

Revisiting *Who Is Guarding the Guardians?*

A Report on Police Practices and Civil Rights in America

Acknowledgments

The Commission proceeding was organized and the report was written under the supervision of Acting General Counsel Edward A. Hailes, Jr. Project team leader Joseph Manalili* and attorney-advisors Kim Ball, Deborah Reid, Joyce Smith, and Audrey Wiggins performed preliminary research and planning for the proceeding. Additional assistance was provided by the Public Affairs Unit through its deputy chief Marcia Tyler and editor David Aronson. Further assistance was provided by Kimberly Alton, special assistant to the staff director. Clerical support was given by legal secretary Pamela Moye and administrative assistant Carolita Little of the Public Affairs Unit. Project team leader Joseph Manalili and attorney-advisors Deborah Reid, Jenny Kim Park, Joyce Smith, and Audrey Wiggins drafted the report. Attorney-advisors Kim Ball, Barbara de La Vies, Michael Foreman, Emma Gonzalez-Joy, and Bernard Quarterman conducted the legal sufficiency review. The report was prepared for publication by Dawn Sweet.

The Commission acknowledges with gratitude the tremendous contributions of the selected experts to this important project.

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Executive Summary

For almost 20 years, the U.S. Commission on Civil Rights has been at the forefront of the police practices debate. Through its seminal report titled *Who Is Guarding the Guardians?* and numerous subsequent reports, the Commission has made important recommendations to improve the quality of police protection while ensuring the protection of civil rights for all Americans. The Commission has consistently endeavored to underscore these connected goals.

Law enforcement work is undeniably difficult. Officers must constantly be aware of the pressures to reduce crime and make arrests, while balancing concerns about officer safety and the constant stress of making split-second decisions that could mean the difference between life or death. The Commission applauds the efforts of many law enforcement agencies to improve themselves by increasing diversity among the ranks of officers, developing new training methods on the use of force, and bolstering their internal affairs divisions. Many police departments have also worked to strengthen their relationships with communities of color and have updated their policies in order to adequately respond to the needs of an ever-changing constituency. Some police departments have drastically reduced crime and fundamentally changed the communities in which they serve. Indeed, the Commission found that cities like New York City and Los Angeles, for example, have made great strides in lowering crime rates. These departments have not developed into "world-class" forces, however, due to lingering concerns over the number and types of police misconduct charges they must address.

Regrettably, their crime reduction achievements often have come at a significant cost to the vulnerable communities in greatest need of police protection. Reports of alleged police brutality, harassment, and misconduct continue to spread throughout the country. People of color, women, and the poor are groups of Americans that seem to bear the brunt of the abuse, which compounds the other injustices that they may suffer as a result of discrimination against their racial, ethnic, gender, or economic status. In their eagerness to achieve important goals such as lowering crime, some police officers overstep their authority, trample on individuals' civil rights, and may cause entire communities to fear the same people they hired and trusted to protect them.

Based on the Commission's research, the problem of police misconduct has affected every facet of police culture and policies. Perpetrators can come from any race, ethnicity, or gender, but all police officers are essentially trained by the same law enforcement methods that fail to adequately address cultural diversity and civil rights. Moreover, although law enforcement agencies may significantly reduce crime and the number of police shootings, these improvements come at a terrible price. Incidents of police officers committing crimes, engaging in racial profiling, and harassing individuals continue to make the headlines.

The Commission has a long history of examining the police in their administration of justice and has made numerous recommendations to improve law enforcement as a whole. Many of the Commission's recommendations have been implemented and have positively affected those communities. Despite this fact, reports of abuse and misconduct seem to be incessant, and they typically prompt a complex series of responses: community leaders cry out for change; law enforcement agencies assert that they are doing their job; federal investigators evaluate rogue police officers and entire departments; politicians debate about policies that purport to be tough on crime, yet strong on civil rights. What emerges from these opposing accounts is the need for a reasoned, systematic approach to honestly and sufficiently address police misconduct, once and for all.

By supplementing *Guardians* and its other related reports, the Commission hopes that this publication will move the apparent conflict between law enforcement and civil rights objectives toward a meaningful resolution. Through its findings and recommendations, the Commission presents a comprehensive set of guidelines and objectives to remedy police misconduct, which law enforcement agencies, both federal and state, should fully implement.

Some of the Commission's key findings and recommendations have been previously made in other reports. For example, the Commission reiterates the need to increase diversity in all law enforcement agencies—from the officer patrolling the street to the precinct captain. There is also a continuing need to implement successful models of community policing and to improve police officer training so that it will encompass cultural sensitivity issues and the proper use of force.

In addition, the Commission makes findings and recommendations on the issue of racial profiling that need to be given the highest priority in order to confront this pressing contemporary problem. It has been established that racial profiling exists in many areas of law enforcement. However, profound differences exist between the perceptions of the police and the public, particularly with regard to people of color. People of color and other civilians often conclude that law enforcement officers disproportionately target their communities because of misperceptions about their racial and ethnic backgrounds, rather than crime patterns or citizen complaints. In contrast, many law enforcement officers view race and ethnicity as appropriate elements of proper police investigations. Despite efforts to monitor racial profiling, some police officers and officials resist collecting statistics on alleged suspects' race or ethnicity. It is clear that modified policing techniques, based on facts rather than myths about communities of color, would begin to remedy many of the current problems surrounding this issue. The collection of racial profiling data is needed to examine the extent of its use, to enact legislation to prosecute those who utilize it, and to realize the total elimination of this practice in law enforcement.

