cooperate with investigations. This includes investigations related to citizen complaints, internal police department investigations, and criminal investigations by prosecutors. The so-called 'code of silence' involves four distinct actions: not reporting misconduct by other officers, falsely claiming not to have seen the events in question, actively lying to investigators, and colluding with other officers to create a cover story" (Walker 2005, 82).

[30] Officers refer to this as being "covered" or "covering."

verbal abuse in the department. He had a letter of reprimand placed in his personnel file for disclosing this information to the Riverside District Attorney's Office and to a City Councilman.[31] Investigators concluded, "the letter of reprimand . . . seems to represent another example of punishing officers who attempt to bring accountability to the RPD" (17). Indeed, a Captain informed investigators that "there is a tendency within the organization of rallying around officers accused of misconduct" (5).

Another disturbing finding was the pervasive use of racist, sexist, anti-Semitic, and other inappropriate language and behavior within the RPD, much of it corroborated, and the lack of peer rebuke or supervisory reprimand for such conduct. Louis Verdugo, Senior Assistant Attorney General, reported on this language and behavior in two memos discussing the immediate aftermath of the Miller shooting. As Miller's family members were arriving at the scene and reacting to her death,[32] officers were seen laughing, high-fiving, and hugging each other. Among the comments made at the scene were: when officers referred to Miller, they referred to her as "that bitch" including when confirming her death. "Go check that bitch," one of the shooters told another shooter; "She wasn't going to hurt you, I had that bitch covered." Referring to the hysterical family members, they said "they're having a Kwanzaa reunion across the street." As Miller's grandmother learned of her death, an officer said "Hey, here comes the Watts Death Wail," and, as family members and

[31] As part of the stipulated judgment, the RPD was required to purge the letter of reprimand from the Lieutenant's personnel file and never reference its contents.

[32] Miller family members reported that, before smashing the window of Miller's vehicle, one of the police officers who shot Miller yelled "Get your black ass out of the car or we'll sic the dog on you!" (Verdugo 1999b, 1). This allegation could not be corroborated by investigators.

bystanders assembled at the scene, "We need to get you guys out of here—these animals are arriving in busloads." After the shooters were transported to the police station, additional comments were made: "well if it will make the family feel any better, we shot her with black bullets"; and, "'NHI' brother, uh which means No Humans Involved." While they were waiting to be interviewed, the officers watched a video titled *Banned from TV*, a collection of amateur recordings of disasters including a segment on police shootings showing horrific footage of victims (Verdugo 1999a; 1999b).

There was an atmosphere of racial insensitivity at departmental roll calls, where critical training regularly occurs.[33] Command staff failed to monitor and manage these important assemblies. During a briefing regarding a Native American High School, officers discussed bringing "alcohol to loosen them up" and buying "the Indians a casino." Inappropriate jokes were a common feature of roll calls. One officer asked "the difference between a pizza and Jew," and then replied "pizzas don't scream when you put them in the oven." Another officer, enrolled in training at the Museum of Tolerance, remarked that he "can't make it that day, I have Nazi training." A sergeant replied, "field marshal training, right?" Officers also remarked that "in L.A. they treat you like a King, and in Riverside it's Miller time," an obvious

[33] Roll calls occur prior to the beginning of a work shift. During roll call, officers are briefed on important events or information, including patrol deployments and objectives for the day, and often receive important training. An example of a police roll call is the opening sequence of the 1980s television police drama, "Hill Street Blues."

reference to the Rodney King beating and Miller shooting.[34] A supervisor referred to Tyisha Miller as "Ty-i-shit Miller" (Ichinaga 2000, 23; Verdugo 1999a, 2).

The environment at roll calls symbolized the cowboy culture of the department and the lack of supervision by RPD leadership. Vital learning failed to take place during these meetings. Captains were unable to describe what, if any, training was taking place during roll calls. When the department mandated a 45-minute training session on how to properly respond to situations like the Tyisha Miller incident, an officer told investigators that the training lasted about 15 seconds and consisted of a handout (Ichinaga 2000, 23). At the time, according to investigators, many law enforcement agencies in Southern California conducted formal debriefings of the Miller shooting; however, the RPD had not (13).

The investigation also found a significant deficit in the number of trained supervisors in the department, and critical shortcomings in the scheduling of personnel. The "span of control," or ratio of line officers to supervisors, was substandard at 8.9 to 1, which the investigative team's advisory group of policing experts recommended should be 7 officers to each sergeant in Riverside (7). There was no systematic training of new sergeants or policies and procedures for their performance evaluations. No more than 10 sergeants out of a total of 27 received

[34] Interestingly, the behavior of LAPD officers prior to and following the beating of Rodney King and the behavior of RPD officers following the Miller shooting was equally offensive. Examples of the LAPD officers' radio and computer transmissions included: one of the officers who beat King describing a domestic dispute between an African American couple immediately preceding the beating "right out of *Gorillas in the Mist*"; an officer reporting the King beating to the station house "You just had big time use of force . . . tased and beat the suspect of a CHP pursuit, Big Time"; the station house responding "Oh well . . . I'm sure the lizard didn't deserve it . . . HAHA I'll let them know okay." At the hospital where King was treated, nurses reported that police officers were joking and bragging about how many times they hit King (Christopher Commission Report 1991, 14-15).

any supervisory training because of the shortfalls sending sergeants to training would cause in the field. Worse yet, the scheduling of shifts was based on seniority, leaving the least experienced sergeants in the field during the important evening and graveyard shifts. Moreover, at the time of the Miller shooting, command staff[35] only worked the day shift during weekdays and there were no lieutenants serving as watch commanders from 2:00 a.m. to 7:00 a.m. During these times, a sergeant would essentially be in charge of the RPD, serving as watch commander. Sometimes, just one sergeant would work at night (7-8). This combination of circumstances produced a department with absent leadership, a shortage of managers, deficient supervision, and no accountability.

A 1998 study by David Thacher for the National Institute of Justice (NIJ) and the Urban Institute of the Riverside Police Department's use of federal Department of Justice, Office of Community Oriented Policing Services (COPS) grants[36] also suggested that the RPD had management deficiencies. In fact, Thacher's case study of RPD's use of COPS grants revealed a department in need of important reforms, not unlike the agency the AG's investigators encountered after the Miller shooting. Thacher found that in the early 90s "administrative systems were a major outstanding weakness in the RPD" and noted that even later many in the RPD acknowledged these managerial shortcomings (5). The management philosophy of the RPD was called "high trust, low control" by observers inside and outside the

[35] The Chief of Police, Captains, and Lieutenants are considered management command staff (Ichinaga 2000, 6).

[36] The COPS grants funded community-policing initiatives.

department. This translated into a hands-off style of management that created an environment lacking oversight and accountability. City Manager John Holmes[37] worried that the department was "becoming a loosely-controlled organization" (6).

Thacher also described how the RPD's leadership and City officials were under fire from inside and outside the police department. The police union had voted no confidence in the Police Chief *and* the Deputy Chief, and the reputation of the RPD was badly damaged in the community. As evidenced by Thacher's study, even before the Miller shooting the minority community viewed the RPD as disrespectful. The media regularly reported on allegations of police misconduct, including incidents of harassment and brutality (6). Ken Fortier, the Riverside Police Chief from 1993 to 1997, put it bluntly, "The relationship with the minority community was miserable, especially the Hispanic community" (10). In one case, an effort to mend the relationship between Latino residents in the Casa Blanca community and the RPD disintegrated when a prominent community group refused to talk to the RPD (6).

A 1992 management audit of the RPD commissioned by the City Manager and conducted by the consulting firm Ralph Andersen and Associates also foretold problems the department would continue to experience years later. The audit described a police department lacking fundamental management systems. Although the report was not entirely critical of the RPD and most of the document was written

[37] John Holmes served as Riverside City Manager from 1990 through 2001. He was City Manager at the time of the Tyisha Miller shooting and during the investigation and consent decree negotiations.

diplomatically, the assessment was blunt and direct with its conclusions of the RPD. The department

> [h]as not placed appropriate value on basic management infrastructure so that it cannot identify or define basic workload; cannot adequately perform resource allocation; does not devote the appropriate level of resources and attention to personnel and training; and has not placed enough emphasis on inspections and quality control; and is not prepared to move toward implementation of the community-oriented policing concept without first devoting considerable effort to its management infrastructure. (iii)

The audit found that the RPD's training program was in need of immediate and focused attention (vii) as "in-service training programs are poor and overall training administration appears not to accomplish external or internal training needs" (104). The programs were "seriously neglected in terms of scope, resources, and administrative practice" (105).

In short, the RPD's training program was in chaos. More than 30 percent of RPD officers were likely to soon be out of compliance with Peace Officer Standards and Training (POST) requirements. An inexperienced officer was responsible for overseeing the entire department's training program, and supervisors charged with providing critical training either refused to present the training or falsified training logs to make it appear that officers had received training when they had not (105-106; Thacher 1998, 5). In addition, the department's supervisory system was significantly flawed and there was little quality control. There were huge deficiencies in the measurement of individual officer and departmental unit performance (Ralph Anderson and Associates 1992, vii, 112).

The disciplinary system had "significant weaknesses" (113). Again, as with the training unit, the internal affairs unit consisted of only one sergeant who had additional responsibilities, which included risk management, litigation support and the coordination of workers' compensation claims. The internal affairs unit also had no system for reviewing disciplinary cases and management essentially ignored most cases, addressing only the most serious matters. Moreover, the RPD lacked a system to monitor public complaints and subsequent investigations. Consequently, management had no way of evaluating or analyzing complaints, or supervising the investigation process (113-115). Clearly, RPD lacked systems to ensure officer, managerial, and departmental accountability.

The Attorney General's investigators also reviewed use-of-force reports to determine whether there were deficiencies in how these incidents were reported and investigated. They found that "consistent with other findings in this report, the use of force reports evidence problems in supervision and in training at the RPD" (Ichinaga 2000, 28). One report documented an incident where disarray and overreaction led 23 officers to a crime scene, creating confusion, disorder and a lack of control over the scene. The Director of the Division of Law Enforcement considered this incident "symptomatic of a lack of supervisory control over the officers responding to the scene and of an aggressive policing agency" (28). In another incident a man was shot and killed by police officers after he attacked them with a knife. Non-lethal weapons such as a beanbag gun might have prevented the

man's death. The Director's analysis of these reports suggested that the department had difficulties responding appropriately to these incidents.

> Supervisors need to be at more critical scenes. It's clear from this review that they are not in control, nor providing oversight at enough such events. . . . Again, I think this says there is a critical shortage of aggressive, well-trained, and well-motivated supervisors within the field operations of the agency. I see a lack of ongoing tactical and operational training for officers as well. They seem short on options at critical junctions. The failure of control holds, the relatively few times batons were used, and no indication of the verbal judo skills are all examples that are of concern and draw me to this judgment (28).

The Attorney General's examination of complaints by the public against Riverside police officers revealed a failure to take complaints and investigate those complaints thoroughly. In 1993 the department instituted a public complaint policy applying contemporary policing methods. To ensure that complaints were processed properly, the new Police Chief at that time, Ken Fortier, directed the department to use random "testing" of the complaint system. Investigators learned that during the Fortier administration[38] "six stings per year, six random inspections for compliance with complaint procedures" were conducted (19). The integrity of the system was weakened after Fortier left the department in 1997. When Jerry Carroll was appointed Chief, the random inspections for compliance ceased. According to information provided to investigators by the RPD, before Fortier implemented the random stings,[39] the number of reported complaints was very low. Indeed, City

[38] Fortier served as Chief of Police in Riverside from 1993 through the summer of 1997, when Jerry Carroll took over as Chief.

[39] A sting is an undercover operation by law enforcement designed to uncover unlawful behavior. Sting operations of citizen complaint procedures usually involve someone posing as a member of the

Manager John Holmes worried about the RPD's complaints, "We are a city of 250,000 people, . . . I started wondering why we were having so few [complaints]" (Thacher 1998, 7). During Fortier's time as chief, complaints increased. Complaints again declined after Carroll became chief (19-20).

The decline in complaints during the last several years of Fortier's tenure as Chief may have been the result of an orchestrated campaign against his policies and leadership by the Riverside Police Officers Association (RPOA), the union representing officers (Ichinaga 2000, 19-20; Thacher 1998). Fortier's authority and influence waned during this time. He explained in an interview with the Attorney General's Office that "officers were no longer feeling accountable during this period" (Ichinaga 2000, 20). Complaints continued to decline after Carroll became Chief and the stings stopped. A Captain explained to investigators that under Carroll "commanders did not follow the policy" (19). Sergeants ignored the policy as well. When the random stings ended, officers and their supervisors knew that there was little chance violations to the complaint policy would be exposed. Further, Carroll "personally overrode and violated the complaint policy" and "used his authority to direct Internal Affairs investigations not to be done on some complaints" (19). Investigators also found that complaints, particularly those dealing with discrimination, were "inconsistent in terms of thoroughness, objectivity, and compliance with the guidelines set forth in the RPD's Conduct and Performance Manual" (21).

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public attempting to file a complaint to determine whether the complaint will be appropriately processed and investigated.

The Attorney General's investigative report also suggested that the RPD did not place a high value on their officers' aptitude for dealing with minority residents. The ability to understand and work with diverse populations was not considered in promotions, nor was it used when assessing the performance of officer trainees. Trainees received minimal cross-cultural instruction, and most officers had only their academy training in this area (24). The lack of diversity training for police officers in a city the size of Riverside, where non-Hispanic whites are a minority, worsened the RPD's relationship with the community they served. Evidence of the police department's "lukewarm reputation" among minorities was noted in a 1992 community survey that found that 54 percent of blacks graded the department as "only fair" or "poor" (Ralph Anderson and Associates 1992; Thacher 1998, 1-3). It is safe to assume that those views persisted up to and after the Miller shooting. The RPD's relationship with the City's Latino community was also strained, particularly in the poor Casa Blanca section of the City (Thacher 1998, 3).

Although the investigation did not conclude that racial profiling[40] was a policing tactic in Riverside,[41] the use of pretext stops[42] by officers had "the potential to be discriminatory if not supervised" (Ichinaga 2000, 25). At the time of the Miller

[40] Racial profiling refers to the illegal practice of police stopping a vehicle solely based on the race of the driver because they consider members of a particular race to have a greater likelihood of criminal activity.

[41] Racial profiling is very difficult to prove. See *Whren v United States* (1996).

[42] A "pretext stop" is a tactic employed by police officers in which a vehicle is stopped for a minor trafiic infraction because the person driving the vehicle is suspected of participating in a more serious crime and the officer would like to conduct an extensive search of the vehicle to obtain incriminating evidence. See *Whren v United States* (1996).

incident there was no way of evaluating whether pretext stops were biased because the department did not document traffic stops. The possibility of abusing pretext stops and thus engaging in racial profiling was real according to senior staff in the RPD. Investigators determined that more training about pretext stops was necessary and a system that records every traffic stop, including the purpose of the stop, and the race and gender of the person stopped, was essential (25-27). A reporting system for traffic stops would allow for careful evaluation of stops to determine whether they reflect bias or are associated with any type of abuse.

Another significant finding of the inquiry into the Riverside Police Department was the absence of a modern problem-oriented community policing effort.[43] Community policing is a prevailing philosophy in contemporary law enforcement. The strategy has proven effective at preventing crime, reducing the fear of crime, and most importantly improving police-community relations. Starting in 1993, Riverside Police Chief Ken Fortier developed a community policing program. According to Thacher's 1998 study of the RPD's use of community policing grant funding, Fortier "was able to lay the foundations for community policing in the city by spearheading a system of area commands charged with solving community problems" (2).

[43] According to the Office of Community Oriented Policing Services (COPS) of the U.S. Department of Justice, community policing or problem-oriented policing (I use the terms interchangeably) "focuses on crime and social disorder through the delivery of police services that includes aspects of traditional law enforcement, as well as prevention, problem-solving, community engagement, and partnerships. The community policing model balances reactive responses to calls for service with proactive problem-solving centered on the causes of crime and disorder. Community policing requires police and citizens to join together as partners in the course of both identifying and effectively addressing these issues" (Office of Community Oriented Policing Services 2008).

Fortier had been the Assistant Chief in the San Diego Police Department, a department regarded as a leading practitioner of community policing. While in Riverside, opposition from the police union and the subsequent campaign opposing Fortier's policies frustrated the community-policing effort and ultimately led to Fortier's resignation and the unwinding of the Fortier reforms. Management staff interviewed by the Attorney General's investigators credited Fortier with implementing policies that enhanced professionalism and improved accountability. They added that when Fortier resigned and the new Chief took over, the department jettisoned many of the improvements (Verdugo 2008; Ichinaga 2000, 5, 8-10). The investigative report explains how one Captain described how Carroll, the new Chief, from his very first day on the job began to undo the progressive policies of Fortier:

> "At his swearing in he said, 'We're back!' There were many of us who didn't want to go back." The Captain said Carroll's comment was an affront to Chief Fortier and the essential reforms he had brought to the department. The Captain believes the comment sent a message to the rank-and-file officers that a more relaxed and less accountable atmosphere, a return to the "good old days," was forthcoming, a "terrible message to send to the personnel." (Ichinaga 2000, 10)

Former Chief Ken Fortier warned during an interview with investigators that the police officer's union in Riverside was so powerful that lasting reform of the RPD would be "exceedingly difficult without some type of outside authority to assure that reforms are not undone" (10). Commentary such as this suggested that outside intervention and oversight would be necessary to reform the department.

The investigation concluded that the management systems within the RPD were dysfunctional, causing a complete breakdown in police accountability. Modern

policing systems to track vehicle stops and officer misconduct were inadequate. Contemporary policing strategies such as community and problem oriented policing were substandard or ignored altogether. The department also lacked a coordinated comprehensive training program, teaching current policing techniques, particularly on how to deal with minority communities. A lack of effective leadership and supervision allowed misconduct to be tolerated and to go unchecked, creating an organizational culture where unethical and irresponsible conduct festered. Investigators concluded:

> The foregoing factual findings establish the RPD's lack of accountability and supervision, the inadequacy of its complaint procedure and, especially, the failure of supervisors to consistently monitor the conduct of officers. They also evidence an informal culture that punishes officers and managers who attempt to report or redress officer misconduct, and the failure of the RPD command staff, the City Manager, and the City Council to create a culture which enforces and reflects the values of modern, professional policing. . . . the risk created by the RPD's shortcomings justifies intervention by the Attorney General. (29)

By August of 2000, the Attorney General's investigation had uncovered considerable evidence pointing to the need for reform in the Riverside Police Department. Officials were ready to proceed with settlement discussions in the form of a consent decree with the City of Riverside. The consent decree would require the City to institute reforms to address the various shortcomings exposed during the investigation. Alternatively, the Attorney General could sue the City to force reforms. But no one wanted to pursue that option, as litigation would be difficult and expensive, without any guarantee of success. Further, the adversarial nature of litigation would not be conducive to change. Buy-in would be necessary for reforms

to take hold, and thus a collaborative relationship was essential between the state and City.

Lawyers in the Attorney General's Office were also hopeful that their investigative findings could be joined with a concurrent federal investigation into the RPD, and a joint consent decree could be crafted with both the state and federal Departments of Justice as parties to the agreement. Various representatives of the Attorney General's Office, including Attorney General Bill Lockyer, tried unsuccessfully to develop a cooperative arrangement between the two agencies. Initially, California officials received contradictory signals from their federal counterparts regarding their willingness to collaborate on the Miller investigation, and in the end they did not partner with the California Attorney General's Office. In October 2000 the federal government communicated that they were not ready to proceed with settlement discussions and that they did not want slow down the work of the California Attorney General's Office (Verdugo 2008).

People knowledgeable about the investigation suggested that the federal government declined to work jointly with their California counterparts because they viewed their effort as superior to the AG's intervention. USDOJ also assumed that CalDOJ would be unable to carry out such a complex undertaking. California and Riverside officials who participated in the RPD investigation and settlement described the representatives of the USDOJ as arrogant, uninformed, biased, difficult

to work with, and even unprofessional and unethical in their methods.[44] Indeed, the City received several complaints regarding interrogations the USDOJ conducted during their investigation.

As a part of their investigation, USDOJ lawyers interviewed plaintiffs suing the RPD for police misconduct. The plaintiffs and their lawyers complained to the City of Riverside about the tactics employed by the USDOJ, telling city lawyers that the methods of the federal lawyers were at least unprofessional and bordered on unethical. Plaintiffs' attorneys described federal investigators as attempting to elicit damaging information that was false about the RPD from their clients. The information could then be used to strengthen their investigation and case against the RPD. In fact, one of the plaintiffs' lawyers provided a sworn statement to the Riverside City Attorney describing the tactics of the federal prosecutors (Priamos 2008).