Recruitment, Selection, Promotion, and Retention

Law enforcement personnel generally do not reflect the communities they serve. There continues to be a serious underutilization of people of color and women, as well as bilingual officers. Although police forces have tried to implement affirmative action policies, they have been unable to accomplish or sustain diversity. Several reasons account for this problem. Recruitment efforts do not specifically target women and people of color. Despite attempts to attract members of these groups, many people of color and women continue to have negative perceptions of law enforcement.

Within law enforcement agencies, claims of sexual and racial harassment, disparity in pay, and low job satisfaction make police careers unattractive. Additionally, the selection process for police officers often contains biases that, in effect, eliminate candidates of color and noncitizen permanent residents. The Commission recommends, among other things, that law enforcement agencies:

- Develop creative strategies to increase diversity at all levels.
- Improve public perception of the police to attract more applicants.
- Encourage recruits to have college degrees.
- Eliminate biases in the selection system.
- Revise recruitment and selection methods.

The Commission finds that the promotion and reward systems of many law enforcement agencies are seriously flawed. The emphasis on certain questionable crime reduction strategies may negatively affect civil rights by encouraging officers to engage in unlawful practices in the hopes of gaining a promotion. Indeed, racial profiling may be encouraged by this re-

ward system because communities of color are frequently targeted as “high-crime areas.” To remedy this situation, law enforcement agencies should:

- Re-evaluate their retention and promotion processes, recognizing that a system of rewards that promotes crime prevention over the protection of civil rights should be replaced with one that incorporates and reinforces the two concerns.
- Seek ways to improve the promotion rate for officers of color.

Training

Good basic training on diversity issues, especially at the earliest stages of law enforcement careers, would significantly improve the overall effectiveness of officers. In contrast, inadequate training usually reveals itself during the most precarious circumstances: when officers are responding to a volatile crime scene or in the process of making an arrest, and are called upon to make instantaneous, life-altering decisions.

- Effective training must incorporate contemporary issues such as cultural sensitivity, use of force, racial profiling, and community policing into basic crime prevention methods.
- Members of the community should be involved in the training process, so that divergent views and perspectives might be represented.
- Consent decrees with the federal government may also be used to force recalcitrant police departments to comply with federal mandates to improve their training practices.

Internal Regulation of Law Enforcement Agencies

Law enforcement agencies should police themselves primarily because they possess the tools to internally change policies and practices. The Commission finds problems, however, with the internal regulation of the use of deadly force, racial profiling, as well as misconduct investigations and dispositions.

Presumably, all police departments seek to reduce the unnecessary use of deadly force. But different jurisdictions have varying interpretations of the legitimate use of deadly force and the legal standards of reasonable behavior. Civilian deaths caused by police error continue to mount, and it is increasingly evident that officers need clear guidance from their chiefs of police and immediate supervisors on the use of excessive force, as well as internal misconduct policies and disciplinary procedures related to that behavior.

- Police officials should construct a uniform policy on the use of deadly force.
- Intensive training should be provided on a continuing basis to guide officers’ discretion.

Internal affairs divisions, charged with investigating allegations of police misconduct and resolving complaints, increasingly lose credibility and effectiveness when they are accused of unequally disciplining the same types of offenses, taking too long to investigate complaints, being unable to break through the code of silence among police officers, failing to keep the public apprised of complaint dispositions, and lacking computerized data systems to track needed information on misconduct incidents.

- Police administrators and IAD officials should routinely examine their disciplinary procedures in order to improve the overall effectiveness of internal affairs divisions.

External Controls

City officials continue to hold the most influence over how external review procedures are conducted. They guide the overall attitude of their officers regarding police misconduct issues.

- Officials at every level of city government should make a concerted effort to eliminate all forms of police misconduct.
- Complete cooperation among government entities and police representatives is necessary to ensure the success of any policy or program designed to address police misconduct.
- Officials should encourage the development of external oversight devices such as civilian review boards, independent auditors, and solicitors general.
- The use of federal monitors to oversee police misconduct issues should be enhanced, especially in light of the federal civil rights statutes that are in place to address these issues.
- Local law enforcement agencies should be encouraged to cooperate with the efforts of federal monitors.

State prosecution of police misconduct cases is not effective primarily because district or county attorneys rely heavily upon the support and cooperation of police departments.

- The appointment of an independent or special prosecutor assigned solely to police misconduct cases would increase the frequency and quality of those investigations and prosecutions.

Civilian review boards continue to play an important role in the external oversight of police misconduct; however, most boards have little or no investigative or disciplinary powers.

- Subpoena power must be granted to all civilian review boards.
- Civilian review boards should be endowed with disciplinary authority over investigations of police abuse incidents.