The federal investigation suffered from other limitations as well. At the time, the resources of the USDOJ Civil Rights Division Special Litigation Section were stretched thin by other police misconduct investigations, particularly the investigation of the Los Angeles Police Department following the Rampart scandal. Indeed, the federal investigation appeared not to have progressed much after initial inquiries after the Miller shooting, lagging significantly behind the state's effort. Around the time that the CalDOJ and City had reached agreement on a stipulated

[44] As part of my research for this study, over six weeks in April and May of 2008, I attempted to interview past and present representatives of the USDOJ. Unfortunately, no one from USDOJ replied to repeated phone calls and emails seeking assistance with my research.

judgment, the federal government, having been caught off guard by the AG's agreement, attempted to induce a consent decree with the City of Riverside.

On February 21, 2001, just eight days after the CalDOJ and the City of Riverside's negotiations and proposed agreement were discussed very publicly during a daylong visit by Attorney General Bill Lockyer to the City of Riverside, lawyers from the USDOJ hastily summoned Riverside officials to Los Angeles to discuss the federal investigation. The City told the USDOJ that they were very close to entering into a settlement agreement with the California Attorney General's Office (Priamos 2008). Twelve days later, on March 5, 2001, a stipulated judgment mandating RPD reforms was entered into the Superior Court of the State of California, County of Riverside, between the City of Riverside and the CalDOJ. Privately, federal prosecutors were not pleased with the CalDOJ/Riverside decree. The USDOJ attorneys had spent significant time and effort investigating the RPD and they assumed consent decrees to reform police agencies were their domain.

On April 13, 2001, Steven Rosenbaum, the Chief of the Special Litigation Section of the Civil Rights Division of the USDOJ, wrote the Riverside City Attorney. The letter stated that they had several concerns that were not addressed by the City's stipulated judgment with the State of California. They attached to the letter a draft consent decree addressing these concerns and expressed the federal government's intention to conclude its investigation if the City agreed to the consent decree (Rosenbaum 2001). The City politely declined the proposal and, from that

point forward, ceased most discussions with the USDOJ relating to the federal investigation of the RPD (Priamos 2008).

Ironically, for almost a year the California Attorney General's Office tried unsuccessfully to convince the USDOJ to work jointly on the RPD investigation, believing that a collaborative effort would produce a superior result.[45] In the end, the AG's Office was able to help officially close the USDOJ investigation by mediating a few minor changes to RPD policy suggested by the USDOJ, and then agreeing to monitor these changes. In a letter to the City, dated February 23, 2004, the US Department of Justice advised the City that it had closed its investigation (Cutlar 2004).

Negotiating Change: Crafting an Agenda for Reforming the RPD

In response to the conclusions of the investigation and the federal government's decision not to proceed jointly, the Attorney General dispatched a team of negotiators to the City of Riverside to express his determination to take legal action to rectify breakdowns in accountability within the RPD. He vowed to litigate if the City of Riverside did not agree to a court-enforceable reform program in the form of a consent decree. In 2000, the Attorney General's negotiation team, which included Louis Verdugo, Jon Ichinaga, and Steve Staveley, met with Riverside officials and conveyed the results of the investigation and the office's intent to obtain a consent decree to reform the police department, or if settlement was not possible, to take legal action to compel the City to make reforms.

[45] By the time a settlement was reached between CalDOJ and the City of Riverside, participants from the State and City were frustrated and averse to dealing with the USDOJ.

The City initially expressed shock and surprise at the message the team delivered. However, City officials agreed to meet again to discuss the AG's offer to settle the investigation with the City by consent decree rather than litigation. In the interim, in late September 2000, Russ Leach was sworn in as the City's new Police Chief. This was a crucial turning point in the relationship between the City and State officials. Since early 2000, Interim Police Chief Robert Luman, a well-respected retired Long Beach police chief, had led the RPD. He served as a transitional manager while the City conducted a national search for the next police chief.

Russ Leach had been the Police Chief of El Paso, Texas, where he received glowing reviews. An editorial in the *El Paso Times* titled, "Leach's Legacy, Police Chief's Progress, Success Must Continue," began with this line: "Police Chief Russ Leach's legacy is an enviable one that will go something like this: He did everything right. . . ." (10A). The editorial added, "His eminently successful community-policing policy has helped El Paso earn recognition as the nation's third-safest major city. . . . In short, Leach has been a powerfully effective police chief for El Paso, the person we needed, arriving at the precise time he was needed" (10A). After his swearing in, Leach took an immediate hands-on approach towards negotiations with the Attorney General's Office. His involvement in these negotiations was critical in moving the process forward to a settlement.

In November 2000, the City and State met to discuss a settlement. A team that included Mayor Ron Loveridge, City Councilmembers Ameal Moore and Joy Deffenbaugh, City Attorney Stan Yamamoto, Deputy City Attorney Greg Priamos,

Police Chief Russ Leach, Deputy Chief Mike Smith, and Captain Audrey Wilson represented the City.[46] At this November 2000, meeting, the Mayor and Councilmembers explained how they had voluntarily made changes to the RPD, particularly implementing recommendations from a group of citizens that examined problems in the RPD following the Miller incident.[47] They also expressed the belief that a consent decree was not needed, and suggested that a "memorandum of understanding" was a more favorable option. The Chief responded positively to a draft consent decree that the AG's team had provided to the City before the November 2000 meeting. The AG's team was encouraged by the Chief's willingness to implement many of the reforms stipulated in the draft consent decree (Verdugo 2000, 1-2; Verdugo 2008; Ichinaga 2008).

The City and State met several times over the next three months to hammer out a resolution. The meetings were cordial and many details of an agreement for reforms were discussed. However, the City continued to balk at a consent decree. During the meetings, City leaders protested the incredible expense that would be incurred by the consent decree, and objected to incorporating reforms within a court order. They cited the reforms they had already implemented and the significant progress made to improve the police department. News of the negotiations and the

[46] A representative of the Riverside Police Officers Association (RPOA) joined the negotiations at subsequent meetings.

[47] In response to the aftermath of the Miller shooting, Riverside Mayor Ron Loveridge created the Mayor's Use of Force Panel. The Panel of community members made 12 recommendations to improve the RPD. All 12 of the recommendations were successfully implemented by the RPD. In some form or another, the recommendations were later incorporated into the stipulated judgment between the City of Riverside and the State of California.

debate over whether a consent decree was necessary became an important topic of conversation in the City and especially in the local newspaper, the *Press Enterprise*. In fact, Riverside issued a press release on November 30, 2000, announcing they were in "discussions . . . with the California Department of Justice (DOJ) regarding the investigation of the City's Police Department."[48]

City Councilwoman Joy Defenbaugh expressed frustration with the AG's demand for a consent decree. She said, "We have been aggressively pursuing reform measures in the city. I don't know what else we can do. It [consent decree] would place a stigma on the city itself and I don't think that is fair, given the efforts we have made in the last two years" (Pitchford and O'Neill Hill 2000, B1). City Councilman Ameal Moore also conveyed dissatisfaction, "We feel like most of the things they are concerned about, we are already in various stages of implementing or trying to bring about. We feel we've made some real good progress. I certainly would not support a consent decree" (O'Neill Hill 2000, B8).

Other members of the community felt differently. The Rev. Paul S. Munford, a leader in the African American community who also served on the Mayor's advisory group on police use of force, commented that the consent decree "can only help. There is no harm in having double protection for the public" (Pitchford and O'Neill Hill 2000, B1). Louis Hayes, vice chairwoman of the Riverside Human Relations Commission agreed, remarking that "It seems like this would just be one more good thing to commit to. Why not raise the mark?" (B1). Local activist Chani

[48] The headline of the press release was "City Officials Praised for Cooperation with State Department of Justice."

Beeman acknowledged that the City had made progress, but also expressed concern that reforms might not last, stating "I'm pleased with where we are today but I also am not confident that it couldn't just wither and die and go away within the year" (B1).

A consent decree would not only be enforceable by a court, but it also would give the AG's Office the power to oversee the reforms. The City would be subject to a contempt of court citation, punishable by a fine, jail or both if Riverside failed to meet the requirements of the order. A consent decree would thus provide greater incentive to the city to comply with the terms of the agreement. However, Riverside preferred an informal agreement or "memorandum of understanding" or other agreement that did not require judicial involvement. Nonetheless, the AG's Office would not and did not compromise on the need for a consent decree. The Attorney General asserted that a legally binding court judgment was essential to guarantee lasting change in the police department (Verdugo 2008; Ichinaga 2008).

A large part of the City's trepidation with a consent decree was the stigma the consent decree might bring to the City. Riverside officials were following the progress of the federal government's pursuit of a consent decree in the Rampart investigation and did not want to be associated with that scandal. Further, the City was concerned that the "language of the draft lawsuit (petition and complaint) is too strong, negative, and does not acknowledge the City's voluntary efforts at reforming the Riverside Police Department" (Verdugo 2000, 2). Finally, the City believed a consent decree would lead to a loss of control over the police department to an

outside agency and a special master or "co-chief" who would make departmental decisions. They did not want to be branded with the stain of a state receivership.

The AG's representatives communicated to the City that the California Department of Justice intended to be "helpful, supportive, and constructive" and that it "did not wish to take over or run the Riverside Police Department" (2). CalDOJ emphasized that although Riverside had made progress, additional reforms were necessary. Moreover, there was no guarantee that the City's reforms would hold up in the future. The State also stressed that a consent decree would ensure that the RPD would receive the means necessary to effectuate reform (2).

Finally, CalDOJ insisted on a consent decree because previous attempts at reform during the tenure of Police Chief Ken Fortier were short-lived. Absent a consent decree, there was no guarantee of actual permanent change. Notably, the City's attempts at reform during Fortier's administration were undermined by the police union, which orchestrated a campaign of harassment against him. The union's then-President, Jack Palm, led an aggressive and confrontational campaign against Fortier and his reforms. The RPOA's actions included filing lawsuits against the reforms, a vote of no confidence against Fortier, and Freedom of Information Act requests for the Chief's travel and expense records, and even investigative telephone calls to locations where Fortier was attending meetings or conferences in an effort to uncover improprieties.[49] In April of 1997, a large number of officers participated in

[49] Apparently, the RPOA were taught these techniques at a seminar they attended to help the union determine a plan of action to combat the reforms. The seminar's title was "Power, Politics, and Confrontation" (Thacher 1998, 44-45).

a "blue flu" wildcat strike, punctuating the antagonistic relations between the union and the Chief (Thacher 1998, 43-46). Fortier and his family were also personally threatened and harassed.[50] Some city officials did not support him and he was forced to resign.[51]

Riverside City Manager John Holmes explained the objective for hiring the reform-minded Fortier in 1993. The City had commissioned a comprehensive management audit of the RPD that revealed serious shortcomings in the department (Ralph Anderson and Associates 1992). Holmes declared the RPD needed to develop into a "modern, professional police department" which utilized "modern technology and crime analysis" and exhibited "excellent standards of conduct, professionalism, a community-based policing approach, and [a system for] taking citizen complaints seriously" (Thacher 1998, 7). Holmes' views of the RPD in 1993 were equally descriptive of the RPD in 2001. Almost a decade had passed and the promise of reform had failed.

In February 2001, after extensive negotiations had resulted in a package of reforms to be included in an agreement, no resolution on a consent decree had been reached. There was general consensus on the particulars to include in the agreement,

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[50] The harassment included the message "187" being repeatedly sent to his pager. The 187 referred to Penal Code section 187, "the unlawful killing of a human being . . . with malice aforethought." Fortier and his wife received phone calls that included harassment and threats. Callers told his wife that they knew where she was and where she parked her car. They asked her if she knew that her husband was with another woman and that he is "screwing some gal." Fortier found nails in his tires and a small explosive was detonated on the front door of his home. Fortier received information that an RPD officer told a doctor he was going to kill him (Ichinaga 2000, 9-10).

[51] Fortier developed stress related medical problems and filed a worker's compensation claim that was settled by the City (Ichinaga 2000, 10; Thacher 1998, 45).

but after several months of negotiations, the City continued to hold out for something other than a consent decree. Attorney General Bill Lockyer grew frustrated as some City officials knowledgeable with the confidential negotiations began a local push to plant doubt regarding the AG's investigation and insistence on a consent decree. The local campaign targeted three important groups: the local elite, particularly business leaders; local Democratic leaders and activists; and the media. The strategy was to put pressure on Lockyer to back away from a consent decree by persuading his Democratic political friends in Riverside to call him and question the need for a consent decree.

Four different delegations of City leaders traveled to Sacramento to try to convince Attorney General Lockyer to rescind his demand for a consent decree (Lockyer 2008; Verdugo 2008; Leach 2008). Local elites argued that a consent decree would damage the City's reputation and hurt its economy. They contended that tourism would suffer and the recruitment of high-caliber students to the University of California, Riverside, would be more difficult. Finally, leaks to the media questioned the process of the negotiations (Verdugo 2008).

On February 2, 2001, the leading paper in Riverside, the *Press Enterprise*, published an editorial entitled "A Time for Informed Consent." The editorial presented the City's position and prodded the AG to provide the Riverside community with his position. It outlined the City's view that "Officials recoil from having a consent decree forced on them; they think they've done a lot" and "they shudder at the stigma of a consent decree, that their All-American City would be

singled out as some kind of benighted, bigoted backwater" (2001, A12). The editorial advised the AG to explain his position:

> We have the outlines, from statements and leaks, of the city's side. . . . Considerably less is known of the attorney general's position. He isn't talking. But Bill Lockyer has probably spent more time in Riverside County than any other statewide elected official, and he doesn't do it because he wants to make enemies down here. Local contacts have had to tell him that a consent decree would really stick in the civic craw. . . . Explain. Put aside those who are convinced that RPD can do no wrong; and those convinced RPD can do no right, and explain to those who genuinely want to understand. . . . Let local people know what is being done in their name (A12).

It was clear from the editorial that the City was only presenting one side of the story. Not wanting to prolong an already lengthy investigation and negotiation, and feeling that a more aggressive posture with the City was needed, Lockyer told the City he wanted a consent decree by the end of the month or he would initiate a pattern and practice civil rights lawsuit. Up until this point, the AG's Office had been firm in its position on a consent decree, but they had taken a mostly friendly and respectful tone with the City.

Riverside officials were thus shaken from their denial when Lockyer and his staff launched a public relations counter-offensive campaign in their back yard. Specifically, on February 13, 2001, Lockyer personally visited Riverside, spending the day and evening meeting with the entire spectrum of people in Riverside. In the morning he gave a presentation to the Riverside City Council outlining the need for a consent decree, which he called a "settlement agreement." He told the Council that, absent such a document, his office would initiate court proceedings. Lockyer referred to the proposed consent decree as a "settlement agreement" to soften and

tone down the perceived negative connotation of a consent decree. This would also pacify City leaders who were nervous about public perceptions.

The phrase typically utilized in California state courts for settlements of this kind is "stipulated judgment." However, these agreements are almost always referred to as consent decrees because of their similarity to United States federal court settlements of this type. People understand what a consent decree is and does, but almost no one except a specialized lawyer is familiar with a stipulated judgment. Even California state government lawyers use the phrase consent decree as shorthand and because it is understandable to more people. Interestingly, City officials preferred to use "stipulated judgment" over any other description after the settlement was signed because it was obscure and unknown, and in their view had no stigma associated with it. The AG and his staff used the City's preferred language to soothe the City's anxieties. In the end, the AG's Office was not conceding anything since what the agreement was called was not important. What was important was that the agreement was enforceable in court (Verdugo 2008; Ichinaga 2008; Lockyer 2008).

After the Attorney General made his presentation to the City Council on February 13, 2001, he had lunch later that day with the Monday Morning Group (MMG), a powerful consortium of the City's elite and business leaders. He tactfully explained why a consent decree was necessary, as part of his argument that other types of agreements lacked teeth to ensure reforms. He also told them that he did not want to reopen wounds by putting the City through a trial, where painful and embarrassing details of Riverside's police would be exposed publicly. However, he

also made clear that he was ready to do so if the City refused to sign the consent decree.

At 2:30 in the afternoon that same day, Lockyer met with the editorial board of the *Press Enterprise*, including senior editors and the publisher of the newspaper. In this meeting he was again very candid, describing, mostly off-the-record, some of the investigative findings.[52] He later met with the staff of the *Black Voice News*, an African American newspaper headquartered in Riverside and serving the Inland Empire. He shared his view that the RPD needed a consent decree to guarantee the permanence of reforms. In the evening he met with community members at the Cesar Chavez Center. Here, there was a great deal of support for a consent decree. Lockyer and his staff made a brief presentation and answered questions for approximately two hours ("Daily Schedule: Attorney General Bill Lockyer" February 13, 2001; Verdugo 2008; Lockyer 2008).

The Attorney General's staff and Police Chief Russ Leach were also instrumental in promoting the consent decree. Attorney General staff traveled to Riverside before and after Lockyer's visit to communicate to the community that under the agreement, police reform would be a collaborative effort between the State and the City. In fact, a "consultant" would lead the AG's oversight. The State cleverly called the monitor a consultant, again using less loaded language to calm

[52] The AG's Office never shared the investigative report with the City. They began negotiation with the "decree provisions in the assumption that we are not going to negotiate or argue about our factual findings and conclusions. We are there to negotiate a decree, and we should make clear to the city that the negotiations do not include convincing us there is no problem to be addressed by judicial decree" (Siggins 2000).

worries and help deliver the message that the reform program would be a partnership. In his conversations with leaders in Riverside, Police Chief Russ Leach acknowledged that the AG's Office had evidence that substantiated the need for reform. He reassured those in the community who were concerned about a consent decree by explaining, "The proposed settlement is really nothing to be afraid of. The timelines are doable" (O'Neill Hill and Pitchford 2001a, A1).

Lockyer's visit to Riverside on February 13, 2001, was effective at convincing many in the community that a court-enforceable settlement was necessary. Many observers assumed the Riverside Police Officers' Association would oppose the decree, yet they remained neutral. Indeed, the Association's President, Jay Theuer, who attended the negotiation meetings, stated that the RPD and City would benefit from the agreement. Additionally, civil rights leaders like the Rev. Jesse Wilson continued to support a consent decree, believing that oversight would ensure reforms would last. Wilson, who served as chair of the Tyisha Miller Steering Committee, said "A consent decree by any other name is still as sweet as long as it brings the needed changes. There's just too many people, especially in city government, who are denying or downplaying the extent of the problem" (A1). The impact of the state's persuasion campaign was best measured by a *Press Enterprise* editorial, "To Continue the Progress," published after Lockyer's visit:

> there is an insistence on a five-year, judicially endorsed agreement. . . . Riverside has run through a series of police chiefs, shifts in the police union, and has seen earlier reform efforts sputter and stall. . . . Bill Lockyer doesn't want to put Riversiders in the dock. He made that abundantly clear during his Riverside roundabout. He doesn't want to be forced into a starkly

> adversarial role, making as hard and as harsh a legal presentation as is needed to prevail. He knows how damaging such 'victories' can be. . . . The council members ought to agree to a state document that builds on their own improvements. . . . The Attorney General's Office has other things to do than fine-tune one police department. The state will be represented by a consultant and the city will be held accountable by order of a court; but this does not have to be an oppressive or onerous relationship. . . . The best way to continue the progress is to sign the agreement. . . . Sign it and move on. (February 20, 2001, A11)

The *Black Voice News* also published an editorial supporting the settlement. Publisher Hardy Brown wrote that the City has "an opportunity to send a clear signal and leave a legacy for others to follow when it comes to police reform. . . . We agree with the Attorney General and forcefully suggest that the city leadership sign the 'settlement agreement'. . . . Mayor and City Council sign the 'Consent Decree'" (Brown 2001).

In response to the Attorney General's deadline (giving the City until the end of February 2001), the City Council scheduled a vote for February 27, 2001, on whether to sign the agreement. A community meeting on the agreement was held a week earlier on February 20, 2001. At the community meeting, Mayor Ron Loveridge, City Manager John Holmes, Police Chief Russ Leach, and Councilmember Ameal Moore all urged support for the agreement during a scheduled vote the following week. Most of the speakers at the meeting endorsed the consent decree. Jack Clarke Jr., an influential lawyer and civic leader, told the gathering, "In order to look forward and not look back, we need to support this agreement" (Pitchford and O'Neill Hill 2001, B1).

Several commentators also provided their views in the media regarding the agreement and its details. Law Professor and policing expert Erwin Chemerinsky said the reforms in the consent decree "will alter the culture of the department and will decrease police abuse" (O'Neill Hill and Pitchford 2001b, B1). Ramona Ripson, Executive Director of the American Civil Liberties Union (ACLU) of Southern California, thought the changes called for in the settlement would help reform the RPD. She said, "One of the problems in every police department is the culture. The culture is hard to change. I think steps like these will lead to change" (B1).

Although many in Riverside continued to oppose a court-enforceable agreement, their efforts to prevent it were unsuccessful. The Attorney General's Office would not, and did not compromise. In the end, the City feared costly litigation and the additional adverse publicity associated with a trial. They also wanted to put this painful episode in the City's history behind them, in order to begin to heal their wounds. Key City leaders, particularly the new Police Chief, also realized the AG's Office had no intention of running the RPD from Sacramento. The AG's Office would be a constructive partner and help the City build a first-class modern law enforcement agency that could serve as a model for other police departments.