Remedies and Legal Developments

The passage of the Violent Crime Control and Law Enforcement Act, which authorizes the Attorney General to bring civil actions against state and local law enforcement agencies that have engaged in a pattern or practice of constitutional rights violations, has been an important development since the publication of *Guardians*. However, the Justice Department has not been adequately funded to realize the full authority provided under the act. Moreover, the act fails to provide for a private right of action by individuals injured by police misconduct.

- Resources must be allocated to fund federal investigations into systemic police misconduct.
- Individuals should be afforded legal standing to sue for equitable and injunctive relief against police departments engaging in misconduct.

Criminal remedies should be pursued in every police misconduct case when there is sufficient evidence to support the charges. Through vigorous criminal prosecution of accused police officers, the federal government can work to remedy the problem of police misconduct. Aggressive federal government tactics could also have a profound effect on the deterrence of further police abuses. But federal prosecution of police officers has been impeded by the provision of 18 U.S.C. § 242, which requires that an allegation of official misconduct be supported by evidence showing that the accused officer acted with a "specific intent" to violate

the person's civil rights. In light of the hindrance that this restrictive standard imposes on federal prosecutions,

- Congress should amend § 242 to remove the "specific intent" requirement.
- Federal racketeering laws may serve as alternative methods to pursue criminal charges against offending officers.
- The Justice Department should be properly funded to collect statistics regarding racial profiling.
- The Traffic Stops Statistics Study Act of 1999 should be enacted to further the efforts of that data collection.

Conclusion

Police misconduct has a deleterious effect on virtually every aspect of our society. Most importantly, police brutality tears violently at the fabric of our nation, leaving in its aftermath a distrustful and divided community. To improve the effectiveness of our police departments and to decrease tensions between the police and the public, we must find innovative methods to combat police misconduct in all its destructive forms. The Commission hopes that through the collective efforts of the police, the public, and our government, we will someday experience a strengthened bond and a mutual respect between the police and the communities they serve.

Introduction

The report by the U.S. Commission on Civil Rights titled *Who Is Guarding the Guardians?*¹ remains a major publication on police practices and civil rights almost 20 years after its release. Many of its findings and recommendations still ring true today. The present publication seeks to build on the groundwork created by *Guardians* and is not intended to replace *Guardians* or its research and analysis, which remain relevant to the examination of current police practices. With this report, the Commission seeks to achieve two goals: (1) expand upon the principles and findings outlined in *Guardians*, and (2) explore how police practices have evolved since the publication of *Guardians*.

Despite major improvements in police practices since *Guardians*, reports of alleged police misconduct and abuse continue to spread through the nation. As a major policy issue, police misconduct has not disappeared, but rather gained more of a spotlight since *Guardians* with the advent of issues such as racial profiling. The following stories represent a fraction of the incidents that have led up to the publication of this report.

The mere mention of the name "Rodney King" conjures the shocking images captured by an amateur video of an African American man surrounded and beaten by Los Angeles police officers.²

¹ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981.

² "Official Negligence: Lou Cannon dissects the Rodney King case and the LA riots," Apr. 7, 1998, <http://www.pbs.org/newshour/authors_corner/jan-june98/cannon_4-7.html> (July 26, 2000). One of the four officers involved in the beating of Mr. King was found guilty of excessive force in a state court. The other three officers were acquitted of all state charges. "High Court considers Rodney King defendants' sentencing," *USA Today*, May 28, 1996, <<http://www.usatoday.com/news/court/nscot089.htm>> (July 26, 2000).

In 1997, the beating and assault of Abner Louima while in custody in a New York City precinct stunned the country.³

In 1998, two New Jersey state troopers opened fire into a van with three African American and one Hispanic male passengers on the New Jersey Turnpike. The van was allegedly speeding at a rate of 19 miles per hour above the 55-miles-per-hour speed limit.⁴ The troopers claimed that the 11 shots fired into the van were in self-defense.⁵

Four other New Jersey state troopers escaped federal prosecution for opening fire into a car in 1999 after the driver failed to stop for an alleged traffic violation. The driver allegedly led the police on a 15-mile chase. The evidence was insufficient to sustain federal criminal civil rights claims.⁶

³ "At the 70th Precinct house, officers pulled down [Louima's] pants and led him to the bathroom, where they sodomized him with the [toilet] plunger and then jammed the handle in his mouth." "New York City Police Accused of Sexual Assault" (quoting Louima, *The Associated Press*, Aug. 13, 1997, <<http://members.aol.com/Jaiconsul/copraper1.html>> (July 26, 2000)).

⁴ Thomas Zolper, "State Says 2 Troopers Lied About Shooting; Court Papers Dispute Claims in Turnpike Case," *The Record* (Bergen County, NJ), June 1, 2000, p. A1.

⁵ The "van's tires were spinning and squealing as it bolted backward toward the troopers' patrol car," said one of the troopers. This event triggered the other trooper to break the van's passenger window and shoot the passenger four times. The van was searched for contraband following the shooting. Only clothing, a book, and a Bible were recovered. Ibid. See also Robert Hanley, "Troopers' Version of Shooting Is Disputed," *The New York Times*, June 2, 2000, p. B4.

⁶ Dan Kraut, "4 Cops Avoid Charges in Death; No Bias Found in I-80 Shooting," *The Record* (Bergen County, NJ), July 14, 2000, p. A1. The four troopers claimed they fired 27 shots into the vehicle because "they feared for their lives after [the driver], who was unarmed, began ramming the police cars that trapped his vehicle." The driver was fatally

Later, Amadou Diallo, an unarmed West African immigrant, died in the vestibule of his home when four New York City police officers fired 41 shots at him. The officers involved in the fatal shooting of Mr. Diallo were acquitted of all charges.⁷

The Los Angeles Police Department, already battered with numerous allegations of misconduct, found itself involved in another scandal—this time involving its Rampart Division. Officers were charged with planting evidence on suspects and “covering it up.”⁸ The scandal reinforced the public’s perception that corruption still plagues the police department.⁹

wounded and his passenger was shot in the leg. The U.S. attorney’s investigation consisted of a review of the grand jury transcripts, interview with one witness, and review of photographs and a video. Based on the investigation, the U.S. attorney found insufficient evidence to charge the officers with federal criminal civil rights violations. Ibid.

⁷ A New York City detective testified at the criminal trial that “four more bullets fell from Diallo’s body as it was removed.” “Detective: Bullets fell from Diallo’s body as it was lifted from scene: Testimony begins in murder trial of N.Y. officers,” CNN, Feb. 2, 2000, <<http://www.cnn.com/2000/02/02/diallo.trial.02/>> (July 28, 2000). Julia Campbell, “Jury Acquits Officers of All Charges in Diallo Trial,” *Fox News*, Feb. 25, 2000, <<http://foxnews.com/national/022500/diallo.sml>> (July 28, 2000).

⁸ “Criminal charges filed against officers in Los Angeles scandal,” CNN, Apr. 24, 2000, <<http://www.cnn.com/2000/US/04/24/lapd.probe.02/>> (July 26, 2000). “More than two dozen officers have been fired, relieved of duty, or have quit as a result of the corruption scandal, and at least 70 are under investigation, CNN has learned.” Ibid.

⁹ Four other officers from the Rampart Division were arraigned for crimes “including planting drugs or weapons on suspects, falsifying police reports and lying under oath at criminal trials” during the first week of August 2000. As this report was finalized, the Los Angeles Police Department charged six other officers “with misconduct” for “allegedly shooting and then framing unarmed suspects.” Los Angeles Police Chief Bernard Parks ended his resistance to a consent decree with the U.S. Department of Justice to end the LAPD’s pattern or practice of violating the civil rights of persons through the use of excessive force and “infringing the rights of minorities.” Rene Sanchez, “Beleaguered LAPD Charges Six More With Misconduct,” *The Washington Post*, July 27, 2000, p. A2. “Since the scandal broke, investigators have focused mainly on suspects who may have been wrongly convicted or imprisoned because of officer misconduct. Cases have been dropped against nearly 100 suspects, and about 10 people have been released from prison.” Ibid. “None among the new group of officers to be disciplined by the department has been criminally charged. But LAPD officials say the administrative charges stem from the officers’ role in shooting unarmed gang members, planting a gun on one of them and then delaying calling an ambulance

The New York City Police Department faced allegations in June 2000 that its officers did not respond to the cries for help from women in Central Park who were being sexually assaulted at a public event.¹⁰

In July 2000, a New York City grand jury cleared an undercover narcotics officer in the March shooting of an unarmed security guard.¹¹ The guard, Patrick Dorismond, became upset when an undercover police officer approached him to buy drugs.¹²

In Philadelphia, Thomas Jones was allegedly beaten by a group of police officers that caught him after two car chases, one involving Jones’ driving a police vehicle.¹³

for a victim bleeding to death while they altered the crime scene.” Ibid. See also Peter Y. Hong, Tina Daunt, “Parks Drops His Opposition, Commits LAPD to Decree,” *The Los Angeles Times*, Sept. 21, 2000, <<http://www.latimes.com/news/state/20000921/t000089369.html>> (Sept. 22, 2000).

¹⁰ “CTV News,” CTV, June 17, 2000, <<http://www.lexis.com/research/News Group File>> (July 28, 2000). A group of men “swarmed the women—in the park and along Central Park South—first drenching them with water, then ripping off all their clothes and groping them during a 35-minute spree.” Ibid. Martin Mbugua, Michelle McPhee, and Bill Hutchinson, “Central Park Terror: Gang of 15 Strips, Sexually Abuses 4 Women,” *The Daily News* (New York), June 12, 2000, p. 4. See also Rick Hampson, “Men run through Central Park stripping and groping women,” *USA Today*, June 13, 2000, p. 4A.

¹¹ Michelle McPhee, Emily Gest, and Bill Hutchinson, “Dorismond Cop is Cleared: Victim’s kin rip grand jury ruling,” *The Daily News* (New York), <http://www.nydailynews.com/2000-07-28/News_and_VIEWS/City_Beat/a-74767.asp> (July 28, 2000).