In addition, the process was also blessed with key participants who realized the significant need for police reform. Although they had to tread carefully in public, City leaders such as Mayor Ron Loveridge and then-Deputy City Attorney Greg Priamos (who would shortly become City Attorney) were instrumental in

guiding the negotiations toward a settlement. Indeed, a consent decree would provide cover for the Police Chief and reform-minded City leaders to implement changes in the RPD, because they could blame controversial changes on the consent decree. This understanding between the state and City, especially the Chief, facilitated the resolution of the settlement.

On February 27, 2001, the Riverside City Council voted 6 to 1 to sign the legally binding settlement. On March 5, 2001, the City of Riverside and the AG's Office appeared before the Superior Court of the State of California, County of Riverside and requested that the court sign and enter the decree. Riverside County Superior Court Judge Victor Miceli signed and entered the judgment, a court order compelling the City of Riverside to implement various reforms during a five-year period of state oversight (Verdugo 2008; O'Neill Hill 2001, B1; Pitchford and O'Neill Hill 2001, A1).

Specific Terms of the Consent Decree

In the complaint accompanying the judgment entered by the court (*People v Riverside* 2001), the State alleged that:

> because of defective and inadequate policies, practices, and procedures, the RPD has failed to uniformly and adequately enforce the law. Such failure is caused, in substantial part, by the improper and inadequate supervision, monitoring, and training of the RPD's officers. This failure to uniformly and adequately enforce the law has resulted in, and poses an unreasonable risk of, violations of the California Constitution and California statutory law (2).

The complaint also set forth seven causes of action: (1) violation of the California Constitution, article I, section 13 (to be free from unreasonable searches and

seizures); (2) violation of California Constitution, article I, section 15 (right to not be deprived of liberty and property without due process of law); (3) violation of California Constitution, article I, section 7 (right not to be deprived of life, liberty, or property without the due process of law or denied equal protection of laws); (4) violation of Penal Code section 832.5 (requirement that local law enforcement agencies develop a citizen complaint procedure for investigating officer misconduct); (5) violation of Penal Code section 13010 et seq. (requirement that police agencies compile and report annually all complaints which are filed against its officers by citizens to the California Department of Justice); (6) violation of the Bane Civil Rights Act (prohibits all persons from interfering, by threats, intimidation, or coercion, or from attempting to interfere by threats, intimidation, or coercion, with the rights that are secured by, inter alia, the California Constitution and California statutory law; and (7) violation of Civil Code section 52.3 (prohibits any government authority from allowing its law enforcement officers to engage in a pattern or practice that deprives any person of the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of the State of California) (4-6).

The stipulated judgment or consent decree (*People v Riverside* 2001) was a comprehensive directive outlining a series of reforms necessary to protect the constitutional rights of citizens by transforming the organizational behavior of the RPD and by making police more accountable. The judgment included various timelines for implementation of the reforms. The prescribed reforms included

increasing training programs and enhancing their quality. Further, the decree required the development of improved management and accountability systems, including the installation of advanced technological systems to monitor and evaluate officer behavior. In addition, the agreement stipulated that the RPD must provide officers alternatives to deadly force by acquiring less-lethal weapons. Finally, the RPD was required to develop a five-year strategic plan that establishes and adequately funds a training program, and that provides "the resources and programs that are necessary to support a serious effort at community policing" (13). The strategic plan had to also "ensure that the RPD has and maintains an effective and efficient span of control" (13). All required reforms were subject to review and approval by the Attorney General with the assistance of a consultant-monitor paid for by the City of Riverside but employed by the Attorney General.

The California Attorney General's effort at reforming the RPD, embodied in the consent decree, employed the best practices of progressive policing to enhance police accountability as recommended by the United States Justice Department (U.S. Dept. of Justice 2001) and described by Walker (2003) as the "new paradigm of police accountability."

The Riverside consent decree stipulated that the RPD must establish a comprehensive use-of-force training program that exceeds Peace Officer Standards and Training (POST) requirements. Every year, training must be provided to all officers in the department, and that must include instruction in the use of less lethal force (*People v Riverside* 2001, 17-18). Further, the RPD was required to conduct a

debriefing after every critical incident, including instances of officer use of lethal force.

The department also had to revise its citizen complaint procedures to incorporate an officer's personnel history and previous citizen complaints into all internal investigations. Further, all complaints had to include the race and gender of the person making the complaint and all complaints connected to stops or searches had to be investigated and evaluated to determine the justification for the stop. Each matter included within a complaint also had to be reviewed individually. The RPD was required to establish a process to evaluate and audit complaints and investigations, and it had to conduct random testing a minimum of three times a year (11-13).

RPD was required to implement an "early warning system"[53] that is activated by two "reportable incidents;" these include personnel complaints, policy violations, officer-involved shootings, in-custody deaths, canine bites, and all reportable use-of-force incidents (Exhibit 5). In addition, the consent decree required the RPD to collect data on all vehicle stops, including the race and gender of the driver as well as the legal justification for the stop, and then analyze and report this data every year to the Attorney General. The department also had to develop a training program on the use of "pretext stops" to be given to all officers twice yearly (10-11, 15).

[53] These are also called "early intervention systems." Walker, Alpert and Kenney describe an early warning system as a "data-based police management tool designed to identify officers whose behavior is problematic and provide a form of intervention to correct that performance. As an early response, a department intervenes before such an officer is in a situation that warrants formal disciplinary action. The system alerts the department to these individuals and warns the officers while providing counseling or training to help them change their problematic behavior" (2001, 1).

There were also various stipulated requirements to further enhance officer accountability: the installation of real-time video conferencing equipment to allow for the constant monitoring of roll calls, the deployment of audio recorders to all officers to preserve a record of citizen-officer interactions, and the gradual but steady installation of video cameras on police vehicles to further document citizen-police contacts (11, 17). Further, the RPD was required to develop and provide various training programs: field training officer training ("training the trainers"), management and supervisory training, cross-cultural training,[54] and supervisory training on citizen complaint inquiries and investigations. The RPD also had to establish a dedicated training account to provide adequately for the training requirements (13-16).

The judgment also required a 7 to1 officer to supervisor ratio in the field, as well as a requirement that at all times a lieutenant serve as Watch Commander. Newly promoted or hired sergeants also had their probationary period increased from six months to a year. In addition, supervisors had to complete evaluations on every officer yearly or they would have a personnel action filed against them for failing to comply with RPD policy. Finally, the court order required Riverside to cooperate with the AG's monitor-consultant, allowing him or her to interview any employee of the RPD. The consultant would also have access to any relevant information from

[54] The consent decree requires that the first session focus "on the reasons why certain segments of the Riverside community reacted negatively to the manner in which some RPD personnel responded, verbally and otherwise, to the Tyisha Miller shooting incident" (*People v Riverside* 2001, 15). In addition to the inappropriate language and behavior described previously, many officers of the RPD shaved their heads to show support for the four officers who were involved in the Miller shooting, further fueling charges of racism within the RPD.

the RPD, including statistics, records, files, reports or any other materials related to the agreement.

Facilitative Leadership in the Shadow of the Law

The negotiations leading to the consent decree set the stage for a productive partnership between the RPD and the CalDOJ. The parties' relationship was formed by a facilitative style of engagement by the CalDOJ that centered on mutual collaboration. In addition, "bargaining in the shadow of the law" created a stimulus for effective negotiation that led to agreement. Mnookin and Kornhauser (1979) describe bargaining in the shadow of the law as a type of "private ordering" or (as Lon Fuller has defined it) "law that parties bring into existence" outside of the courtroom (950). The parties in the Riverside litigation understood the utility of resolution without courtroom adjudication. Mnookin and Kornhauser suggest that there are obvious advantages to settlement. For example, the expense and burden of a trial, as well as the unpredictability of litigation, are avoided. Parties are able to save time and move on (956). The City and the Attorney General crafted a mutually agreeable solution that avoided costly litigation and provided a more suitable and durable result. Their cooperation during the negotiation process produced a foundation for trust and cemented the collaborative working relationship that was essential to the successful implementation of police reform in Riverside.

Chapter 4

Transforming the RPD:
A Collaborative Program for Police Reform

Selecting the Monitor

After the judgment establishing the RPD reform program, the AG's Office, in consultation with Riverside Police Chief Russ Leach, began the search for a monitor-consultant for the RPD. Senior Assistant Attorney General Louis Verdugo, head of the Civil Rights Enforcement Section in the AG's Office, and the lawyer charged with overseeing the RPD reforms, compiled a list of respected policing experts to consider for the appointment.

The final list included two people. One was a lawyer, and the other a former police chief. Verdugo invited them to interview for the position. After much deliberation, the AG's Office decided that Joseph E. Brann, the former police chief, was a more appropriate match for the RPD reform effort. The consensus was that a former cop would have greater credibility with the rank-and-file, and a better understanding of how a police department operates. The goal of the judgment was to work in partnership with the City, achieve buy-in, and have the City affirmatively assume ownership of building an effective law enforcement agency that is accountable and applies modern policing methods. The view was that the RPD would be more receptive to the oversight and advice of a former police chief (Verdugo 2008).

Brann's extensive work experience made him uniquely suited for the role. From 1969 to 1989, Brann had risen through the ranks of the Santa Ana, California, Police Department, obtaining the rank of Captain. He then moved to Hayward, California, becoming the City's Police Chief. In 1994, then-President Bill Clinton appointed Brann as the first Director of the Office of Community Oriented Policing Services (COPS Office) in the U.S. Department of Justice. Clinton charged the COPS Office with funding 100,000 new police officers and advancing community policing throughout the country. Under Brann's tenure, the agency developed a reputation for providing support, advice and guidance to local law enforcement, particularly in the field of community and problem-oriented policing.

Brann proved to be a wise selection as consultant. It is important to note that this role is variously called monitor, special master, consultant or auditor; however, the parties to the reform agreement utilized the term consultant. The AG's Office believed the term consultant was less coercive and fostered a more collaborative relationship.

Brann's time with the Santa Ana Police Department (SAPD) is also interesting because the SAPD was known as a trailblazer in the community policing movement. In Skolnick and Bayley's *The New Blue Line* (1986), the second chapter, "Santa Ana: Conservative County, Progressive Police," portrays a police department serving a City that is half Latino, as enlightened and innovative, "a rare and resounding police success story. . . . tightly run, technologically advanced, and unusually sensitive to the local community" (Skolnick and Bayley 1986, 48-49).

They describe how the department attracted substantial government grants for their innovative programs, as well as the attention of those interested in effective policing. Indeed, "60 Minutes" called the SAPD an "exemplary police department" (48).

> More interesting, however, is how the researchers described Brann:
>
> > Brann is nobody's stereotype of a cop. Tall, earnest, intelligent, so clean-cut that he looks as if he polishes his buttons, Brann left Brigham Young University's pre-med program in 1969 to earn some money to continue his studies. . . . cops like Brann . . . are thinkers rather than shooters. All hold advanced degrees and are continually taking courses to upgrade their policing and management skills (14).

Brann received a Bachelor's degree in Criminal Justice from California State University, Fullerton, a Master's degree in Public Administration from the University of Southern California, and graduated from the FBI's National Academy.[55] In the "Acknowledgments" section of Skolnick and Fyfe's *Above the Law* (1993), Skolnick thanks Brann "for showing him around the world of policing and police administration" (vii). This history explains much about his critical role in the story of how the RPD was reborn. Joe Brann had a great deal of policing experience, the kind necessary to help implement the reforms mandated within the consent decree.

In July of 2001, Joe Brann began serving as the Attorney General's monitor/consultant. Brann worked in tandem with Louis Verdugo from the AG's Office to ensure that the terms of the reform agreement were carried out by the RPD. Verdugo was an important partner in the effort, a solid equal to Brann in substance

[55] Brann also completed coursework for a Doctorate in Public Administration from the University of Southern California.

and ability. He was considered one of the hardest-working lawyers in the AG's Office, one of the last to leave the office in the evening, and one who regularly worked on weekends. He was smart, wise, experienced, and extremely professional. At times, during the tenure of conservative Attorney General Dan Lungren, he toiled as the lone full-time civil rights attorney in the entire office.

When Attorney General Bill Lockyer took office, Verdugo was one of his first high-level appointments. Verdugo was promoted to lead the newly created Civil Rights Enforcement Section. Within a short time, the freshly elevated Senior Assistant Attorney General (SAAG) was managing the largest civil rights office of any state AG. More important than his professional credentials was his personal background. He was a product of East Los Angeles, who by studying hard was able to break out of his neighborhood and graduate from Stanford University. Like Brann, Verdugo had spent his entire career in public service, and was committed to using government for the benefit of the public.

Compliance with the Consent Decree

The State's monitoring of the RPD was an ongoing process that lasted five years. During this time, the AG's compliance team – consultant Joe Brann and SAAG Louis Verdugo – not only provided oversight of the reforms; they provided guidance, support and technical expertise to the RPD. This role was unique. The traditional model of governmental reform intervention is for the government, mostly federal lawyers, to enter into a consent decree with an agency; the agency then pays for a monitor who reports to the court that issues the judgment. The court's monitor

essentially checks off requirements as they are satisfied. Here, the monitor, who was called a consultant, was paid by the City, but worked for the Attorney General. The Attorney General was therefore more directly involved in seeing that the reforms were carried out.

The AG's Office reasoned that RPD buy-in and ownership was essential for reforms to be carried out efficiently. An antagonistic or adversarial relationship between the RPD and the State would ensure that reforms would be difficult to implement, and close to impossible to make permanent, especially after the decree was terminated. Thus, the AG's Office and its consultant engaged the RPD in developing the plans for reform. The consent decree was a 17-page framework that established an end point for reforms, but allowed Riverside to join in the development of the plans to get to that end point. As the AG's consultant, Brann served as a technical advisor and coach, assisting the City in the development of the plans.

Federal consent decrees have a tendency to prescribe every specific change in the department in excruciating detail. They can be dictatorial in style and substance, leaving very little room for collaboration or modification during the period that the agency is under court order. For example, the Los Angeles Police Department's consent decree with the federal government is 93 pages long, whereas the RPD consent decree was 17 pages long. As Attorney General Bill Lockyer said, "a federal consent decree can be as thick as a telephone book" (Lockyer 2008). Charles Sabel and William Simon (2004), describing how remedial intervention succeeds,

have suggested that *experimentalist* interventions, which they describe as stressing "ongoing stakeholder negotiation, continuously revised performance measures, and transparency," are more effective than "command-and-control . . . top-down, fixed-rule regimes. . . set by a central authority" at securing mandated compliance and reform implementation (1016-1019).[56]

The AG's collaborative approach toward achieving reform in the RPD was also influenced by Lockyer's past experience in local government. Lockyer's first elected office was as a school board member in his hometown of San Leandro, California. He recalled how difficult it was for some districts to achieve desegregation. He concluded that those districts that were engaged participants in the process were able to desegregate with minimal negative collateral consequences. However, districts that resisted desegregation and were compelled to desegregate by antagonistic litigation, were less likely to experience a change in culture, which often was the source of their resistance to desegregation.

As a local school board member he personally persuaded his colleagues to embrace desegregation, recognizing that supportive leadership was essential for the successful implementation.[57] Lockyer learned that it is very difficult to change organizational culture if the organization is coerced rather than convinced. By

[56] Sabel and Simon suggest that there is a "shift away from command-and-control injunctive regulation toward experimentalist intervention" (1019). They add, "acceptance of institutional reform litigation in policing has been slower than in other areas" (1043). However, they are encouraged by the enactment of Section 14141 and the statute's broadening of the USDOJ's authority to seek injunctive relief to correct systemic problems in law enforcement agencies (1043-1047, 1100-1101).

[57] After extensive review of research regarding desegregation, Lockyer found that effective implementation required the buy-in of local elites.

working in partnership with the RPD, he hoped to persuade them that reforms were in the best interest of the community and the RPD. Once convinced and a willing partner in the reform process, a change in organizational culture would follow (Lockyer 2008).

The RPD consent decree was crafted to allow, within reason, greater participation by the police department. The AG's Office established the individual reform objectives, but permitted the RPD, within specified parameters, to develop the plans to accomplish the objectives. With the assistance and expertise of the consultant, the RPD created the plans required pursuant to the consent decree. They then submitted the plans to the AG's Office for approval. The plans were more likely to be approved because of the participation in their development by both sides, the State and the City. For example, if the judgment called for the development of a policy to assign lieutenants as Watch Commanders on all shifts, the RPD would be more willing and thus successful at implementing the policy because they had drafted it.

Verdugo and Brann benefited from the enthusiastic support for the reforms by RPD Chief Russ Leach. Leach created a new specialized unit within the Office of the Chief of Police, the Attorney General Compliance Task Force, to oversee the implementation of the agreement. Leach assigned the task force with "coordinating resources to facilitate full and timely compliance with the stipulated judgment" (Leach 2008). The members of the unit — a lieutenant, a sergeant, two detectives, and an administrative assistant — reported directly to the Chief. Leach strategically

selected officers for the unit who exemplified the goals of the agreement – a modern, progressive police agency in tune with the community it serves. These officers were bright, talented and respected in the department, but more importantly they were not a part of the old guard. They represented the future of the RPD. The consultant and the AG's Office worked closely with these officers to develop and put into practice reforms (Brann 2008; Verdugo 2008; Leach 2008).

The judgment stipulated that the RPD injunction would run for five years, unless the Attorney General asked the court to extend the injunction because of non-compliance, and the court agreed to do so. If at the end of the five-year period the AG's Office concluded that the City was in compliance, the two parties could ask the court to dissolve the permanent injunction. As the end of the five-year period approached in late 2005, the AG's compliance team had to clarify what "full compliance" meant. The Riverside judgment used the phrase "full compliance" as the threshold for dissolving the judgment, rather than the more common phrase "substantial compliance" used by the United States Department of Justice. Although the AG's Office inserted "full" instead of "substantial" into the text of the agreement, they applied a substantial compliance review when determining the RPD's compliance.

In retrospect, the inclusion of "full compliance" when drafting the agreement was a minor oversight; however, its presence in the document may have served to stimulate the City and RPD to implement the reforms more comprehensively (Verdugo 2008; Brann 2008). The AG's compliance team emphasized that

compliance "is not based on achieving perfection and unfailing compliance with every element of each provision in the judgment. That is simply not possible or realistic for any organization" (Brann 2006, 2). In his final report to the Attorney General, Joe Brann wrote:

> What is expected and what has been constantly evaluated is a combination of factors: whether the policies or plans required were developed and implemented; whether the City displays a good faith effort to implement the policies and plans and strives to ensure all employees adhere to these; and whether the organization responds appropriately when deficiencies are noted or problems arise.
>
> For the purposes of this judgment, compliance is based on documented and sustained progress displayed with each of the reforms undertaken and what overall level of success has been achieved by the City (2).

In February of 2006, the Attorney General, on the advice of the consultant and his staff, determined the City was in compliance. On March 2, 2006, the Superior Court of the State of California for the County of Riverside dissolved the permanent injunction. Although the consultant advised an end to the judgment, he urged the City to carry on with the spirit of the consent decree and its specific plans, policies and procedures. More importantly, he also made several recommendations to the City and RPD that he considered important to strengthening the reforms, and reassuring the public in Riverside that the City would continue the progress realized during the period of the consent decree (27). Following is an analysis of the RPD's compliance with the judgment. The AG's Office divided the required reforms into four interrelated types: training, accountability, supervision, and the strategic plan (Verdugo 2008).

Training Reforms

The judgment outlined various training reforms that needed to be implemented by the RPD to ensure that officers had the necessary skills to effectively do their work. The judgment mandated that the RPD formulate a variety of training plans, submit them to the AG's compliance team, and then put the plans into practice. The RPD was required to develop and implement these plans within a range of specified deadlines.

Training was required in several areas: the public complaint policy and how to investigate complaints; supervisory and management training, including how to conduct performance evaluations; critical incident debriefings; the training of field training officers, including instruction in community and problem-oriented policing; diversity training; training on preventing the improper use of pretext stops; and use-of-force training, including the use of less lethal techniques and weapons (*People v Riverside* 2001).

The Riverside Police Department complied with all of the training provisions in the judgment. The City demonstrated a sustained commitment to the training of personnel, spending almost $900,000 to fulfill the training provisions within the consent decree (Burge 2006, A1). This was an important accomplishment given the fiscal challenges experienced by the City and State during this period, most notably cuts to the Commission on Peace Officer Standards and Training (POST). During this time period, the RPD received fewer reimbursements from POST for training, and POST also reduced the number of courses offered. Nevertheless, the City

maintained appropriate funding levels, and in many instances supplemented the budgets for these critical education programs (Brann 2006; Brann 2008; Verdugo 2008).

The field training officer (FTO) program also displayed a substantial makeover. The RPD command staff used more selective criteria for appointing FTOs, selecting officers who demonstrated fidelity to more progressive ideals of policing and who would serve as quality mentors and role models. In addition, POST worked with RPD's FTO program in developing a training curriculum for law enforcement throughout the State. The command staff and the RPD training unit gave the program a great deal of attention, frequently evaluating and updating the program to ensure it was up to date (Brann 2006; 2008).