¹² Ibid. Manhattan District Attorney Robert Morgenthau said, “For the sake of the Dorismond family, I want to make this perfectly clear: Mr. Dorismond was gainfully employed as a security guard, was unarmed and was not selling drugs. The evidence shows that he lost his temper and hit someone who tried to buy drugs from him.” The mayor’s office released Mr. Dorismond’s juvenile and adult criminal records after the fatal shooting. Subsequently, the mayor reluctantly agreed to cooperate with federal oversight of the New York City Police Department’s handling of abuse and brutality allegations. Ibid. See also William K. Rashbaum, “A Reversal on Oversight of the Police,” *The New York Times*, July 7, 2000, p. B1.

¹³ As in the Rodney King incident, Jones’ beating was captured on videotape. Mr. Jones’ sister told a Philadelphia newspaper that the police action was unwarranted: “They had already shot him five times. They didn’t have to beat him.” Mike Regan and Mat Gross, “Man Beaten on Video Had Many Prior Arrests” (quoting *The Philadelphia Inquirer*), *Fox News*, July 13, 2000, <http://www.foxnews.com/national/071300/shootout_capture.sml> (July 20, 2000).

On the same day as the Philadelphia incident, police officers in Lawrenceville, Georgia, were videotaped beating Marshall Dwight Studdard. Mr. Studdard allegedly led police on a three-county chase when police finally caught up with him.¹⁴

Former Los Alamos National Laboratory scientist Wen Ho Lee was charged with "59 counts of violating nuclear security"¹⁵ and held in solitary pretrial federal confinement for nine months.¹⁶ The one-time heated prosecution of Lee "virtually collapsed . . . when an FBI agent recanted testimony in which he said Lee lied about his purpose for downloading the nuclear information."¹⁷

Prince Jones, a Howard University student, died from a fatal gunshot wound inflicted by a Prince George's County (Maryland) police officer who followed him in an unmarked sport utility vehicle because "a vehicle matching the description of the car driven by Prince Jones was linked to a weapon stolen from a Prince George's County police vehicle." Prince Jones was shot

"five times in the torso and once in the forearm, all from behind."¹⁸

As a result of the incidents described above, the terms "racial profiling" and "community policing" have entered the everyday vocabulary of many Americans.¹⁹ Both of these issues have become subjects of legislation, litigation, and police policy since the publication of *Guardians* and will be discussed throughout this report.

Law enforcement agencies have made great in-roads in reducing crime and the use of deadly force, but such progress comes at a cost. An agonizing reality exists alongside statistics showing a decrease in the use of deadly force by police

¹⁴ "Police Deny Brutality Claim in Georgia Arrest," *United Press International*, July 14, 2000, <<http://www.lexis.com/research/News Group File>> (July 24, 2000).

¹⁵ "Wen Ho Lee Pleads Guilty, Goes Free," Fox News, Sept. 13, 2000, <<http://www.foxnews.com/national/091300/wenjolee.sml>> (Sept. 22, 2000).

¹⁶ Kevin Johnson and Toni Locy, "Wen Ho Lee released from custody," *USA Today*, Sept. 13, 2000, <<http://www.usatoday.com/news/washdc/ncswed05.htm>> (Sept. 22, 2000) (hereafter cited as Johnson and Locy, "Lee released"). Lee ultimately pled guilty to a single count on Sept. 13, 2000, admitting that "he had used an unsecure computer to download a document relating to national defense onto a tape." At Lee's plea and sentencing hearing, U.S. District Judge James Parker said, "I apologize to you, Dr. Lee, for the unfair manner in which you were held in custody by the executive branch." Judge Parker also stated, "The Departments of Justice and Energy have embarrassed our entire nation and each of us who is a citizen of it." President William J. Clinton also expressed concern about the handling of Lee's case. President Clinton "found it difficult in retrospect to reconcile how the government could 'keep someone in jail without bail, argue right up to the 11th hour that they're a terrible risk, and then turn around and make that sort of plea agreement. It can't be justified.'" "Clinton will talk to Reno about Wen Ho Lee," *USA Today*, Sept. 17, 2000, <<http://www.usatoday.com/news/washdc/ncsfri03.htm>> (Sept. 22, 2000).

¹⁷ Johnson and Locy, "Lee released."

¹⁸ "Fairfax prosecutor says facts in shooting support Md. Officer's self-defense claim," *The Associated Press State & Local Wire*, Sept. 8, 2000, <<http://www.lexis.com/research/News Group File>> (Sept. 22, 2000). Prince George's County Police Department Corporal Carlton Jones followed the 25-year-old student who worked as a physical trainer, was followed "from suburban Maryland through the District of Columbia, across the Potomac River and into Virginia." Corporal Jones "told authorities that he fired at Prince Jones because he was in fear for his life after Prince Jones used his Jeep to back into the driver's side of the officer's unmarked" vehicle. The Prince George's County police weapons policy says that "[f]irearms may only be discharged . . . from or at a moving vehicle when the occupants of the other vehicle are using or threatening deadly force by a means other than the vehicle." Corporal Jones is also a defendant in an unrelated police brutality suit. At the time of this report, no charges had been filed against the officer.

This incident is one of 12 in the past 14 months where Prince George's County officers shot civilians. Five of those shot died and two others died in police custody. Prince George's County Police Chief John Farrell promised to institute a "series of initiatives designed to restore confidence in the troubled force, including the immediate installation of video cameras in patrol cars and the appointment of an FBI agent to oversee disciplinary affairs." Ibid. Tom Jackman and Jamie Stockwell, "Man Shot in Back, Autopsy Shows," *The Washington Post*, Sept. 7, 2000, p. A1. Tom Jackman, "Man Killed in Va. By Md. Officer," *The Washington Post*, Sept. 2, 2000, p. A1. Jamie Stockwell and Ian Shapiro, "Va. Officials Seek Details in Slaying," *The Washington Post*, Sept. 4, 2000, p. A1. Frederick Kunkle and Jamie Stockwell, "Cracking Down in Prince George's," *The Washington Post*, Sept. 22, 2000, <<http://www.lexis.com/research/News Group File>> (Sept. 22, 2000). Special Agent Roy Washington was appointed executive director of the Office of Professional Responsibility for the Prince George's County Police Department. Ibid. "Washington and a team of at least four detective sergeants will have authority to roam the force at will, conducting 'integrity checks' that include reviewing reports and evidence submitted by officers, conducting post-arrest interviews with suspects and carrying out surprise inspections." Ibid.

officers and a reduction of crime in many communities: the persistence of police misconduct. For example, the fact that 11 people were shot down by police officers in New York City in 1999 compared with 41 in 1990 does not remove the specter of impending doom that visits ordinary law-abiding people of color during street encounters with police officers in the city. The errant behavior of a few abusive police officers, even in the absence of police shootings, can often destroy cooperative and strategic alliances between police departments and the communities they serve. When some citizens perceive and experience the police being unfair, inequitable, harsh, and/or arbitrary, and moreover, when these citizens come from groups that have historically experienced unfair and inappropriate police behavior, such perceptions and experiences deride the very concept of fair and equitable treatment under the law and erode the bonds of civil society.²⁰

This is not to say that the laudatory reduction in fatal shootings by police officers is unimportant. The recorded decreases in police shootings exhibit a meaningful illustration of the progress that law enforcement departments can achieve when reform efforts are targeted and emphasized in training and professional discipline for the use of deadly force. It is significant, however, that cultural training practices and uniformly employed discipline are lacking in other important areas of police work. Additional police reforms are required to reduce civil rights violations where they continue to occur in the course of complex police investigations and in response to questionable crime reduction strategies.

For example, a compelling case can be made for providing better training and harsher discipline to law enforcement officials to prevent officers from transgressing constitutional requirements for initiating a legal stop based on individualized suspicion. Currently, an urgent need exists to halt the frequent police practice of disproportionately stopping individuals of color based on statistical probabilities and demographics. Racial profiling compromises civil

rights and constitutional principles. Such incidents often leave blameless, upstanding persons with emotional scars, if not physical injuries. These scars and injuries cause these individuals to remain apprehensive about the prospect of future adverse encounters with police officers. Left with no assurances that effective disciplinary actions will be taken or reforms implemented, the injured individuals maintain lingering doubts about the objectivity of persons who wear badges, carry guns, and make critical judgments about who is and who is not a criminal suspect.

As the Cato Institute determined in a report about New York City's Street Crime Unit that was released in 2000, "experience has shown that stop-and-frisk tactics unnecessarily endanger the police, the suspect, and bystanders. Policymakers in New York and elsewhere should discontinue the freewheeling stop-and-frisk searches and restore the constitutional standard of probable cause without delay."²¹

The Commission recognizes and reiterates that the adverse actions of some officers are not representative of all law enforcement professionals. Law-abiding officers should not have to pay for the crimes committed by a few whose actions are memorialized in news headlines. The problem of police misconduct, however, is too pervasive and complex to be reduced to simply blaming a few rogue law enforcement officers. It is important to note that the problem of police misconduct is not limited to white officers but may include officers of color. Indeed, police practices and policies as a whole, which include training, use of deadly force, oversight, and the police culture, contribute to the problem. Correcting these issues and addressing community concerns are the only legitimate means of ensuring the protection of the civil rights of all Americans.

COMMISSION REPORTS

Since the publication of *Guardians*, the Commission has remained in the forefront of examining police misconduct and its effect on civil rights. It has published more than 20 reports since *Guardians* discussing these issues

²⁰ Sandra Bass, assistant professor, University of Maryland, statement before the U.S. Commission on Civil Rights, National Police Practices and Civil Rights Briefing, June 16, 2000, transcript, p. 15 (hereafter cited as Police Practices Briefing Transcript).