Similarly, the RPD made important progress in the areas of diversity and use-of-force training, working with outside experts to provide contemporary diversity training. This training included instruction on the City's racial, ethnic, cultural and religious communities. Moreover, a clear line of accountability was created by special order of the Chief, requiring the Personnel and Training Division to establish continuing training programs addressing cross-cultural understanding. The diversity training effort by the RPD far exceeded the requirements of the consent decree. In addition, the department's use-of-force training program became a special POST pilot training project, exceeding the requirements mandated by POST (5-7).

One area where the consultant found problems was in the RPD's compliance with the requirement that debriefings occur after critical incidents. Although the

AG's Office approved RPD's policy in October 2001, early on its implementation was problematic. The consultant noted that command staff led some debriefings where they had also been involved, creating an atmosphere where officers were uncomfortable openly discussing the incident. Further, the RPD had trouble complying with the critical incident policy's deadlines, including the timely filing of post-incident reports, the preparation and submission of instructional resources, and the debriefings themselves. In the end, the RPD modified their procedures to ensure that the policy's provisions were in compliance (4).

The AG's consultant made several training recommendations regarding steps the RPD should take even after the consent decree ended. He recommended that management training continue to be provided annually, given that the RPD continues to hire and promote more officers as it responds to the rapid growth in the population of Riverside.[58] In addition, he recommended that RPD leadership continue to closely monitor the training response to critical incidents so that officers are able to put into practice the lessons learned. Further, he emphasized that it was imperative that the RPD maintain and continuously revise its pretext stop training to ensure that all officers, particularly new hires, receive the most up-to-date training. He noted that the RPD must ensure that traffic stops are lawful, particularly given the fact that members of the public will continue to scrutinize the traffic stop data that the City collects (3-4, 7).

[58] The RPD promoted 35 sergeants between 2002 and 2006.

Reforms Designed to Improve Accountability

The need for greater police accountability in Riverside was another major objective of the reforms in the stipulated judgment. The judgment called for the RPD to annually collect traffic stop information, analyze the data, and then provide a report to the AG. The RPD was also required to establish a system for monitoring roll calls. Moreover, the public complaint procedure had to be changed to include the race and gender of the person making the complaint, and the reason for any stop related to a complaint, and a procedure for documenting this information had to be developed so that investigators could more thoroughly review complaints. Further, credibility determinations[59] had to account for the officer's complaint and personnel history. In addition, the RPD was directed to implement a system to review and randomly audit complaints and investigations a minimum of three times a year (*People v Riverside* 2001).

The decree also required the department to perform personnel evaluations on all officers, and reprimand supervisors who did not complete the officer assessments in a timely manner. Moreover, the department was required to ensure that there was management supervision for all shifts, including the assignment of lieutenants instead of sergeants as Watch Commanders. The RPD also had to extend the length of probation for sergeants from six months to 12 months. The judgment also set forth changes in the job specifications of personnel, requiring the RPD to consider

[59] During an investigation of a complaint, the policy required that Internal Affairs (IA) articulate the reasons why it found one witness more credible than another. This is called a credibility determination.

cross-cultural awareness and sensitivity in hiring, personnel evaluations, and promotions (*People v Riverside* 2001).

Lastly, the judgment called for the purchase of audio and video recorders, and the implementation of an early warning/intervention system. The RPD was required to equip all field officers and supervisors with audio recorders, which had to be turned on when they engaged members of the public, such as during a traffic stop or when responding to a call. The agreement also called for the purchase and installation of ten video cameras on police vehicles, and for the RPD to make a good faith effort to secure an additional 25 or more cameras. In addition, the judgment called for the triggering of the early intervention system whenever two reportable incidents were documented during a 12-month period (*People v Riverside* 2001).

The RPD complied with all of the accountability provisions within the consent decree. Below, I point out several categories where the department made noteworthy strides.

Roll Call Monitoring

The roll call monitoring provision was deemed an innovative tool to enhance accountability. Indeed, after reviewing the consent decree, policing expert Erwin Chemerinsky had commented that using video cameras to observe roll calls was unconventional. Executive Director of the Southern California ACLU, Ramona Ripson, found that "having video cameras at roll calls is particularly interesting because police departments have long been male-dominated and loathe to accept women and minorities" (O'Neill Hill and Pitchford 2001b, B1). She added, "It

would be nice if people on their own wouldn't say racist or sexist things, but I think until we reach that point in society, somebody watching or monitoring what is being said is really a good thing" (B1).

The RPD set up a two-way video system that allowed the Chief and senior management to monitor what was happening during roll call. They could also take part in roll calls, including making announcements, giving or receiving training, and conducting briefings. The consultant randomly and without warning periodically audited the roll calls, both in person and remotely. Before the reforms were implemented, officers would make racist and sexist comments during the unstructured and unsupervised roll calls. Important training that took place during roll call was often ignored. In a post-consent decree universe, Brann observed that the roll calls had become professional and that the pre-decree offensive behavior had been stamped out. In fact, POST worked with the RPD to develop DVD training based on the department's advanced two-way video system (Brann 2006, 9-10).

Management Accountability Program

The consultant also found through audits that the RPD was doing a superior job of ensuring that all personnel were receiving yearly performance evaluations. Another area of significant improvement was in management accountability. The Chief developed a new program, the Management Accountability Program (MAP), which has enhanced accountability and helped implement community and problem-oriented policing. Every month, the RPD leadership meets to review and modify its field operations to ensure that the community's public safety needs are being met.

Managers are not only evaluated on how they meet their unit's objectives, but also on how their staff performs.

MAP meetings are open to everyone, including elected officials, the public, and the media (Brann 2006, 12, 16). This openness allows for greater accountability and provides an opportunity for greater communication between the police and the community. The community is involved in setting the agenda for the police department, and thus are co-producers of public safety, a key component of community policing.

Audio Recorders

The judgment stipulated that every police officer, detective, and sergeant assigned to the Field Operations Division of the RPD was required to carry an audio recorder and record all public contacts. The policy developed by the RPD and approved by the Attorney General allowed the City and consultant to review the recordings without an officer's prior knowledge. The RPD's audio recording policy stated "recordings provide an accurate, unbiased audio record, which may be useful for investigation of complaints and lawsuits, evaluation of an employee's performance, as a training aid and as evidence for court purposes" (RPD Policy 4.60). The RPD purchased audio recorders for all officers assigned to the Field Operations Division and the recorders are now fully deployed in the field.

The consultant found that some officers ignored the policy's provisions early on, necessitating greater monitoring. The department reprimanded officers who failed to follow the policy. As officers grew accustomed to using the recorders, they

grasped the advantages of utilizing it as an investigative tool, and as a way of defending themselves against false accusations. The recorders have been very useful when investigating complaints, often clearing the officers of wrongdoing.

Random audits by the monitor have demonstrated compliance with the policy (Brann 2006, 15-16). The recorders keep officers honest and the public honest as well. Officers are more likely to behave appropriately when they know their actions are being recorded. The same is true for the public. They know that their interactions with officers are being recorded, and therefore are less likely to file false complaints. The recordings have allowed for a more respectful and accountable relationship between the department and the community. Citizen contacts steadily increased during the consent decree (Brann 2006; 2008), yet complaints by the public were generally down (see Table 1).

Table 1. RPD Public Complaints 2001 - 2008

Year	Number
2001	146
2002	117
2003	79
2004	65
2005	87
2006	62
2007	68
2008 (ytd)	20

Source: CA Department of Justice and RPD

Video Cameras

The stipulated judgment mandated that the RPD would purchase and install ten video cameras and make a good faith effort to obtain 25 or more cameras. The department far exceeded the consent decree's provision. As of May 2008, 129 cameras had been ordered and approximately 100 were already installed in marked police vehicles. The videos from the cameras are downloaded wirelessly after every shift (audio recordings are downloaded after every shift as well). In addition, the department added video cameras to other critical areas such as booking rooms, front counters, and the perimeters of police facilities (Wright 2008).

The video recorders serve the same accountability function as the audio recorders. Indeed, one interesting interaction between a suspect and a police officer occurred recently that demonstrated the utility of the video cameras. A suspect in custody filed a complaint that an officer had beat him up while being removed from a police vehicle to be booked at a police facility. When video of the alleged encounter was reviewed (a video camera outside the facility recorded the incident), it revealed that while the officer removed evidence from the trunk of his police vehicle, the suspect violently banged his head against the police car suffering self-inflicted injuries to his head and face. These types of examples prompted suspicious officers to embrace the video and audio recorders, as the recorders have often served to protect officers from false allegations (Kossky 2008).

Public Complaint Investigations

Although the department made significant progress and complied with the terms of the stipulated judgment, there were several challenges along the way when implementing the accountability reforms. For example, the consultant found that after the complaint policy modifications were approved, the department's investigations of public complaints were inadequate. Some investigative reports lacked necessary credibility determinations and a review of the officer's personnel history. In several cases, this information may have pointed to a pattern that may have sustained a complaint. To rectify this problem, the consultant personally conducted training on the provisions of the policy and how to perform proper complaint investigations.[60] Later audits indicated public complaint investigations improved. The consultant stated that random audits were essential for holding personnel accountable. He recommended that after dissolution of the decree, the RPD should continue to perform regular audits of the complaint process (Brann 2006, 10-12). Following the termination of the stipulated judgment, the department continues to conduct periodic audits of the complaint process.

Collection and Analysis of Traffic Stop Data

Another important accountability requirement of the consent decree was the collection and analysis of traffic stop data. This provision was a response to alleged instances of racial profiling in Riverside. For all drivers stopped, the RPD collected

[60] The monitor's role was unique in that he not only was overseeing the consent decree implementation and compliance, but he also served as an expert resource that provided guidance when necessary – much like a coach. Instead of just identifying and reporting problems, he also used whatever resources he could summon to fix the problems.

and reported the race and gender of the driver, and the rationale for the stop. The judgment also required the RPD to annually analyze the information and then submit an annual report to the Attorney General.

The City of Riverside contracted with Professor Larry Gaines,[61] Chair of the Criminal Justice Department at California State University, San Bernardino (CSUSB), to study and analyze the data, and then issue the reports. The purpose of the reports was to determine whether the RPD was unlawfully practicing racial profiling. Professor Gaines consistently concluded that the RPD did not practice racial profiling as defined by California law (Gaines 2002; 2003; 2004; 2005; 2006a; 2006b).

California law defines racial profiling as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped" (California Penal Code section 13519.4). Gaines suggested that without getting into the head of the officer making the stop, it is impossible to prove one way or the other the motivation for the stop:

> This definition does not mean that police officers must have parity across different groups of people when conducting traffic stops. . . . Rather, the language in the law prevents the police from stopping citizens solely based on a broad set of criteria such as race, gender, or ethnicity. Obviously, such a requirement is extremely difficult to prove or disprove. In other words, the decision to stop a vehicle is an individual officer decision, and only the officer knows and understands his or her rationale when stopping the vehicle (Gaines 2006b, 42).

[61] Gaines is a well-known expert on policing, including racial profiling. He has published extensively on law enforcement and crime. He has authored or co-authored eleven books.

Gaines conducted a comprehensive analysis of the traffic stop data in Riverside. He found that although African Americans were overrepresented in traffic stops as a percentage of the population, it was not a statistically significant difference. Further, there were no significant differences among groups in terms of who was searched after a stop or the outcome of the stops – for example, citation or release (Gaines 2006a, 229).

Gaines suggested that most stops appeared to be the result of calls for service and crime patterns. He explained, "correlational analyses demonstrated that the patrol stops were highly correlated to police calls for service, crime, and drug activities, and there was little difference in the magnitude of the relationships between these measures of crime and disorder across racial groupings" (229). In other words, more traffic stops occurred in areas of the city where crime, disorder and calls for service were highest. Traffic stops for all racial categories "tended to be in areas where they had equivalent representation as suspects" (229). Gaines determined that any disparity in traffic stops could be explained by "enforcement patterns interacting with crime patterns," and that the results in Riverside were consistent with studies conducted in other California cities such as San Diego and Sacramento (Gaines 2004, 25, 35; Gaines 2006b, 32, 44).

The Riverside traffic stop data studies provided no evidence that racial profiling was being practiced by the RPD; however, it is possible that racial profiling may still exist. Indeed, Gaines states that his findings do "not disprove that racial

profiling exists, they do substantiate logical and acceptable reasons for some level of disparity" (Gaines 2006b, 43).

Many of the RPD police reforms were intended to militate against practices such as racial profiling. One would assume that if the practice were taking place, it would be curtailed by the changes implemented by the department. Reforms such as a modified complaint procedure, improved training, better supervision, greater accountability, and the use of audio and video recorders to monitor officer interactions with the public would likely minimize or at least discourage the practice.

The collection and reporting of the data in and of itself was a significant reform. Before the judgment, the RPD did not document traffic stop information. The AG's monitor indicated that many members of the community viewed the collection and analysis of traffic stops by the RPD favorably. The data and the reports allowed for greater transparency into the RPD, which was a significant weakness of the RPD before the decree (Brann 2006, 8-9; Brann 2008; Verdugo 2008). The RPD continues to collect traffic stop data, one of only a few police agencies in the State of California to do so.

Reforms Targeting Use-of-Force Policies and Excessive Force

Another mechanism for ensuring accountability that was embedded in the consent decree involved the RPD's response to excessive force incidents. Excessive use of force is one of the most horrible forms of police misconduct and therefore must be eliminated. Indeed, the use of force by Riverside police officers in the

Tyisha Miller shooting served as the critical incident that led to the RPD investigation and subsequent consent decree.

The consent decree established several provisions to help limit unnecessary force, such as enhanced training and improved reporting of critical incidents. The RPD's use-of-force policy and continuum, i.e., the policy describing how much progressive force may be applied given a suspect's level of resistance, were modified and then incorporated into the department's standard protocol (see Appendix). During several tours of RPD facilities, I noticed that in almost every common area, and even in many officers' personal workspaces, there were large posters with the use-of-force continuum. The monitor compared RPD use-of-force data with data from comparable municipalities and among similar police departments that document use-of-force data. He found that after the police reforms were implemented in Riverside, the use-of-force levels in the RPD were "generally lower" than comparable departments and cities (Brann 2006, 17-19). More importantly, over the last five years, officer-involved shootings are trending down (see Table 2).

Equally significant was the RPD's response to incidents of excessive force after the consent decree was implemented. One notable critical incident from 2005 involved a man who was under the influence of drugs and was running around yelling on the roof of a two-story home, acting bizarrely, and urinating from the roof. The man was on parole for assault and had a history of drug use and fighting with police officers.

Table 2. RPD Officer-Involved Shootings 2001 - 2008

Year	Number
2001	3
2002	5
2003	8
2004	4
2005	3
2006	3
2007	2
2008 (ytd)	1

Source: Riverside Police Department

RPD officers spent eight hours attempting to bring the man off the roof to arrest him, using a variety of faulty tactics. For example, they had the Riverside Fire Department spray water on him several times. They also recklessly deployed tasers and less lethal projectiles. At some point, the subject was finally arrested. A thorough investigation of the incident showed that the man was sprayed with water intermittently for a total of over an hour during the eight-hour period, was tasered four times, and was hit with at least 36 less lethal projectiles out of a total of 68 that were deployed. The supervisors on the scene also discussed the use of several unconventional tactics such as using tranquilizer darts, lassos, and drop nets.

The man was taken to the hospital critically injured with hypothermia caused from the water, 36 contusions consistent with less lethal strikes, and multiple lacerations and abrasions. The injuries were all over his body, including his head.

He spent eight days in the hospital. The department's internal investigation concluded that the supervisors at the scene, a captain and a lieutenant, had made disastrous decisions that had critically injured and endangered the life of the suspect.

However, what was significant about this episode is how the department and officers responded in its aftermath. Individual officers chose not to follow the pervasive code of silence that critics of police have long argued makes it difficult to root out police misconduct.[62] Misconduct by officers is often not revealed because officers conceal the problem behavior to protect their fellow officers. If an honest officer exposes misconduct by one of their brethren, he or she will be ostracized, harassed, or even threatened with injury. The officer's family and friends can be targeted as well.

Neal Trautman (2001) conducted an extensive survey of police officers from 21 states throughout the nation. The sample consisted of 2,657 officers, of whom 1,116 responded to the confidential questionnaire – a response rate of 42%. Trautman found that not only does the code of silence exist, it "breeds, supports and nourishes other forms of unethical actions" (3). His findings revealed that 46% of respondents said they had witnessed police misconduct and withheld the information. Of those 46%, when asked why they would take no action after witnessing misconduct, the top reasons were: "I would be ostracized (22%); the officer who committed the misconduct would be disciplined or fired (17%); I would be fired from my job (14%); I would be 'blackballed' (11%); the administration would not do

[62] See note 29 for Sam Walker's description of the code of silence.

anything even if I reported it (10%)" (2-3). More troubling was that 73% of the pressure to conceal misbehavior came from managers or supervisors. Of those who concealed misconduct, 8% were in upper management. Forty percent of the cover-ups were for excessive use of force (1-3). The code of silence has thus persisted as a major barrier to establishing an accountable police agency.

Actions by RPD officers after the critical incident described above stand in stark contrast to these statistics. Specifically, the RPD officers who were on the scene and participated in the standoff questioned the tactics employed during the operation. Rank-and-file officers not only contacted the Chief of Police, they also contacted the Attorney General's monitor to criticize the methods employed during the botched operation. The officers' response to the incident was a striking contrast to the culture of the old RPD. The officers were piercing the code of silence to do what was right and just. The response of the Chief and the Internal Affairs Division was also exemplary. They conducted a thorough investigation that concluded that the management at the scene made poor decisions and gave orders that led to the use of unjustified and excessive force.

As a result, the Chief demoted the lieutenant who helped direct the tactics at the scene, and requested the retirement of the captain who was in command of the scene. The captain was also an area commander and member of the command staff of the RPD. Chief Leach had promoted both the lieutenant and captain. Leach also referred the case to the Riverside District Attorney's Office for possible prosecution of excessive force charges.

The forwarding of misconduct cases to local prosecutors is extremely rare. Prosecutors and local law enforcement are reluctant to initiate criminal prosecutions, given their shared interests and close working relationships. Indeed, criminal prosecutions can give rise to or bolster civil lawsuits against a city (Walker 2005, 34-35; Human Rights Watch 1998, 8; Cheh 1996, 252). In addition, it is not uncommon for high-ranking officials to escape accountability.[63]

One of the key goals of the RPD reforms was management accountability. The actions of the police department in response to this critical incident were exemplary, showing a significant change in organizational culture by all levels of the organization. Officers and leadership exhibited integrity and courage in exposing the misdeeds. The response to the incident sent a message to the organization that it was permissible to come forward with evidence of police misconduct, and that officers, even managers, would be held accountable. It should also be noted that during the duration of the consent decree, the Police Chief referred at least four additional cases, unrelated to the above, of alleged misconduct to the District Attorney. Again, this is atypical.

[63] A recent example is the Abu Ghraib prison scandal where U.S. soldiers abused Iraqi prisoners. No commanding officers were court-marshaled as a result of the scandal. Nine enlisted soldiers, none higher than a staff sergeant, were court-marshaled. Most received prison sentences ranging from six months to ten years.

Early Warning/Intervention System[64]

Samuel Walker has written that "[t]he dirty little secret in policing is not just that some officers repeatedly engage in misconduct but that other officers know who they are" (2005, 100). A small number of police officers are responsible for most incidents of misconduct (100-106). For example, in the aftermath of the Rodney King beating, the Christopher Commission reported that LAPD leaders knew who the problem officers were in the department. Former LAPD Assistant Chief Jesse Brewer told the Commission "[w]e know who the bad guys are. Reputations become well known, especially to the sergeants and then of course to lieutenants and the captains" (Christopher Commission Report 1991, ix). The Commission found:

> Of approximately 1,800 officers against whom an allegation of excessive force or improper tactics was made from 1986 to 1990, more than 1,400 had only one or two allegations. But 183 had four or more allegations, 44 had six or more, 16 had eight or more, and one had 16 such allegations. Of nearly 6,000 officers identified as involved in use of force reports from January 1987 to March 1991, more than 4,000 had fewer than five reports each, but 63 officers had 20 or more reports each. (ix-x)

They also found that three officers had a significant and serious pattern of questionable behavior when personnel data were merged.

> One officer had 13 allegations of excessive force and improper tactics, five other complaint allegations, 28 use of force reports, and one shooting. Another had six excessive force/improper tactics allegations, 19 other complaint allegations, 10 use of force reports, and three shootings. A third officer had seven excessive force/improper tactics allegations, seven other complaint allegations, 27 use of force reports, and one shooting. (x)

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[64] The RPD's system is called an Early Warning System. As Walker (2005) has explained, the term early warning was used when these systems were initially developed, but the term suggests the negative implication that the system is set up for discipline (103-104). The term early intervention connotes stepping in to help correct or improve performance. I use the term early intervention system. Also, see note 53.