²¹ Timothy Lynch, "We Own the Night: Amadou Diallo's Deadly Encounter with New York City's Street Crimes [sic] Unit," Cato Institute, Mar. 31, 2000, p. 8.

and made numerous recommendations on how to best address police misconduct.²²

A review of these reports reveals that the problems discussed in *Guardians* decades ago persist despite many calls for change. The Commission repeated many of the recommendations it made in *Guardians* on improving police practices and protecting civil rights in its subsequent reports. The problems, however, continue with no end in sight to the constant barrage of police misconduct reports. This led the Commission to conduct a briefing and ask several experts on police practices to provide an update on what has happened since *Guardians* and where the future lies with regard to how our guardians perform their jobs and serve our country while still protecting constitutionally guaranteed civil rights.

BRIEFING

On June 16, 2000, the Commission gathered a group of experts on police issues to examine police misconduct and recommend changes that would be appropriate for present-day problems. Dr. Sandra Bass, Dr. James Fyfe, Dr. Robert Loudon, Dr. Charles Ogletree, and Mr. Hubert Williams were the five panelists invited to discuss current police practices in the United States and their effect on civil rights. Their expert presentations and previous Commission reports served as bases for the present publication.

Sandra Bass has been an assistant professor at the University of Maryland in the Department of Criminology and Criminal Justice since 1998. Prior to her association with the University of Maryland, Dr. Bass was a policy analyst and doctoral fellow at the Rand Corporation, where she conducted research from 1997 to 1998 on early childhood violence prevention. She taught courses at the University of Maryland in advanced policing. Dr. Bass has a Ph.D. in political science from the University of California at Berkeley. She has written numerous articles on police and minority communities.²³

James Fyfe is a professor of criminal justice and senior public policy research fellow at the Temple University Center for Public Policy. Dr. Fyfe is also the project director of the Crime and

Justice Research Institute in Philadelphia. He is a retired New York City police officer. Dr. Fyfe is the co-author of *Above the Law: Police and the Excessive Use of Force*. He has a B.S. from the John Jay College of Criminal Justice at the City University of New York (CUNY) and an M.A. and Ph.D. in criminal justice from the State University of New York.²⁴

Robert Loudon is director of the Criminal Justice Center and Security Management Institute at John Jay College of Criminal Justice at the City University of New York. He is also an adjunct member of the sociology department and the department of law, police science and criminal justice administration at CUNY. Dr. Loudon is a 21-year veteran of the New York City Police Department. He received a B.A. from Baruch College and an M.A. from John Jay College. He received an M.A. and Ph.D. in philosophy from CUNY.²⁵

Charles Ogletree is the Jesse Climenko Professor of Law at Harvard University School of Law. His research interests include public defender systems, standards of competence for counsel, and criminal justice administration. Dr. Ogletree is co-author of *Beyond the Rodney King Story—An Examination of Police Conduct in Minority Communities*. He received a B.A. and M.A. in political science from Stanford University and a law degree from Harvard University School of Law.²⁶

Hubert Williams is president of the Police Foundation, an independent nonprofit research and technical assistance organization dedicated to the improvement of police practices. As president, Mr. Williams is a leading advocate for professional standards and uniform practices in policing. A 30-year veteran of policing, he became one of the youngest chief executive officers of a major police department on the Newark police force from 1974 to 1985. Mr. Williams has a B.S. from the John Jay College of Criminal Justice and a J.D. from Rutgers University School of Law. He was a research fellow at Harvard University School of Law, Center for Criminal Justice, and is a graduate of the FBI National Academy.²⁷

²² See appendix A.

²³ Chairperson Mary Frances Berry, Police Practices Briefing Transcript, pp. 5–6.

²⁴ *Ibid.*, p. 6.

²⁵ *Ibid.*

²⁶ *Ibid.*, p. 7.

²⁷ *Ibid.*, pp. 6–7.

Recruitment, Selection, and Training for Police Work

The U.S. Commission on Civil Rights has noted in several reports that law enforcement agencies can implement two actions to help protect civil rights: increase the recruitment and hiring of women and people of color from the communities being served and train officers not only in police work but also in community relations, cultural sensitivity, and the importance of diversity. As discussed below, most police departments have not implemented these recommendations, to the detriment of the communities they serve.

The American population is more ethnically diverse now than at the time *Who Is Guarding the Guardians?* was published. In April of 1980, the U.S. Census Bureau accounted for 226,546,000 Americans.¹ By 1990, the number of Americans had increased by more than 22 million.² In July 1998, the Census Bureau reported that the population had grown by another 21 million,³ increasing the total number of residents by more than 43 million since 1980. As the general population grew, so did the relative numbers of each ethnic group.⁴ At a 1992 Commission hearing on

racial and ethnic tensions in America, then-director of population and policy research for the University of Louisville, William O'Hare, testified that people of color accounted for approximately two-thirds of the total population growth from 1980 to 1990.⁵ Professor O'Hare determined that people of color had increased by around 32 percent, and Caucasians had increased by about 4 percent.⁶

Professor O'Hare also identified Asian Americans, Pacific Islanders, and Hispanics as rapidly growing groups of residents. Between 1980 and 1990, the number of Asian Americans doubled, increasing by six million from 1980 to 1998.⁷ The Hispanic population increased by over 50 percent, adding 15 million people to that population

¹ Bureau of the Census, *Statistical Abstract of the United States: 1999*, table 12, "Resident Population—Selected Characteristics, 1790 to 1998, and Projections, 2000 to 2050," 119th ed. (1999), p. 14 (hereafter cited as *1999 Census Statistics*). The total listed above represents the addition of the total number of males and the total number of females.