The Christopher Commission concluded that management and supervisors failed to adequately hold these officers accountable for their behavior. Brewer testified, "I don't see anyone bring these people up" (ix). LAPD Assistant Chief David Dotson added, "we have failed miserably" to achieve managerial accountability. The LAPD knew who the bad apples were, but failed to control or discipline these officers (ix).

As mandated by the stipulated judgment, the RPD established an early intervention system (EIS) triggered by two or more reportable incidents during a twelve-month period. Examples of incidents that are reportable include complaints, use of force incidents, traffic accidents, and lawsuits. The purpose of the system is to identify problem officers early so that corrective action can take place.[65] Internal Affairs monitors the EIS system and prepares an EIS report for the management staff to discuss at quarterly EIS meetings (or more frequently if necessary). Division Commanders are required to be proactive in addressing officer performance problems, negative trends and patterns by intervening and providing counsel and corrective action that may include training, modification of the officer's working conditions or assignment, referral to the Employee Assistance Program (EAP), the

[65] In a 2001 USDOJ report, *Principles for Promoting Police Integrity*, police departments are urged to implement early intervention systems. These information management systems "provide law enforcement supervisors and managers with information relating to potential patterns of at-risk conduct involving the law enforcement agency. Agencies should monitor information relating to the actions of individual officers, supervisors, and specific units or divisions of the agency" (10). EI systems are required in all the USDOJ negotiated consent decrees. The Commission on Accreditation for Law Enforcement Agencies (CALEA) recommends EI systems in *Standards for Law Enforcement Agencies* (2006). Also, see note 53.

Department Peer Counseling Program, or the RPD's contract psychologist. Other personnel actions may be warranted if at-risk conduct continues (RPD Policy 4.55).

The RPD's EI system has proven to be an important accountability tool for the department. However, the implementation of the system had to first overcome considerable managerial inertia. Several managers within the RPD neglected their responsibilities, ignoring departmental policies relating to the EIS. Managers failed to take timely action when officers were identified by the EIS as needing attention. When intervention did occur, managers neglected to follow up to ensure that remedial actions were carried out. For example, there were several instances of officers who were directed to attend training, but failed to do so. Supervisors did not verify that training occurred or that the intended results were realized.

The Attorney General's monitor worked with senior leadership in the department to hold these managers accountable. He provided training and guidance on "management and supervisory accountability" to managers. He bluntly described their failure to follow through with the necessary officer interventions flagged by the EIS. The Chief withheld rewards such as promotions, choice assignments and transfers from supervisors who ignored their responsibilities. In time the appropriate personnel were in place, managers committed to the RPD's reform values and objectives. Indeed, Chief Leach promoted 27 of the 29 RPD managers (lieutenants and above), 93% of the management staff. The altered management structure ensured that supervisors properly employed the information from the EIS. The EIS provided systemic capacity to identify and address officers with performance

problems *and* held managers accountable for taking action when problem officers were identified.

Before the EIS was implemented, managers focused on specific incidents rather than the more revealing patterns provided by the early intervention system. The RPD was unable to analyze trends that would identify officers, groups of officers, or even managers with performance problems. After the EIS was deployed, the RPD leadership was able to pinpoint at-risk behavior, and immediately address the problems. At one point during the consent decree, the EIS was regularly identifying about a dozen officers for intervention. Approximately half of those officers were being flagged by the system repeatedly. In addition, it was evident that an officer's complaint and use of force history was often closely associated with other performance problems such as continually missing court appearances, too many traffic accidents, unexplainably high sick leave and/or worker's comp claims, and frequent long-term disability leave. The early and ongoing recognition of problematic conduct helped prevent police misconduct and reduced liability (see Figure 2). The City of Riverside incurred over $3.8 million to settle police misconduct cases in 2000-2001. Over the next five fiscal years combined, the City's total cost of settling misconduct cases was $484,300, or an average of $96,860 per year.

Walker considers EI systems the "linchpin of the new police accountability" (Walker 2005, 101). These systems integrate the various "key elements of a department's accountability process, including primarily use of force reports and

citizen complaint data" into a cohesive informational database to aid managerial decision making (101). Indeed, the RPD's Early Intervention System is now the backbone of the department's accountability reforms. It allowed the RPD to provide rewards for exemplary performance and remedies or sanctions for problem behavior. Another benefit of the system was that managers had to act on the information generated by the EIS. The entire command staff sees the reports, putting pressure on supervisors to address, follow up, and monitor the problems. Managers know who is responsible for taking action, and therefore they are unable to whitewash patterns of misconduct. This enabled department leadership to make over the RPD by formally and informally prodding personnel, supervisors and rank-and-file, to either change or leave the department. The effect on the department has been extraordinary. Over 70% of RPD officers have either been hired or promoted since 2001 (the beginning of the consent decree and the hiring of Chief Leach). Sixty-five percent of the RPD's rank-and-file officers have been hired since 2001, and 80% of the others (detectives, sergeants, and management staff) have been promoted since 2001 (see Table 4).

Reforms Designed to Improve Supervision

The stipulated judgment also required several personnel improvements to supervision within the Riverside Police Department. The department was required to have a lieutenant or higher-level officer serve as Watch Commander on all shifts. In addition, the department was required to have a 7-to-1 officers on patrol to supervisor ratio. The AG's compliance team determined that the RPD complied with

these provisions. The stipulated judgment allowed the RPD to boost the number of personnel in the department, a critical necessity given years of understaffing. This allowed for greater supervision, productivity and accountability. In 2001 the RPD had 347 sworn officers and 193.65[66] civilian employees.[67] By 2008 the RPD had 415 sworn officers and 220.68[68] civilian employees, which included 10 sworn officer vacancies and 23 civilian vacancies.[69] The management staff (lieutenants and above) was increased by almost 50%, allowing for managers to serve as Watch Commanders. The number of sergeants increased by 34%, providing enhanced supervision to maintain the 7-to-1 officer to supervisor ratio. Without the judgment, the City may not have approved the significant budgetary resources necessary to hire the additional staff. Table 3 compares the changes in staffing between 2001 and 2008.

However, the department had difficulties at times achieving the 7-to-1 ratio. For a significant portion of the decree's duration, the department was not fulfilling this provision. The monitor found that the department failed to achieve the desired ratio approximately 10% to 13% of the time, however the RPD was able to bring the percentage down to 4% during the last year of the agreement. Because of unforeseen

[66] Includes part time civilian employees.

[67] 2001 data is from April 5, 2001.

[68] Includes part time civilian employees.

[69] 2008 data is from April 11, 2008.

absences, it was impossible to reach the required ratio at all times. The ratio was usually no greater than 7.5 to 1 when they went beyond the mandated ratio.

Table 3. Comparison of Staffing for Years 2001 and 2008

	2001[70]	**2008**
Chief	1	1
Deputy Chief		2
Assistant Chief		1
Captain	6	5
Lieutenant	14	21
Sergeant	41	55
Detective	63	71
Pilot	7	7
Officer	215	242
Sworn Vacancies		10
Total Sworn	347	415
Civilian	193.65	220.68[71]
Total Personnel	540.65	635.68

Source: Riverside Police Department

More positively, the ratio was better than required most of the time. A robust 5-to-1 officers to supervisor ratio was the average ratio during the consent decree, and since the dissolution of the judgment, the department continues to improve in this area. When there are unexpected absences, the department redeploys

[70] 2001 numbers include vacancies.

[71] Includes part time civilian employees and civilian vacancies.

supervisors, often paying overtime, to ensure there are enough supervisors to meet the ratio. However, the consultant warned the City not to allow the ratio to backslide given that insufficient supervision and oversight of personnel was a key finding of the AG's investigation that resulted in the consent decree (Brann 2006; Brann 2008).

The Strategic Plan

Arguably the most important stipulation within the consent decree was the requirement that the RPD develop and submit for approval a strategic plan to the Attorney General. The provision called for the plan to be delivered and approved within one year of the entry of judgment. The strategic plan was required to include:

> a. a plan that is reasonably calculated to provide the resources and programs that are necessary to support a serious effort at community policing; b. the creation of a dedicated training fund that is sufficient in amount to ensure compliance with the RPD training plan which is also to be set forth in the Strategic Plan; and c. a plan to ensure that the RPD has and maintains an effective and efficient span of control. (*People v Riverside* 2001)

The purpose of the strategic plan requirement was to enhance the RPD's sense of ownership and responsibility for implementing community and problem-oriented policing, and publicly to put in writing the City's commitment to providing the necessary resources and programs to fund the essential training and personnel for establishing an innovative, progressive law enforcement agency.

Although the consent decree required the plan to be submitted within one year of the judgment, the plan was not finalized and approved until two years later. The City had submitted a plan before the deadline. However, the AG's compliance team determined the plan needed to be enhanced with greater detail, and the

department needed for other essential reforms to be implemented before a complete strategic plan could be developed. The plan took several years to formulate in light of the various structural, organizational, and cultural changes that were occurring in the RPD. The monitor recommended that more time be given to developing the five year plan given the complexities of the reforms, and so that the community could be involved in shaping the plan and thus share in its ownership (Brann 2006, 22; 2008; Verdugo 2008).

The final plan was approved on October 20, 2004. The decree required that the stipulated judgment be amended to include the strategic plan. Accordingly, the parties sought an amendment from the court several days later, which was granted. By delaying the plan, the AG's Office was able to essentially extend the compliance period past the judgment's expected March 2006 dissolution. Moreover, the RPD's five-year strategic plan would continue the reforms, without a court injunction, until the fall of 2009. Thus the consent decree in effect has a life past the termination of the agreement. The plan was a highly comprehensive program for change that was forged by the RPD with the participation of the community and the City Council.

Before approving the plan, the AG's team required the RPD to develop a detailed flowchart and schedule for the strategic plan, identifying who would be the specific people and units responsible for implementing each objective in the plan.

The schedule included deadlines for implementing each provision in the plan, and a tracking system to monitor the progress.[72]

There are 180 individual action items assigned to division commanders (Baitx 2008). The Mayor and City Council were asked to and approved the plan, which was then published for dissemination to the community and other stakeholders (RPD 2004). This put the RPD and City leadership on record, and in the judgment, as agreeing to continue the reforms for several years after the end of the injunction (Verdugo 2008; Brann 2008). After the dissolution of the consent decree, Chief Leach transformed the Attorney General Compliance Task Force, which was responsible for coordinating the implementation of the stipulated judgment, into the Audit and Compliance Bureau to coordinate the implementation of the Strategic Plan. The plan, the responsibility schedule, and the community and Council approval created an effective accountability system.

This was a clever and skillful achievement by the AG's Office and supported by Chief Leach, who was highly invested in the continuation of the reforms. The initial rationale by the AG's Office for demanding a consent decree was to ensure that changes in the AG, City Council, Police Chief or City Manager would not affect the reforms. The strategic plan served as a compact between the entire community of Riverside, ensuring that implementation of the police reforms would last longer that the AG's involvement in Riverside, thus giving the reforms more time to take hold and solidify. The unwinding of the reforms became more difficult with the

[72] The process is regularly charted and monitored on an extensive spreadsheet dubbed "the Matrix."

approval of the plan. In the end, the strategic plan surpassed the expectations of the AG's Office.

The Development of Community and Problem-Oriented Policing in Riverside

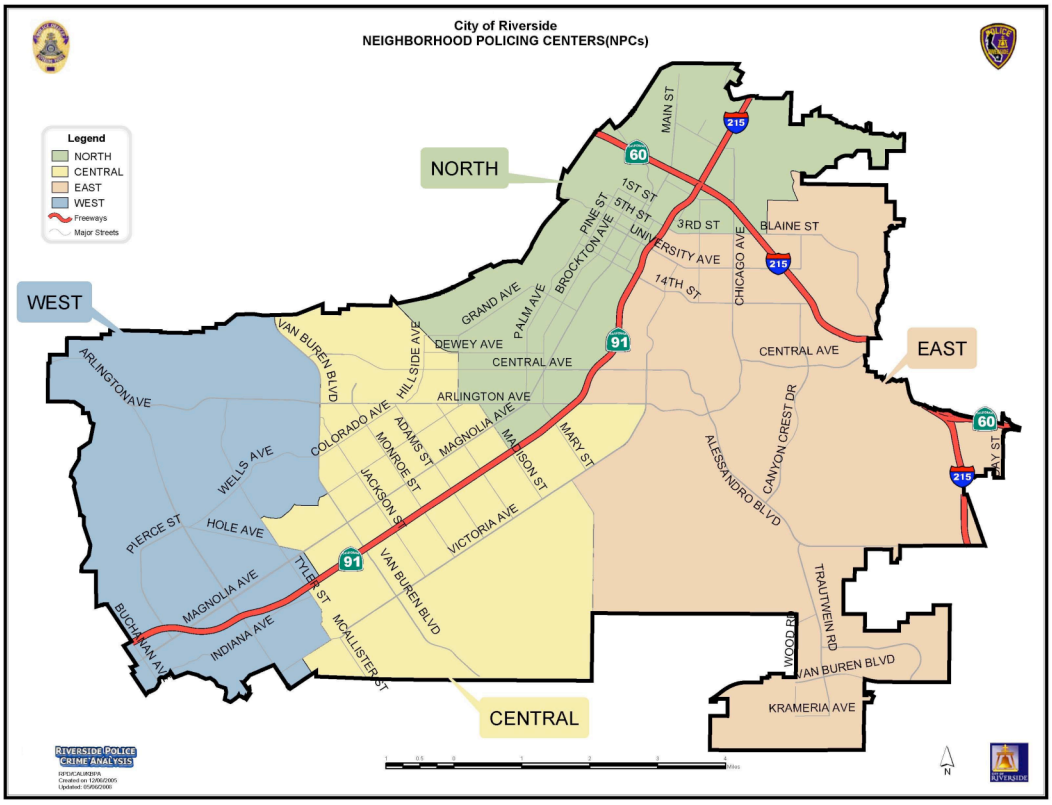
The stipulated judgment mandated that the *Strategic Plan* include a "plan that is reasonably calculated to provide the resources and programs that are necessary to support a serious effort at community policing" (*People v Riverside* 2001). The department incorporated the community policing philosophy into the strategic plan by creating an overarching principle represented by a responsibility triad based on a cooperative partnership between the RPD, the public, and City leadership. This troika balances responsibilities among the partnership and establishes an accountability model founded on the precept that these stakeholders are "co-producers of public safety" (Riverside Police Department 2004, 8). The *Strategic Plan* calls the RPD's community policing philosophy a "management style and organizational design that promotes proactive problem-solving and police-community partnerships to address the causes of crime and fear" (8). It further calls for a "sustained commitment to work together to do 'whatever it takes'" to implement an effective community policing effort (8). Finally, the RPD's plan for community policing includes the "empowering of previously disenfranchised community members" as a central objective (8).

Since the initiation of the consent decree in 2001, the RPD has developed a serious community-policing program with significant support from the City's leadership and the community. The City has provided the necessary resources to

implement many of the programs. Further, the RPD has aggressively engaged the community as collaborators and allies, particularly groups who have been historically underserved.

The department has completed an extensive decentralization plan, establishing four distinct Neighborhood Policing Centers (NPCs) within the City (see Figure 1).

Figure 1. Neighborhood Policing Centers (NPCs)



Source: RPD

The four zones allow the RPD to be more responsive to local neighborhood needs. This reorganization has included a reallocation of personnel and a realignment of the department's organizational structure. In addition, the City of Riverside expended considerable resources on the establishment of neighborhood police stations to draw the public closer to policing services. In 2006, Riverside opened the $18.2 million Magnolia Policing Center to serve the West NPC. The facility includes a 1,600-square-foot community meeting room. The *Strategic Plan* includes another three NPC facilities within the three remaining neighborhood-policing areas (RPD 2004, 6-7; RPD 2007, 11).

All NPCs have Lieutenants serving as Area Commanders. They are responsible for identifying local policing needs and deploying the necessary resources to address public safety issues. The Area Commanders essentially serve as local police chiefs overseeing the NPCs. They are held accountable for their NPC by the executive command staff at monthly Management Accountability Program (MAP)[73] meetings where they must discuss local crime changes and trends, and then outline a proactive plan of action to address local policing concerns. NPC personnel are expected to practice anticipatory problem solving and crime prevention, attend to quality of life issues, and include the community in the production of public safety (RPD 2007, 31).

Field Operations officers are assigned to work from one of the NPCs. These officers are expected to engage the public so that they can develop better local

[73] The MAP program is modeled after the NYPD's COMPSTAT and the LAPD's COMPSTAT Plus (both developed by current LAPD Chief and former NYPD Chief William Bratton).

understanding and expertise. Officers use this knowledge to identify community concerns and take action to solve problems. The NPCs also have Neighborhood Beat Officer (NBO) programs, consisting of officers who adopt particular neighborhoods within the NPC and work with their communities to formulate solutions to neighborhood concerns. The RPD has also assigned NBOs to all Riverside parks that include community centers. NBOs and park personnel work together to support youth enrichment programs and prevent crime or disorder (31).

In addition, the RPD's Problem-Oriented Policing (POP) program is a key component of the NPCs' neighborhood policing strategy. The POP Team applies the latest information technology, such as geographic information systems (GIS), to research and analyze social disorder and crime. In collaboration with the community and city government, this information is then used to identify and map problems or "hot spots." Over the last several years, POP Teams, working closely with "co-producer" triad partners, have identified many community problems and initiated and completed hundreds of projects to remedy these problems. City government agencies such as Public Works and Code Enforcement worked closely with POP Teams on many projects to prevent crime and disorder (33).

The RPD has established or significantly augmented several other notable programs to expand their community policing efforts over the last several years. These include the Bike Team, the University Neighborhood Enhancement Team (UNET), the Citizen Academy, the Crime Free Multi-Housing Program, Neighborhood Watch and the Neighborhood Watch Academy, Business Watch, the

Riverside Youth Court, and the Mental Health Intervention and Response Program (34-43). These proactive community and problem-oriented policing programs have been central to the Riverside police reform effort.

Two of the more innovative programs are the Riverside Youth Court and the Mental Health Intervention and Response Program. The Riverside Youth Court is an early intervention program for first-time misdemeanor offenders between the ages of 10 and 17. Youth who admit to breaking the law are given a second chance. Their case is presided over by an adult judge in a real courtroom, but the jury, prosecutors, defense attorneys, court clerks, and bailiffs are all youth. The juries of young people decide the sentence. Central to the Youth Court mission is to establish a fair and restorative sentence for the juvenile respondent. Respondents are required to serve on a future jury, and complete one or more of the following: community service, letters of apology, essays, educational workshops, counseling, restitution, drug testing, jail tour, curfew restrictions, behavior contract, and other creative dispositions (RPD 2007, 42-43; Riverside Youth Court 2008).

The RPD Mental Health Intervention and Response Program is a collaborative effort between the department, the City, homeless advocacy groups, the Riverside County Regional Medical Center Psychiatric Division, the Riverside County Department of Mental Health, and the National Alliance on Mental Illness (NAMI). The program was developed in response to increasing numbers of police encounters with mentally ill homeless persons, including officer-involved shootings and other use of force incidents. RPD officers receive training from mental health

professionals and advocates, as well as actual patients. In addition to training, the City established a homeless shelter and has hired a non-profit organization to operate it. Further, the City has hired a homeless coordinator, and with the RPD has created a Homeless Outreach Team that includes clinical social workers. Although too early to evaluate, the program should alleviate potentially volatile interactions between police and the homeless, and provide much needed assistance and services to an extremely underserved and vulnerable constituency.

Assessing the Impact of the California Attorney General's Reform Intervention

The Riverside Police Department no longer looks like the law enforcement agency that the AG's investigators encountered in 1999. The head of the AG's Civil Rights Enforcement Section remarked that following the Miller shooting the RPD had "hit rock bottom" (Verdugo 2008). Since that time, the personnel and managerial infrastructure has improved as a result of the reforms required by the AG's consent decree. Improvements in recruiting, training and compensation for officers and managers have reshaped the make-up of the department. The department is more highly educated, more diverse, better trained, and able to make use of state-of-the-art equipment and systems to do its work. The department has effective and committed leadership, particularly in its Police Chief, Russ Leach.

Indeed, the Riverside Police Department has been reconstructed by Leach through officer recruitment, promotions, and more aggressive personnel management. The RPD has improved the salaries and benefits of police officers since 2001. Police officer salaries increased 27%, and officers now receive a 3% at

age 50 formula when computing retirement benefits through the California Public Employees Retirement System (Priamos 2008; RPD). In addition, new officers also receive a $5,000 signing bonus, bilingual officers get a 3% bump in salary, and officers can receive up to a 12.5% increase in salary for advanced educational credentials. The department is thus now able to compete for the best personnel.

Moreover, there has been a remarkable turnover in staff (see Table 4), in that virtually the entire management staff (lieutenants and above) has been promoted under Leach.[74] Out of 29 managers, 27, or 93%, have been selected by Leach. Of the 55 sergeants in the department who serve as the frontline supervisors, 44, or 80%, have been selected by Leach. Leach also promoted 53 out of 71, or 75%, of the detectives, and 156 out of 242, or 65%, of police officers were hired under Leach. An extraordinary 71% of sworn RPD officers have been either hired or promoted during the RPD reform period of 2001 to 2008. The changes brought about by the consent decree provided the new Chief and his leadership team with the tools to infuse the RPD with new blood, build an organizational ethos based on integrity and accountability, and rid the department of those officers unwilling to change.

In addition, the department made modest gains in the recruitment of minorities into the department. The number of Latino officers increased from 14% of the department in 2000 to 19% of the department in 2006. The number of African Americans increased from 6% of the department in 2000 to 7% of the department in

[74] Leach was hired as Police Chief during the negotiations on the settlement and served the entire duration of the consent decree.

2006 (Burge 2006, A1). At a recent presentation by Chief Leach regarding the RPD's strategic plan (RPD Strategic Plan Update 2007), the Chief presented the racial and ethnic composition of the department as well as recruitment results from the last 12 months (see Table 5).

More impressive has been the number of minority promotions to leadership positions within the RPD. The Assistant Chief of Police, the number two person in the department, is Latino. The two Deputy Chiefs, the third tier of leadership in the department, are also Latinos. Of the four captains in the department, comprising the fourth tier of leadership, one is African American and another other is female ("Organization Chart" 2007). These two captains oversee the highly critical Field Operations Division, which includes the Neighborhood Policing Program, the Management Accountability Program (MAP), the Neighborhood Beat Officer (NBO) Program, and the Problem-Oriented Policing (POP) Program. These units are central to the RPD's community and problem-oriented policing efforts.

Table 4. Police Officers Hired or Promoted 2001 – 2008

	# Before Consent Decree (Pre-2001)	# Since Consent Decree (2001 – 2008)	% Since Consent Decree
Management Staff[75] Promoted	2	27	93%
Sergeants Promoted	11	44	80%
Detectives Promoted	18	53	75%
Police Officers[76] Hired	86	156	65%
Total	117	280	71%

Source: Riverside Police Department

Table 5. RPD Racial and Ethnic Composition

	Asian	African American	Latino	Native American	White	Female	Male
Sworn	2.1%	7.0%	19.2%		71.8%	9.0%	91.0%
Civilian	3.4%	12.0%	21.7%	0.6%	62.3%	82.9%	17.1%
Department	2.5%	8.5%	20.0%	0.18%	68.8%	31.9%	68.1%
City	9.0%	8.0%	46.0%		37.0%	50.7%	49.3%
Sworn Officer Hiring – Last Twelve Months August 2006 to August 2007							
Sworn		10.3%	27.6%		62.1%	10.3%	89.7%

Source: Riverside Police Department

[75] Consists of lieutenants and above. Numbers do not include the Police Chief.

[76] Numbers do not include 7 police officer pilots.

Principles that Fostered Successful Reform in the RPD

There are several factors that shaped the reform in the Riverside Police Department: (1) leadership, particularly from Police Chief Leach, the Mayor and the City Council; (2) the role of the community and media; and (3) the efforts and expertise of the AG's Office and its consultant.

The most important was leadership. The City and AG's Office had effective and committed people working to solve the problems of the RPD. The leadership of Police Chief Russ Leach was critical. His presence at the negotiating table during the discussion on the settlement agreement was instrumental in getting a deal done. He told the City that the police department had problems that needed to be addressed and that they should not be afraid of a consent decree. Leach realized that the judgment could serve as a mechanism for needed change. Indeed, it would facilitate his work by ensuring that he would receive the necessary support and resources to implement the reforms.

Leach also dispelled any notions held by officers or others that the RPD was free of problems. He brought to heel those who failed to heed his blunt assessment of the RPD. Officer and managerial accountability was consistently stressed and expected. Managers were expected to perform and they were held responsible for the performance and conduct of their officers. Further, the Chief realized that the AG's Office was not the enemy. The AG's Office could and would do everything in its power to support the effort. They were just as personally invested in seeing the reforms come to fruition as he was. Because the Chief and the AG's Office had the

same interest, they were able to form a highly effective partnership based on a shared ownership and responsibility for righting the RPD. Leach utilized the judgment and the California Department of Justice's engagement to lend authority and weight to the corrective actions he initiated. Without a police chief like Russ Leach the reform program would have been more difficult.

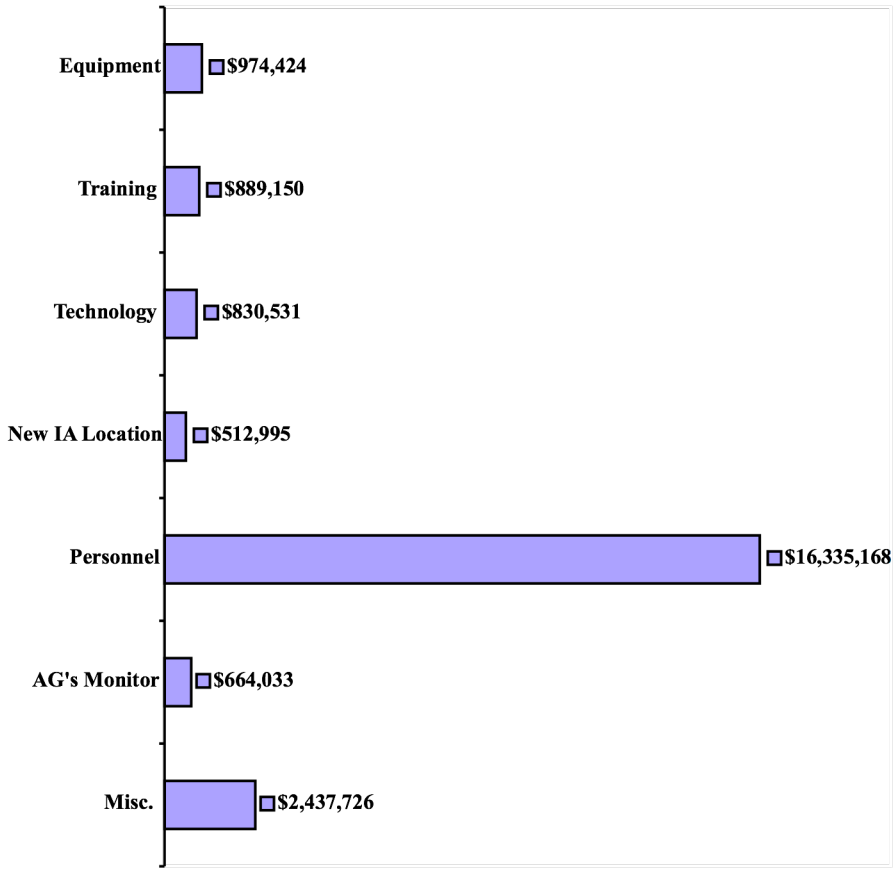
The City of Riverside also exhibited leadership in supporting the reforms. Although they initially preferred to implement reforms without state oversight, the Mayor and City Council provided real support during the implementation process. They provided the key funding that allowed the RPD to purchase new equipment and technology, and that allowed the RPD to recruit and hire the kind of police officers needed to transform the RPD. The total cost of the reforms was $22,644,028. The spending broke down this way (see Figure 2).

The City held firm in the face of budget cuts, changes in the Council, and three different city managers. In addition, Mayor Ron Loveridge[77] was committed to reform from the beginning of the process. Before the AG's investigation began, he created the Mayor's Use of Force Panel that made 12 recommendations to improve the RPD. The AG's Office incorporated these ideas into the consent decree and the

[77] Mayor Ron O. Loveridge has served as a Riverside elected official for 29 years. He served on the Riverside City Council from 1979 to 1994. Since 1994, he has served as Mayor, elected to four terms. The Mayor is also a rarity in the region, an elected Democrat in a mostly conservative Republican area. He has been on the political science faculty of the University of California, Riverside since 1965. He has a Ph.D. from Stanford. Loveridge's academic research has included city management and local government. He currently serves in various leadership roles on local, state, and national organizations dealing with local and regional governance, including the South Coast Air Quality Management District Board, the Southern California Association of Governments Regional Council, the League of California Cities Board of Directors, the California Air Resources Board, and the National League of Cities Board of Directors.

recommendations were realized. Loveridge's knowledge of Riverside politics and history, gleaned from almost 30 years of elected office in the City, including four terms as Mayor, provided context and perspective to the effort. He was also one of only two people (the other was the lone no vote against the consent decree in 2001) to serve on the Council for the entire duration of the consent decree, providing a source of institutional memory and wisdom to new Councilmembers and city staff.

Figure 2. Riverside Police Department Consent Decree Costs
(Total Costs: $22,644,028)



Source: Riverside Police Department and the Press Enterprise

A second factor in ensuring that the RPD's reform efforts were successful, in addition to decisive leadership provided by Leach and City officials, was the role of the community and media. They in essence also held the City and RPD's feet to the fire, beating the drum for change. The elected leaders of Riverside and the RPD understood that the public expected change in the police department. Business and civic leaders came to recognize that a modern, enlightened police was good for the community and good for business, so they lent their support to the reforms. In addition, Riverside's influential University of California campus, including its faculty and students, were unhappy that the RPD's behavior had tarnished the City's image and by extension the university. It was important to the University for the City to fix the problem in the department so that recruitment and fundraising were not hampered.

The most important and effective advocates for reform were the minority community, progressive activists and the local media. They followed the progress of the reforms and voiced their expectation that the City and the RPD would fulfill the provisions of the judgment. Indeed, they served as additional eyes and ears for the AG's Office, another monitoring presence to ensure implementation. Some continue to view the RPD with skepticism and challenge the department at every opportunity, and that is good for the department and good for the community. The difference in 2008 is that the RPD is more transparent and open to criticism. The RPD's community policing philosophy is based on the idea that the community and the

police are co-producers of public safety, meaning that outside opinion and advice are necessary for the success of the policing effort.

A third factor that ensured the successful reform of the RPD was the level of involvement and expertise by the Attorney General's Office. The work of the AG's Office made a significant difference in the revival of the Riverside Police Department. The California Department of Justice had never before investigated a police agency when they began probing the RPD. Indeed, much of the work of the AG's Office relating to the Tyisha Miller shooting and the RPD was unlike anything the office had done before.

Attorney General Lockyer had made the creation of a Civil Rights Enforcement Section a key part of his election campaign in 1998. Immediately after taking office, he established the section and provided it with the staff and resources to carry out an aggressive civil rights agenda. He appointed the right person, Louis Verdugo, to lead the section, who in turn provided exemplary leadership over the Riverside police reform effort. The negotiated stipulated judgment was the first of its kind by a state Attorney General. Investigations of police agencies and the negotiation of consent decrees are typically the domain of the federal government, so the decision to become involved in Riverside was unusual. This pioneering work of the AG's Office allowed for innovative thinking and a greater freedom to do some things differently.

Senior Assistant Attorney General Louis Verdugo and the AG's monitor, Joe Brann, directed the work of the AG's Office. They were a good combination of

complementary expertise: one was the top civil rights lawyer in the Attorney General's Office, the other a former police chief and leading authority on community and problem-oriented policing. In consultation with the Attorney General and other officials in the AG's Office, they guided the implementation of policing reforms that changed the RPD's organizational culture. Brann and Verdugo, along with RPD Police Chief Russ Leach, comprised the leadership triumvirate responsible for the overhaul of the RPD. The foundation of their success was a willingness for open communication and a mutual respect for the abilities and judgments of each other. They shared ownership of the project and recognized the significance of their work.

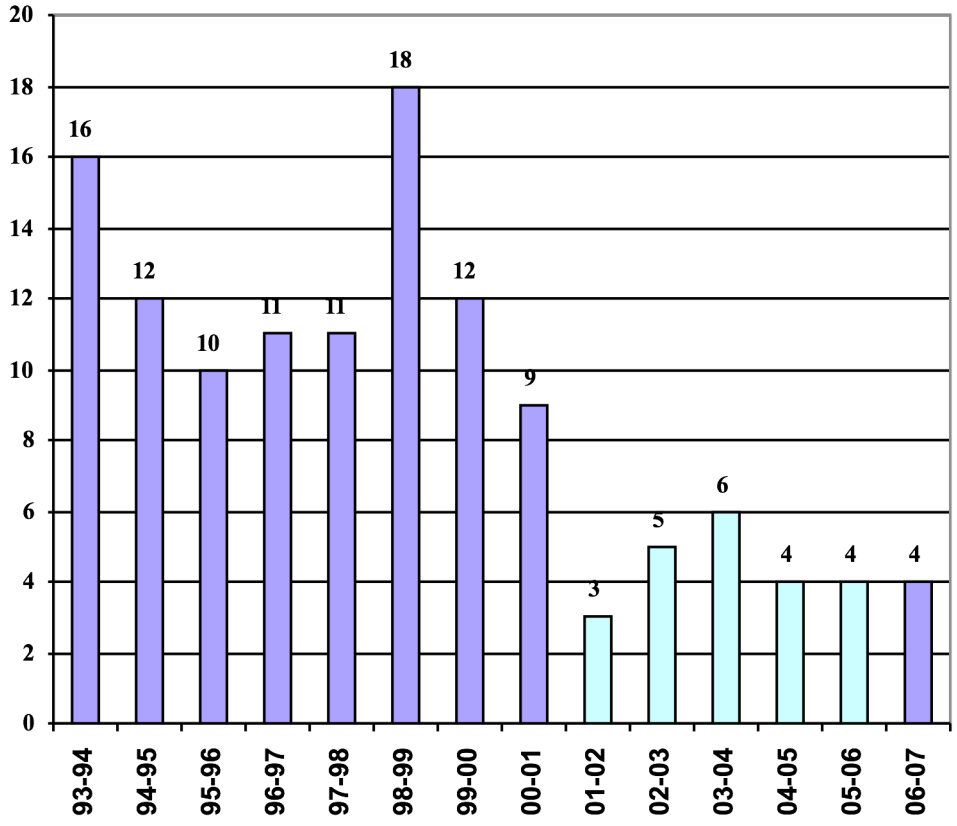
The RPD met all of the benchmarks required in the judgment, often exceeding the requirements of the decree. The implemented reforms have created a foundation for continued progress in the department. The RPD has developed advanced policing systems, highly regarded training programs, a management orientation that has a zero-tolerance policy regarding misconduct, and a more modern philosophy of policing.

Indeed, citizen complaints are stable, public contacts and arrests are up, and crime is down, an impressive accomplishment given the City's considerable population increase – 14% during the judgment's duration. Population increases are often correlated with increases in crime, yet Riverside's crime rate declined by over 19% during this time (RPD 2008; Brand 2008).

More significant was the impressive decline in the number of police civil liability suits and payouts from lawsuits filed alleging police misconduct (e.g., false

arrest, excessive force, etc.). The cost of settling these lawsuits fell significantly. In fiscal year 2000-2001 the City incurred over $3.8 million to settle police misconduct cases. The total cost of settling misconduct cases over the next five fiscal years combined was $484,300, or an average of $96,860 per year (Riverside City Attorney's Office). But the drop in the number of suits was more notable (see Figure 3).

Figure 3. Number of RPD Civil Liability Cases FY 1993 - 2007
(Consent Decree Period: 2001 - 2006)



Source: Riverside City Attorney's Office

The City of Riverside should be commended for taking two important steps to ensure that the RPD upholds the spirit of the reforms. First, Chief Russ Leach has retained the RPD unit, previously called the Attorney General's Compliance Task Force, which was charged with coordinating the compliance to the stipulated judgment. The task force is now called the Audit and Compliance Bureau. Second, the City Council rehired the AG's monitor, Joe Brann, to review and advise the Council on the progress of the strategic plan.

These two actions suggest the City of Riverside will continue to place a priority on the performance of the police department. In addition, the City and Chief must continue to hold the RPD accountable, swiftly rooting out problems and ensuring that officers conduct themselves with integrity and professionalism. Attorney General Bill Lockyer expressed the future challenges best when he wrote in the *Press Telegram*, "reform is an ongoing process that should never end. . . . Continued success. . . will require everyone to remain vigilant and mindful of the ultimate objective: making the RPD one of the best law enforcement agencies in the country" (Lockyer 2006, B9).

There has been important progress in the Riverside Police Department. To preserve and carry on the progress, the City must continue its commitment to support the change effort. Without sustained dedication to the principles inculcated by the judgment, the department could regress. The roadmap for durable reform has been the RPD's strategic plan, and the recommendations that the AG's monitor suggested for the department in his final report to the Attorney General. The plan is the key

instrument for accountability and the continued implementation of community policing in the post consent decree period. Indeed, it is the written expression of the progressive policing agency envisioned by the participants who in partnership crafted it – the community, the city government, the AG's Office, and the members of the RPD.

Chapter 5

Conclusions and Recommendations

Although it is theoretically possible that the Riverside Police Department might have decided to introduce reforms on its own, my research and the numerous interviews I conducted with officials, community leaders, and others revealed the powerful role the consent decree played as a catalyst for action. The approach taken by the parties to the decree was collaborative, leading to innovative solutions to the challenge of policing accountability. The police reforms addressed systemic organizational dysfunction rather than traditional responses focusing on individual officers. Indeed, the lessons learned in Riverside may be relevant to other public institutions in need of reform, such as the military and prisons.

Several important implications may be gleaned from this analysis of the California Attorney General's reform intervention into the Riverside Police Department. The most important finding is that the AG's intervention produced constructive changes in the way the RPD conducts its business. The RPD became more professional, effective, transparent and accountable as it implemented the provisions of the stipulated judgment. This demonstrates that institutional reform litigation can result in meaningful police reform. However, it is a challenging endeavor that requires long-term commitment by the participants.

Police reform requires significant economic and human resources, a supportive political environment, and usually a high profile critical incident or scandal. There are many law enforcement agencies with considerable problems that

need reform, and a good deal of these may have more severe difficulties than Riverside or the police departments that have entered into reform agreements with the federal government. However, these agencies may never have the opportunity to implement a reform program like the one in Riverside. The City of Riverside and the Attorney General's Office had the opportunity to turn the tragedy of the Tyisha Miller shooting into a catalyst for change.

Institutional reform litigation is a legitimate approach to employ for those searching for a way to initiate the reform of a police department. Barbara Armacost has argued that local leaders commonly blame police misconduct on "rogue" officers or a few "rotten apples." This line of thinking insulates leadership and the organization from responsibility for the misconduct and prevents the initiation of organizational interventions that could more effectively address departmental problems or the "rotten barrel." Rotten apple or individual-centered approaches to prevent misconduct are inadequate. Armacost argues that methods such as psychological testing for screening officers or employing civil and criminal law to deter or punish individual misconduct have little efficacy (2004, 457-460). "The individual-specific model of police behavior on which they implicitly rely is woefully incomplete" (459).

Alison Patton (1993), Laurie Levenson (1994), and Marshall Miller (1998) have described the failure of traditional civil and criminal prosecution in curbing police misconduct. It is rare for an officer to be criminally convicted for misconduct or for a civil suit against an officer to be successful (Miller 1998, 152-157; Klockars

1996, 3). Klockars believes that criminal law "is unlikely to have anything but the most marginal influence on controlling police use of excessive force in the line of duty" (3).

For example, a study by David Freed following the Rodney King trial found that the "vast majority" of police brutality cases referred to the District Attorney's office from 1980 to 1991 in Los Angeles County were dismissed (Freed 1991, A1). Another review by Lisa Petrillo found that San Diego police officers involved in shootings, a total of 190 between 1985 and 1990, were all cleared of wrongdoing (Petrillo 1990, A1). Katz found that from 1979 to 1991 the Los Angeles County Sheriff's Department had 477 officer-involved shootings, of which 174 were fatal, but only one officer faced criminal prosecution (Katz 1991, A1).

Policing experts maintain that the most productive responses to police misconduct "lie in proper hiring, training, acculturation, and supervision of police officers; in proper leadership and management of police departments; and in holding police officers accountable to the public" (Cheh 1996, 247; Rudovsky 1992, 493). A better strategy for addressing police misconduct and increasing accountability is to focus on organizational reform, the barrel instead of the rotten apples. If one can change the organization, then the behavior of individuals can change or at least be held in check. If an organization values integrity, dishonest officers committing acts of misconduct will be held accountable.

There are typically three periods or stages in the development of police reform utilizing institutional reform litigation. The first stage is the investigation,

which may be initiated by one or more critical incidents. The second stage is the negotiation of an agreement between the prosecutorial agency and the police agency. This may take the form of a court judgment, such as a consent decree. The parties may also enter into a memorandum of agreement or the prosecutorial agency can provide formal and/or informal technical assistance and recommendations to improve policing practices. Finally, the last stage is the compliance stage. This final step is the implementation of the reforms.

The Riverside Police Department emerged from this three-stage institutional reform intervention process as a remade organization; an organization with a culture that demands professionalism, progressive community engagement, managerial and rank-and-file accountability, constant learning, and continuous evaluation and improvement. I conclude this assessment of the efficacy of legal intervention in the reform of law enforcement agencies with various observations, lessons learned, and recommendations from the study of the Riverside Police Department. These interpretations should serve as an overview for the effective use of organization-centered reform interventions in police departments.

Lessons Learned and Recommendations

Initiating a pattern and practice investigation of a police department is a challenging undertaking that requires resources, patience, and skill. Among the lessons learned throughout the course of the negotiation and implementation of the RPD consent decree are the following: (1) gain an understanding of local politics, and foster relationships with local officials; (2) respect and engage police unions as

allies, rather than adversaries; (3) instill ownership in local officials, making them part of the solution rather than the problem; (4) emphasize how the City and police agency can benefit from the reforms, such as through increased funding for equipment and the hiring of personnel; and (5) recognize that leadership is an essential ingredient in producing positive results. These recommendations are discussed in greater detail below.

Local law enforcement agencies are usually powerful players in city politics. In addition, police officers' unions can make or break the careers of local elected officials by providing or withholding political support in the form of endorsements, volunteers, and most importantly, campaign contributions. Thus, it is critical for an intervening agency to understand the local political dynamics of a city, including its people, interest groups, and history. After an outside agency such as the federal or state Department of Justice surveys the local landscape and decides to conduct a pattern and practice investigation, the foundation for successful implementation should begin. If an investigation reveals organizational dysfunction that constitutes a violation of law, what happens during the investigation will impact the future negotiation and implementation of a reform settlement.

Often the investigating agency and the local government, for obvious reasons, will have a strained adversarial relationship during the investigatory process. However, it still may be possible to develop a cooperative relationship with the locals. The experience in Riverside provides evidence that a productive

relationship among parities can take hold early in the reform process and facilitate the eventual implementation of reforms.

When the California AG's Office began investigating the Riverside Police Department, then-Attorney General Bill Lockyer's elected political career already spanned a quarter of a century. During his tenure in Sacramento, particularly as President pro Tempore of the California Senate,[78] and as a candidate for Attorney General, Lockyer established close personal and political relationships with law enforcement and local leaders throughout the state. These relationships improved the atmosphere in which the investigation, negotiation and implementation materialized. He had a particularly good relationship with public safety unions and leaders in the Inland Empire.

As a result, as the investigation unfolded, the AG's Office was able to lay the groundwork for a partnership with the City of Riverside and the RPD. As a result of a mutually respectful relationship, the AG's Office was able to obtain a more holistic understanding of the problems in the RPD, the local political dynamics, and the threats to and opportunities for reform. The AG's Office was able to reach out to local contacts that provided helpful intelligence. The AG's Office avoided local political hazards and crafted its strategy to build trust and credibility with the City, thus improving the relationship among the parties and increasing the likelihood of establishing long-lasting reforms.

[78] The leader of the California Senate is the President pro Tempore, who is elected by the Members of the Senate. The President pro Tempore directs the work of the Senate and serves as an influential statewide political leader for his or her political party.

The Tyisha Miller shooting occurred on December 28, 1998, one week before newly elected Attorney General Bill Lockyer took office. Within weeks, staff from the Attorney General's Office were talking with Riverside leaders about the incident. As the investigation progressed, the AG's Office and key City officials, which included the Mayor, City Manager, City Attorney, and Interim Police Chief, collaborated on immediate actions to address police accountability. As they were conducting their investigation, the AG's Office supported and encouraged several key initiatives by the City. In fact, the Mayor's Use of Force Panel and its recommendations were the start of the reform process.

Before the investigation concluded or the agreement was signed, the City began implementing reforms that were later incorporated into the stipulated judgment. In addition, as the City negotiated a new contract with the Riverside Police Officers Association, the AG's Office encouraged the City to enhance the benefits and compensation of its officers. It was clear to the AG's team that the RPD was behind comparable police agencies in the compensation of its personnel. The parties realized that high-quality officers would be essential to reforming the police department. The City initiated these and other important changes because they had a good working relationship with the AG's staff. The relationship helped bridge common tensions that often occur when an outside agency carries out institutional reform litigation. Instead of being overly defensive or digging in its heels, the City recognized the problems in the RPD, and tried to make constructive changes.

The City's overriding motive for taking action on its own was arguably a desire to avert protracted litigation or other types of action such as a consent decree. However, the style and methods of the Attorney General and his staff provided a more conducive atmosphere for the investigation, and helped the City build greater trust in the AG's Office. The AG's Office was not interested in playing "gotcha" in Riverside. The Attorney General's Office made every effort to establish credibility with the City during the investigatory phase. The relationship developed during this crucial period made future interactions easier and more productive.

Skolnick and Fyfe have described the significant challenges to reform efforts posed by rank-and-file officers and their representatives. Officers, like most of us, are uneasy with change. Police unions are leery of reforms and often react antagonistically to proposals for greater police accountability. Skolnick and Fyfe argue that there are two methods for addressing opposition to reforms.

> One way is to force change on officers from the top; to press down on cops and *compel* them to go along with change. . . . Reform by intimidation from the top produces great tensions and lasts in police agencies only as long as the administrations of the intimidating chiefs who initiate it. Worse, it is our experience that street cops take every opportunity and use considerable ingenuity to undermine reform-by-intimidation even while such chiefs are in office. . . . More lasting and tension-free changes result from *enlisting* officers in reform efforts. (1993, 259)

It is easier to convince a department to reform by bringing them into process, than it is to force them to change.

During the investigative and negotiation period, the AG's Office actively engaged the Riverside Police Officers' Association (RPOA). As described earlier,

the officers' union in Riverside is a highly influential interest group that not only wields a great deal of political clout, but had also previously been a significant impediment to reforming the RPD. This is not unusual in other settings as well. David Harris explains that police unions have been the "most implacable opponents of accountability" (Harris 2005, 87).

In Riverside, the AG's Office was able to dissuade the RPOA from opposing the consent decree by convincing the union leadership that the agreement would be good for their membership. Relations between the AG's Office and the RPOA were enhanced when the AG's Office discreetly and informally recommended to the City, during its contract talks with the union, that rank-and-file officers receive greater compensation so that high-caliber officers could be recruited and retained. In addition, the President of the RPOA was invited to participate in the negotiations that led to the stipulated judgment.

The AG's Office and the newly appointed Chief Leach explained to the union that increased training, technology and resources were good for the union. Indeed, the stipulated judgment would require more police officers to implement the reforms, meaning more members for the union and more opportunities for promotion. In the end, the RPOA took no position on the stipulated judgment, a welcome situation and scenario that most would not have expected. Indeed, since the inception of the consent decree, the RPOA has generally been more responsive and engaged with the community.

Waudieur "Woodie" Rucker-Hughes, an involved and respected community leader who serves as the President of the Riverside Branch of the NAACP, has appeared with other community members before the Riverside City Council twice in the last several years in support of RPOA's contract negotiations with the City. Although there is still some distrust by the community, this show of solidarity with the police union would have been unimaginable in 2001; however, since the consent decree there has been an undeniable détente in the relationship (Rucker-Hughes 2008).

The Riverside case suggests that reformers need to engage the police union as early as possible in the reform process. In addition, reformers should attempt to enlist the union by finding ways to appeal to the union's self-interest and to build its trust. This is never simple. However, any incremental upgrade in labor relations will yield more productive implementation outcomes. Many policing reforms are mutually beneficial, and finding opportunities where the self-interest of unions and the public interest intersect can improve the chances for reform. The Riverside example suggests dialogue and efforts to find common ground can jump start relationships that have a history of being antagonistic, and lead to solutions that are mutually agreeable.

Another significant recommendation for reformers gleaned from the work in Riverside is the importance of instilling ownership of the reforms in the entire community. As Skolnick and Fyfe suggest, it is more effective to enlist partners in the process than it is to force reforms down the throat of police departments.

Outsiders, no matter how well meaning or skilled, cannot reform a law enforcement agency without the buy-in of the local leadership, police management, officers, and the community. The ultimate success of the organizational change will be based on the energy and commitment of the City and the police department to change, not the courts, prosecutors or the state and federal governments. Thus, institutional reformers must establish the foundation and environment for buy-in by the affected stakeholders.

From the very beginning of its intervention in Riverside, the AG's Office applied a strategy of creating buy-in for the necessary reforms by key groups in Riverside. Although establishing buy-in may appear to be a simple truth, it is usually a major obstacle to reform.

The RPD case reveals several key methods for transmitting ownership of the reform process to the City. First, a reform agreement or consent decree must be negotiated and drafted carefully. Again, as previously discussed, a good relationship based on credibility and trust during the negotiation is critical. The prosecutorial intervener must be sensitive to the circumstances and political realities of the locality.

Second, the negotiating style of the agency seeking reform is vital. The negotiation style employed by the AG's team in Riverside was facilitative and collaborative. A dictatorial or punitive style, which is common in litigation, can result in a difficult negotiation, an unworkable agreement, and a police department that is at best begrudgingly compliant with the settlement agreement.

Third, the agency seeking reform must be sensitive to the political environment of the city where reform is sought. In this instance, the AG's Office was acutely sensitive to the circumstances and political environment of the City as the RPD settlement agreement was drafted. During settlement discussions, the City expressed dissatisfaction with the language in the petition and complaint (the draft lawsuit). The City believed it was too strong and negative. In addition, the City believed that the court documents failed to recognize the work of the City to voluntarily address problems within the RPD. In response to these concerns, the language of the petition and complaint was tempered. Moreover, the AG's Office made minor modifications to the stipulation for entry of judgment to conciliate the City, including the addition of a reference to the work Riverside had done to address the problems exposed by the Tyisha Miller shooting. Paragraph six of the stipulation for entry of judgment states the following:

> Since 1999, Riverside has undertaken significant reforms, specifically directed at the RPD, to ensure that management, supervision, and accountability within that organization improve. In response to the Riverside community's concerns about the RPD, Riverside Mayor Ronald O. Loveridge created the Mayor's 1999 Police Use of Force Panel (Panel). . . . Resulting from the Panel were 12 recommendations to improve the implementation of police policies in the Riverside community, and to increase public understanding and accountability of the manner in which its police department operates. These 12 recommendations were presented in a public session of the Riverside City Council and have been implemented by the RPD.

These minor concessions did not impact the final provisions of the agreement, nor did they affect the court injunction. However, they were important to the City, and helped move the negotiations toward settlement. The objectives of the

institutional reform intervention and the substance of the reform program stipulated within the settlement agreement were not affected by these changes.

The AG's Office was more interested in securing an agreement with meaningful reforms that could be implemented. Although the AG's Office provided the basis for the lawsuit, it pared down any extraneous language that was unnecessary to the agreement. As long as the goal of police reform was unaltered, publicly dressing down the City of Riverside served no productive purpose.

Another example of conciliation by the AG's Office was the use of the term "consultant" rather than other more loaded terms typically employed in consent decrees such as special master, auditor, monitor, and receiver.[79] The City also considered the term "consent decree" to have a negative connotation, so the AG's Office instead referred to the settlement as a stipulated judgment.

Riverside leaders appreciated these concessions, which to them were major concerns, but to the AG's Office were negligible. The AG's Office realized that Riverside was agreeable to police reforms, but was worried about its reputation and the stigma of a consent decree, and thus made every effort to alleviate these concerns by managing external impressions through language and interaction style. From investigation to compliance, reformers are advised to react appropriately to the City and police department's local milieu. This strategy allows interveners to negotiate more productively, and also establishes a positive atmosphere conducive to cooperation. In Riverside, a flexible conciliatory style resulted in greater

[79] The consultant often served in the role of coach while guiding the reforms.

cooperation and a more trusting partnership that proved critical to implementing police reform.

The Riverside Police Department reform effort also revealed three important lessons and recommendations regarding the drafting of consent decrees. Police reform is more likely if agreements between police departments and state and federal prosecutorial agencies are (1) achievable; (2) flexible; and (3) provide for local participation and ownership. This was the case in Riverside. Poorly drafted consent decrees laden with unachievable provisions are more likely to fail to achieve lasting reforms. Riverside City Attorney Greg Priamos, who was the City's chief legal counsel through the entire duration of the stipulated judgment and helped draft, negotiate and implement the agreement, believes that the collaborative relationship between the City and Attorney General's Office provided for an agreement that addressed the specific problems in the Riverside Police Department and that included achievable reform objectives (2008).

He explained that Riverside's experience with representatives from the United States Department of Justice was poor and the relationship was dysfunctional from the beginning of its investigation into the RPD. He felt that the two federal lawyers sent to Riverside to investigate the City were too young and inexperienced, and that they had an arrogant, dismissive attitude toward the City and its officials. This led to a faulty investigation that he considered unprofessional. He described how the lawyers met with all the plaintiffs suing the RPD and their attorneys as a part of their investigation. The attorneys for some of the plaintiffs contacted him to

express discomfort with the federal government's questioning of their clients. They felt that the investigators were trying to put words into the mouths of their clients. This led to a proposed consent decree not grounded in local reality. Their settlement approach was heavy-handed and "cookie-cutter." Indeed, Priamos described their proposed settlement as almost identical to the Los Angeles Police Department's consent decree, a reform program not crafted for the unique circumstances of Riverside (Priamos 2008).

The agreement between the California Department of Justice and the City of Riverside had achievable provisions, was specifically developed for the Riverside case, included local participation in its drafting, and most importantly was crafted to maximize the City's ownership of the reform program. The stipulated judgment called for the RPD to develop plans to implement each of the provisions within the agreement. The AG's Office and the monitor/consultant provided technical advice during the development of the plans, and then approved the final plans. They had greater buy-in and ownership of the reform program because the RPD developed all the plans. In addition, the provisions and timelines were achievable, and focused on institutional change. The best example of this was the Riverside Police Department's Strategic Plan. It was co-created by the Riverside community with guidance from the AG's Office and the monitor/consultant. The local collaborative effort in the formulation of the RPD's Strategic Plan increased the commitment and support of community, police and city stakeholders.

Indeed, because of the unique oversight relationship outlined in the stipulated judgment, the Attorney General's Office had much more ownership of the RPD reforms than is typically the case with consent decrees for institutional reform. The federal model provides for a monitor who works and reports to the court. The California AG's model had the monitor working and reporting to the AG's Office, a significant difference from the USDOJ police misconduct consent decrees.

The closer relationship between the monitor and AG's Office in the RPD case made the California Department of Justice more accountable for the results of the reform intervention. The AG's Office was more involved in the process; this heightened level of engagement was seen as a pivotal factor in the successful implementation of the reforms (Brann 2008, Leach 2008, Priamos 2008). The fact that so many had "skin in the game"[80] made the stakeholders much more motivated and interested in the reform of the Riverside Police Department.

Another lesson learned from the RPD case was that leadership was an essential ingredient in producing positive results. Attorney General Bill Lockyer exhibited unwavering political will in initiating and carrying out the reform intervention. The motivation for his involvement was not punitive; it was constructive. Chief Deputy Attorney General Steve Coony,[81] the top staff person in

[80] The idiom refers to having a greater interest, involvement or stake in a project or undertaking as a result of a significant investment of resources, time, or energy. The term may have been coined by legendary investor and philanthropist Warren Buffet and is typically associated with business finance.

[81] Steve Coony has served as a labor leader, Chief of Staff to two Senate Leaders, and Chief Deputy to Attorney General Bill Lockyer (and now Treasurer Lockyer). He is a recognized policy strategist and public administrator.

the AG's Office, provided wise strategic direction during the investigation, negotiation, and compliance period. The members of the core team who implemented the RPD reforms were exemplary. Senior Assistant Attorney General Louis Verdugo led the effort from beginning to end, skillfully representing the Attorney General and directing the supervision of the reforms. Monitor/consultant Joe Brann provided policing experience, know-how, expert guidance, and a firm hand when necessary to the RPD. Police Chief Russ Leach was the right person at the right time to manage the RPD during the rehabilitation of the department. These leaders served as facilitators and collaborators, providing an environment conducive to innovation and reform.

The Riverside experience also suggests that new leadership and personnel facilitate and enhance the institutional reform process. Leadership changes at the top of the organization expedite reform by providing untainted and fresh thinking not bound to the previous organizational culture whose dysfunction produced an environment where police misconduct was tolerated and accountability was absent. In the aftermath of the Miller incident and the Attorney General's investigation, several key leadership positions changed hands in Riverside. The City Council appointed a new City Manager and City Attorney, and most importantly hired a new Police Chief. This facilitated the various stages of the reform effort by removing potential resistance to change by leaders who may have been partially responsible for the problems in the police department.

Fresh unsullied leadership helped the City and the Police Department turn the page on the past and focus on the future with an open mind. As was described earlier, not only was the leadership new, it was also compatible with the special needs of the RPD and the reform process. Leadership by both parties, the City and AG's Office, brought restorative perspectives and ideas to an organization in need of institutional modification.

The California Department of Justice's institutional reform intervention of the Riverside Police Department achieved the objective of institutionalizing police reforms. Reformers should consider reform settlements negotiated under the threat or perceived threat of litigation, such as the stipulated judgment in Riverside and the various USDOJ agreements, when confronted with police departments in need of reform. A consent decree can be an effective strategy to correct unlawful behavior in law enforcement organizations.

The California AG's use of a negotiated settlement in the form of a stipulated judgment to address police accountability was a first of its kind. Up until the RPD consent decree, agreements to correct systemic police misconduct in local law enforcement agencies were the exclusive purview of the USDOJ.[82] However, the California experience demonstrates that state action is a viable, and in some situations a more appropriate alternative.

Indeed, new presidential administrations may change the priorities of the USDOJ. A new administration may be less likely to initiate investigations and/or

[82] Action by the USDOJ is also extremely rare.

file lawsuits against law enforcement agencies engaging in a pattern or practice of violating citizens' civil rights. Eric Lichtblau reported in late 2000 on the shift from the Clinton Justice Department to the Bush Justice Department, describing Bush's views on investigations of police departments:

> For instance, Bush has already taken issue with the department's practice of aggressively investigating patterns of wrongdoing by local police departments and — in cases such as Los Angeles — imposing reforms. As a general rule, Bush said, he does not believe federal authorities should be "constantly second-guessing local law enforcement decisions" (Lichtblau 2000, A1).

According to observers of the USDOJ, the Bush administration has deemphasized investigations of police agencies (Brann 2008; Bobb 2008). Over the last four years the Special Litigation Section of the USDOJ has not entered into any consent decrees or memoranda of agreement with police agencies. Instead, they have issued technical assistance recommendation letters to local police departments (USDOJ Civil Rights Division 2008).

If the federal government chooses to shift its priorities or is forced to reduce the resources available for police misconduct investigations, the California Attorney General's settlement with the City of Riverside provides an alternate means to effectuate the reform of a police department.[83] State Attorneys General can fill the void by taking a greater responsibility for investigating and reforming police organizations. In fact, partnerships between state and federal departments of justice

[83] In fact, the CalDOJ is currently investigating the Maywood (CA) Police Department, and has been asked to investigate the Inglewood (CA) Police Department.

could also be productive if the parties are amenable to collaborating on investigations and settlement agreements.

Harris makes the following observation regarding the importance of addressing police misconduct:

> Police misconduct jeopardizes police departments themselves by destroying their reputations, demolishing public trust, and putting officers on the street in danger. . . . Accountability mechanisms therefore protect both citizens and police themselves and preserve the integrity and legitimacy of law enforcement from the worst impulses of the few (2006, 86).

In the case of the Riverside Police Department, these accountability mechanisms were achieved through a uniquely collaborative partnership between the City of Riverside and the California Attorney General's Office. The end result of the consent decree was a police department whose policies and procedures achieve the best practices of policing. In this instance, the new paradigm of police accountability – the consent decree – successfully transformed a department riddled with rotten apples into one in which the rotten apples have largely been tossed, and the barrel rendered clean.

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Appendix: Riverside Police Department Use of Force Policy

Effective Date: 8/93
Revision 1 Date: 7/26/96
Revision 2 Date: 5/21/97
Revision 3 Date: 6/1/99
Revision 4 Date: 1/5/00
Revision 5 Date: 5/9/2002
Revision 6 Date: 2/2/04
Revision 7 Date: 11/1/04
Approval:

_____
Russ Leach
Chief of Police

4.30 USE OF FORCE POLICY:

A. PURPOSE:

The Police Department's primary function is to protect the rights of all persons within its jurisdiction to be free from criminal attack, secure in their possessions, and to live in a peaceful atmosphere. In order for the Department to carry out this function, police officers may be required to use physical force. **It is in the public interest that this Department's officers be guided by a Use of Force Policy which is fair, appropriate, and creates public confidence in the law enforcement profession.** The application of physical force, and the type of force employed, depends on the situation as perceived by the officer. The purpose of this policy is to provide guidance as to when physical force may be employed, and the type of physical force that the law will permit. However, policy cannot cover every possible situation presented to officers. Therefore, officers must be reasonable in their actions.

B. PHILOSOPHY:

The use of force by law enforcement personnel is a matter of critical concern both to the public and the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters, and when warranted to do so, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations on their authority, particularly with respect to overcoming resistance from those with whom they come in official contact.

This Department recognizes and respects the sanctity of human life and dignity. Vesting officers with authority to use force to protect the public welfare requires a very careful balancing of the rights of all human beings and the interests involved in a particular situation.

C. POLICY:

The Department's Use of Force Policy is as follows:

In a complex urban society, officers are confronted daily with situations where control must be exercised to effect arrests and to protect the public safety. Control may be achieved through verbalization techniques such as advice, warnings, and persuasion, or by the use of physical force. Officers are permitted to use whatever force that is reasonable to protect others or themselves from bodily harm. The Department's Use of Force Policy must comply with applicable California and federal law. California Penal Code Section 835a states that an officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effect the arrest, prevent escape, or overcome resistance. **A peace officer who makes or attempts to make an arrest need not retreat or desist from his or her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.**

Each situation explicitly requires the use of force to be reasonable and only that force which reasonably appears to be necessary may be used to gain control or resist attack. Mere verbal threats of violence, verbal abuse, or hesitancy by the suspect in following commands do not, in and of themselves, justify the use of physical force **without** additional facts or circumstances which, taken together, pose a threat of harm to the officer or others. Officers must be prudent when applying any of the use of force techniques. **Unreasonable** application of physical force is a violation of California and federal law which may result in criminal prosecution and/or civil liability for the officer. A violation of the Department's use of force policy may also subject the officer to Departmental discipline. Officers should clearly understand that the standard for determining whether or not the force applied was reasonable is that conduct which a reasonable peace officer would exercise based upon the information the officer had when the conduct occurred. Officers must pay careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he/she is actively resisting arrest or attempting to evade arrest by flight.

Furthermore, the Department expects officer(s) to use the most appropriate force option given the circumstances. The decision should take into account the situation facing the officer as well as his/her training and experience.

D. ESCALATION/DE-ESCALATION OF FORCE:

The primary objective of the application of force is to ensure the control of a suspect with such force as is objectively reasonable under the circumstances. Ideally, officers should attempt to control a suspect through advice, warning, or persuasion, but be prepared for the use of physical force. The types of force an officer may utilize will vary, depending on the aggressive behavior or degree of resistance used by a suspect and the tactical practicability of a particular use of force technique. In situations when physical force is applied, an officer must escalate or de-escalate to the amount of force which reasonably appears to be necessary to overcome the suspect's resistance and to gain control.

The concept of escalation and de-escalation of physical force must be put into a proper perspective so that officers can effectively handle all types of resistant suspects. There are three key points regarding the concept of escalation and de-escalation of physical force.

1. Physical force is used to control a suspect;

2. Whenever force is used, the officer's defensive reactions must be in response to the suspect's actions;

   NOTE: This does not mean that an officer has to wait until a suspect attacks. Based on the circumstances, an officer may be justified in using reasonable force to prevent an attack.

3. An officer may use only the amount of force which reasonably appears to be necessary to control the suspect. **The Fourth Amendment of the United States Constitution requires that police officers use only such force as is objectively reasonable under the circumstances. Officers need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct identified as reasonable.**

E. USE OF FORCE TECHNIQUES:

The ability to successfully execute the proper control technique when attempting to control a suspect is essential for officer safety. The following use of force techniques are described in general indicating the six (6) approved levels of force to control suspects under increasing resistant actions. Each technique is fully described in a separate training bulletin.

Level 1: Presence:

California Penal Code Section 834a states that if a person has knowledge, or by the exercise of reasonable care, should have knowledge that they are being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. In addition, Section 148 makes it a crime to willfully resist, delay, or obstruct a peace officer in the performance of their duties.

Consequently, the mere presence of a uniformed or other appropriately identified officer, coupled with good verbal communication, will generally gain the willful submission necessary to avoid a further escalation of force.

Level 2: Verbalization:

Verbalization, "talking a suspect to jail," is the most commonly used technique to effect the arrest of a suspect. Verbalization may be advising, warning, or persuading. Actual field experience demonstrates that certain techniques of verbalization, coupled with an advantageous position, and a mature, professional attitude can prevent further escalation of a situation. These techniques include:

- explaining any actions about to be taken;
- allowing a suspect to save face in front of his/her peers;
- recognizing a suspect's remarks are not a personal attack against the officer; and
- allowing a suspect to retain dignity whenever possible.

Officers should attempt to de-escalate confrontations by utilizing verbalization techniques prior to, during, and after any use of physical force.

Level 3: <u>Empty Hand Control</u>:

Empty hand control is generally used to counter a weaponless suspect's passive or active resistance to an officer's verbal commands. Firm grip and control techniques were designed to safely initiate physical contact and gain control of an uncooperative suspect. When verbalization proves ineffective, a firm grip may be all that is necessary to overcome resistance. If the use of a firm grip is unsuccessful, an officer may decide to utilize a control technique as a restraint or come-a-long hold.

When the suspect's physical actions become actively resistant to a point which prevents the officer from gaining control or effecting an arrest, more aggressive countermeasures may become necessary. At this level of force, these techniques consist of:

- avoidance,
- blocks,
- empty hand control holds such as: wrist lock, twist lock, finger flex, arm bar and escort position,
- pressure points,
- controlled take downs such as: leg sweep, hip throw, front leg wrap, front and rear take downs, figure four and wrist turn-out,
- and ground tactics (using the officer's body weight and/or any combination of empty hand control holds to control the subject),

and are designed to create a temporary dysfunction of the suspect and allow the officer the opportunity to gain the advantage.

Level 4: <u>Chemical Irritant/Electrical Control Devices/Team Take Down/ Carotid Restraint</u>:

Officers should remain mindful that the use of force options described in Level 4, below, are described in order of preference where time and circumstances allow the officer to consider various options. This is based on the affected officer(s) having the time and ability to weigh the circumstances and avoid direct physical engagement (team take downs and carotid restraints.) Whenever possible and where practical, officers are encouraged to employ those techniques that do not require them to directly physically engage the subject so as to minimize risk to both the officer and the subject.

Chemical irritant may be used to overcome and control a suspect's aggressive actions when verbalization is unsuccessful. Verbal threats of violence by a suspect do not alone justify the use of chemical irritants. Chemical irritant may be used if the officer reasonably believes that it would be unsafe to approach and control the suspect. When it is tactically unwise to entangle with the suspect, and it is desirous to maintain a distance, chemical irritant may prove to be useful.

Currently, the only Electrical Control Device which is departmentally approved is the Taser. The Taser is a non-lethal control device which may be used to control violent or potentially violent suspects when an officer reasonably believes the following conditions exist:

- Deadly force does not appear to be justifiable and/or necessary, and
- There is a reasonable expectation that it will be unsafe for officers to approach and place themselves within range of the suspect.

The team takedown is another intermediate force tool utilized to reduce risk of injury to officers and arrestees while achieving maximum control. Two or three man takedown teams under the direction of one leader move as a unit and make contact with the arrestee simultaneously. Contact should not be made until all other lesser levels of control have been exhausted and sufficient officers are present to minimize risk of injury to the officers and arrestee.

The Carotid Restraint Control Hold offers peace officers a method for controlling violently resisting suspects when higher levels of force may not be justified.

The Carotid Restraint Control Hold should not be confused with the bar-arm choke hold or any other form of choke hold where pressure is applied to restrict the flow of air into the body by compression of the airway at the front of the throat.

Choke holds are considered ineffective and create the potential for a suspect to panic and react with greater resistance when pressure is applied in this manner by a peace officer. Also, there is greater risk of serious injury to the suspect. Choke holds shall not be used by any member of this department.

The carotid restraint may be utilized to control a violently resisting suspect, and allows for control against varying degrees of resistance. Once the technique is applied, the officer has the capability of restraining the subject by using only that degree of force **which is reasonable** to control the suspect. Caution should be exercised to prevent a disadvantageous position which might expose the officer's baton and/or firearm to the suspect. Any time a carotid restraint is applied, whether or not the suspect is rendered unconscious, an O.K. to Book shall be obtained as soon as practical and prior to booking.

Level 5: Intermediate Weapons:

Intermediate weapons are utilized to immediately impede the threatening actions of an **aggressive** suspect. They consist of:

- personal body weapons such as palm heel strike, common fist, bottom fist strike, elbow strike, knee strike, front kick, side kick, roundhouse kick,

- impact weapons such as PR-24, expandable baton, mid-range baton, short billy, riot baton and flashlight,

- less lethal munitions

- improvised weapons

- and other self-defense techniques designed to protect the officer and/or innocent citizens from bodily harm.

These weapons are generally used when lethal force is not justified and lesser levels of force have been, or will likely be, ineffective in the situation.

The baton may be appropriately displayed as a show of force if verbalization techniques appear to be ineffective when used on an aggressive suspect. A decision to draw or exhibit a baton must be based on the tactical situation. For example, the drawing of a baton may be reasonable in a situation of an officer entering a bar or other location of prior disturbance calls, or exhibiting the baton in a situation where there is an escalating risk to the officer's safety. If the situation continues to escalate, the baton can provide a viable method of controlling the suspect. The baton was designed as an impact weapon and should be used for striking movements and blocks. **Caution shall be used to avoid striking those areas such as the head, throat, neck, spine or groin which may cause serious injury to the suspect.**

In situations when use of the baton is applicable, the front, side, rear, and round house kicks can be applied as alternate use of force techniques when attempting control of **an aggressive** suspect.

Another alternative to the use of the baton as an impact weapon is the flashlight. While certainly not preferred over the baton in most situations, the flashlight is usually readily available, especially at night, and may be appropriate at times when the baton is not accessible or too cumbersome. Nevertheless, should this choice be made within an intermediate use of force situation, caution shall be used to avoid striking those areas such as the head, throat, neck, spine or groin which may cause serious injury to the suspect.

Generally, the deployment of less lethal munitions should have the goal to restore order and/or reduce the risk of more serious injury. Incidents where deployment may be an option include, but are not limited to, the following:

- Restoration or maintenance of order during a jail or civil disturbance.

- Safely controlling violent persons.

- Subduing vicious animals.

- Situations wherein the authorizing person deems their use necessary to safely resolve the incident.

Depending on circumstances, less lethal weapons can be used to safely control violent or potentially violent suspects when the officer reasonably believes the following conditions exist:

- Attempts to control the incident with lesser force options have been, or will likely be ineffective in the situation, and

- There is a reasonable expectation that it would be tactically unwise for officers to approach or place themselves in range of the suspect.

Level 6: <u>Lethal Force</u>:

If the situation becomes life threatening, the officer would be compelled to escalate to the ultimate level of force. The use of lethal force is a last resort dictated by the actions of a suspect **where the officer has reasonable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.** The weapon of choice in these situations is generally one of the various departmentally approved firearms. However, this does not preclude officers from using **any reasonable means** to protect themselves or other persons from this immediate and significant threat of **death or serious physical injury**. Furthermore, where the officer has reasonable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is reasonable to prevent escape by using lethal force. Thus, if the suspect threatens the officer with a weapon or there is reasonable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, lethal force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.
The use of less lethal munitions is neither encouraged nor discouraged in deadly force situations. Officers must evaluate each situation by the facts and circumstances confronting them. Less lethal force should not be considered a substitute for deadly force in lethal situations.

<u>USE OF FIREARMS</u>

Firearms shall be used only when an officer believes his/her life or the life of another is in imminent danger, or in danger of great bodily harm, or when all other reasonable means of apprehension have failed to prevent the escape of a felony suspect whom the officer has reason to believe presents a serious danger to others where the felonious conduct includes the use or threatened use of deadly force.

1. **<u>Drawing Firearm</u>:** Officers shall only draw their sidearm or shotgun when there is likelihood of danger to the officer or other persons.

2. **<u>Discharge of Firearm</u>:** An officer of this Department shall not discharge a firearm or use any other type of deadly force in the performance of his/her duties, except under the following circumstances:

    a. In the necessary defense of himself/herself or any other person who is in imminent danger of death or great bodily harm.

    b. Where the officer has reasonable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is reasonable to prevent escape by using lethal force. Thus, if the suspect threatens the officer

with a weapon or there is reasonable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, lethal force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

c. To kill a dangerous animal that is attacking the officer or another person or persons, or which if allowed to escape, presents a danger to the public.

d. When humanity requires the destruction of an animal to save it from further suffering, and other disposition is not possible.

e. For target practice at an approved range or in unrestricted areas.

f. To give an alarm or call assistance for an important purpose when no other means are available.

3. Display and Discharge of Firearms Prohibited:

a. Officers shall not display their firearms or draw them in any public place except for inspection or use, nor shall officers handle their weapons in a careless manner which could result in an accidental discharge of the firearm.

b. A member of the Department shall not discharge a firearm as a warning shot.

c. Generally, a member of the department should not discharge a firearm at or from a moving vehicle unless in the necessary defense of himself/herself or any other person who is in imminent danger of death or great bodily harm. If an officer has reasonable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others, it is reasonable to prevent escape by using lethal force. If the suspect threatens the officer with a weapon or there is reasonable cause to believe that the suspect has committed a serious crime involving the infliction or threatened infliction of serious physical harm, lethal force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.

4. Juvenile Felony Suspects: An officer generally should not shoot at a fleeing felon whom he has reasonable grounds to believe is a juvenile.

This section does not limit an officer's right of self-defense or his defense of others whose lives he reasonably believes are in imminent peril, except as provided in paragraph 2 a or b above.

5. Acting as a Peace Officer While Off Duty or in Other Jurisdictions: Officers are reminded that as employees of this Department, the policies set forth here are in force whether or not officers are on duty in this City or on special or casual assignment in another legal jurisdiction or when off duty, but acting as a police officer.

F. OVERVIEW OF TECHNIQUES:

When a suspect physically attacks an officer, the officer must act in self defense using one or more of the previously mentioned control techniques within approved use of

force standards. Consider a situation wherein a suspect assumes a clenched fists fighting stance some distance from the officer. The officer counters by drawing his baton as a show of force. At this time, the suspect drops his hands, resumes a normal posture, and submits to arrest. Although an officer must proceed with extreme caution, maintaining an advantageous position and ensuring that no additional threat exists, they should de-escalate all the way back to verbalization. Therefore, since the suspect is now cooperating, the officer reacts accordingly by advising, warning, and persuading.

The increased amount of force used by a suspect requires an officer to escalate the degree of force needed to maintain control of the situation. **Note, however, that an officer is permitted by law to not only use the level of force used by the suspect but to use reasonable force to <u>overcome</u> the resistance.** As a suspect's use of force declines, the officer's reaction must also decline. The reasonable amount of force needed to control a suspect may vary from one officer to another.

G. <u>SITUATION-BASED USE OF FORCE CONTINUUM</u>:

The Department recognizes that building flexibility into an officer's determination of the appropriate use of force is advisable and acceptable - if not essential - given that the standard for evaluating an officer's use of force claims is reasonableness under the facts and circumstances known to the officer at the time. This is an affirmative stance by the Department designed to provide additional confidence and needed support to officers in making their decisions regarding use of force in the field.

A number of factors are taken into consideration when an officer selects force options, and when evaluating whether an officer has used reasonable force. The Department recognizes that officers are expected to make split-second decisions and that the amount of time available to evaluate and respond to a situation may impact the officer's decisions. By establishing a policy that includes a use of force continuum the Department hopes to provide additional guidance to officers in making those split-second decision. Examples of facts which may affect an officer's force option selection include, but are not limited to:

- Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion, number of officers versus number of subjects)
- Influence of drugs or alcohol
- Proximity to weapons
- Availability of other options
- Seriousness of the offense in question
- Other exigent circumstances

Finally, it is important to note that an officer need not attempt to gain control over an individual by use of the lowest level of force on the continuum when reason dictates and the officer can articulate that a higher level of force is reasonable. Likewise, the skipping of steps may be appropriate given the resistance encountered.

Simply put, this continuum should be viewed as an elevator, not a ladder - an officer may go directly to any level of the continuum provided that the force selected is reasonable.

H. MENTAL ATTITUDE:

Officers must realize that emotional involvement is also a factor in the escalation or de-escalation of force. In order to react to every situation with the **reasonable** amount of force, an officer must be in good physical condition, possess self defense and verbalization skills, and have a mature, professional attitude. Additionally, officers must have self confidence in their training and ability to control the situation.

I. REPORTABLE USE OF FORCE INCIDENTS:

1. A reportable use of force incident is defined as an incident in which any on-duty Department employee, or off duty employee whose occupation as a Department employee is a factor, uses a less lethal control device or any physical force to:

- Compel a person to comply with the employee's directions; or
- Overcome resistance by a suspect during an arrest or a detention; or
- Defend themselves or any person from an aggressive action by a suspect.

Reportable Use of Force does not include:

- The mere presence and identification of police officer status; or
- The use of a firm grip hold which does not result in an injury, complaint of injury, or complaint of pain; or
- That force necessary to overcome passive resistance due to physical disability or intoxication which does not result in injury, complaint of injury, or complaint of pain; or
- Control holds utilized in conjunction with handcuffing and searching techniques which do not result in injury, complaint of injury, or complaint of pain, and did not require any other reportable use of force; or
- Injuries sustained by a subject as a sole consequence of his/her actions such as, but not limited to, falling while fleeing from officer(s); or
- Shooting of an animal as otherwise permitted by the Riverside Police Department Policy and Procedures Manual; or
- Use of Departmentally approved diversion or entry devices, deployed to gain entry into a structure.

2. Employee Responsibilities:

Any member who becomes involved in a reportable use of force incident or discharges a firearm, Taser, or chemical irritant control device for any reason, other than an approved training exercise, shall:

a. Summon medical aid, as needed;

b. Immediately notify a supervisor that they have been involved in a use of force incident;

c. If the force used falls within Level 6 and/or results in death or serious likelihood of death, the employee shall adhere to the provisions of Section 4.8 of the Riverside Police Department Policy and Procedures Manual.

d. Report the full details of the use of force incident in the related Department arrest or crime report;

e. Use a Department "memorandum" form to report the full details of the use of force incident when a crime or arrest report is not required;

f. When off duty, notify the Watch Commander immediately.

3. Supervisor Responsibilities:

The notified or designated supervisor shall:

a. Confirm medical aid has been summoned, as needed.

b. Respond to the scene, independently investigate the use of force and make a report of the incident.

c. If the force used falls within Level 6 and/or results in death or serious likelihood of death, the supervisor shall notify the Watch Commander immediately and adhere to the provisions of Section 4.8 of the Riverside Police Department Policy and Procedures Manual. The Watch Commander shall make additional notifications in accordance with Section 4.8.

d. Photographs shall be taken in all reportable use of force incidents that result in an injury, or a complaint of injury. If practicable, photographs of the subject and the injury should be taken after the injury or wound is cleansed by medical personnel and before medical treatment, if any is necessary. Care should be taken to protect the subject's personal privacy interests. Any possible concerns should be discussed with a field supervisor prior to taking the photographs.

e. The investigating supervisor shall report the incident as follows:

1. A “Supervisor Use of Force Report” form shall be completed within twenty four (24) hours and forwarded to the Office of Internal Affairs, when the force used was within Level 3, 4, or 5 of this policy.

- The "Supervisor Use of Force Report" form shall be sufficient documentation of a Use of Force incident when the force used did not result in an injury or complaint of injury. A simple complaint of pain, without evidence of underlying injury, may properly be documented on the "Supervisor Use of Force Report" form.

- The supervisor shall complete a separate "Supervisor Use of Force Report" form for each subject upon whom force was used. Each report shall include the force levels used by each officer involved in the incident.

2. A "Use of Force Investigation Memorandum" shall be completed within ten (10) days to supplement the "Supervisor Use of Force Report" form and forwarded to the Office of Internal Affairs when:

    - The force used was the direct cause of injury or complaint of injury, beyond a simple complaint of pain.

    - The force used involved the application of a carotid restraint, chemical irritant, electrical control device or similar control technique/device.

    - The force used falls within Level 5.

f. Internal Affairs shall have the responsibility to prepare all administrative reports of incidents wherein the force used falls within Level 6 and/or death or serious likelihood of death results. Field supervisors shall not prepare any administrative reports of such incidents unless directed by Internal Affairs.

g. Use of force reports will be designated for inclusion into the Early Warning System (EWS) in accordance with the provisions of section 4.55 of the Riverside Police Department Policy and Procedures Manual.

h. Alternative methods of reporting uses of force may be utilized during incidents of civil unrest. The incident commander shall make this determination and specify the reporting method to be utilized.

J. CONCLUSION:

The decision to use physical force places a tremendous responsibility on the officer. There is no one capable of advising an officer on how to react in every situation that may occur. Ideally, all situations would require only verbalization. While the control of a suspect through advice, warning, or persuasion is preferable, the use of physical force to control a suspect is sometimes unavoidable. Officers must be able to escalate or de-escalate the amount of force which reasonably appears to be necessary to control a situation as the suspect's resistance increases or decreases. Force should only be used as a **reasonable** means to secure control of a suspect.