² Ibid. The total listed above represents the total number of males and the total number of females reported in April 1990 minus the total number of males and females reported in April 1980.

³ Ibid. The total listed above represents the total number of males and the total number of females in July 1998 minus the total number of males and the total number of females reported in April 1990.

⁴ Perhaps one of the strongest indicators of the change in the American population is the difference in racial data used by the U.S. Census Bureau. The Census Bureau's racial

data reflect the self-classification of the respondents, or how the individual perceives his or her own racial identity. *1999 Census Statistics*, p. 5. See also Bureau of the Census, *Statistical Abstract of the United States: 1982–83*, 103rd ed., p. 3 (hereafter cited as *1982 Census Statistics*). In 1980, if a resident of "mixed racial parentage" was unable to provide a single response to the race identification question, then the race of the mother was used. Ibid., p. 3. If a single response for the racial identity of the mother could not be provided, then the first race reported by the respondent was used. Ibid. This practice varies from 1970 when the race of the respondent's father was used. Ibid. The 1990 census included an "other" racial category with a provision for a write-in classification. *1999 Census Statistics*, p. 5.

⁵ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—A National Perspective*, May 1992, p. 94.

⁶ Ibid. Professor O'Hare attributed the rapid increase in the population of people of color, in part, to immigration. "Roughly speaking, about 75 percent of the Asian and Pacific Islander growth in the 1980s was due to immigration, and about half of the Latino growth in the 1980s was due to immigration. A lot of people don't realize that almost a sixth of the African American population growth was due to immigration from Africa and the Caribbean." Ibid., p. 95.

⁷ Ibid.

between 1980 and 1998.⁸ African Americans grew by more than 12 percent, increasing that group by seven million from 1980 to 1998.⁹ Aleut, Eskimo, and Native American residents grew by approximately one million.¹⁰

RECRUITMENT

The lack of diversity in the ranks of law enforcement officers continues to be a major problem with police departments throughout the country. In 1981, the Commission found that the "serious underutilization of minorities and women in local law enforcement agencies continues to hamper the ability of police departments to function effectively in and earn the respect" of the communities they serve, thereby increasing the likelihood of tension and violence.¹¹

This observation stands true today as revealed in hearings throughout the nation and documented by several Commission reports. In Chicago, the Commission found a "significant under-representation of minorities and women" among police officers, particularly those who speak other languages.¹² A 1995 briefing held in Washington, D.C., revealed that careful recruitment and selection procedures would improve diversity in the police force and officers' ability to deal with community members without resorting to discriminatory practices or harassment.¹³ Examining the justice system in South Dakota as it relates to Native Americans, the Commission found that the Federal Bureau of Investigation and other U.S. Department of Justice divi-

sions that serve Native Americans must expand efforts to recruit Native Americans.¹⁴ Even in the small town of Caruthersville, Missouri, where the general population is predominately black and Hispanic, almost 80 percent of the police officers are white, which some community members believed contributed to the "abusive attitudes toward black residents."¹⁵

The experts at the Commission's June 2000 briefing on national police practices and civil rights echoed the call for increased diversity. Charles Ogletree suggested that the Commission continue to focus its attention on diversity in the recruitment, selection, and training of law enforcement officers.¹⁶ He opined that the solution to repairing the public's perception of the police is to encourage African Americans, Hispanics, Asian Americans and Pacific Islanders, American Indians, and women to become officers, so that the communities of people of color will begin to see a police force that "looks like us."¹⁷

James Fyfe, professor of criminal justice at Temple University, similarly stated that the first issue to be addressed should be how police hiring standards have changed since the publication of *Guardians*.¹⁸ He said that at the time *Guardians* was published, police departments hired on the basis of very objective standards: "white males who are a certain height and who could lift a certain amount of weight and who had 20-30 corrected vision."¹⁹ Since then, police hiring standards have changed radically, and consequently the composition of police departments has changed.²⁰ Dr. Fyfe said police departments are more diverse today; the Philadelphia Police Department is 22 percent female,²¹ and the po-

⁸ Ibid.

⁹ Ibid. The total listed above represents the total number of African American people reported in July 1998 minus the total number of African American people reported in April 1980.

¹⁰ Ibid. The total listed above represents the number of American Indian, Eskimo, and Aleut people reported in July 1998 minus the total number of American Indian, Eskimo, and Aleut people reported in April 1980.

¹¹ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, p. 5 (hereafter cited as USCCR, *Guardians*).

¹² U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume III: The Chicago Report*, September 1995, p. 149.

¹³ U.S. Commission on Civil Rights, *Racism and Sexism in Local and State Law Enforcement Agencies Briefing*, October 1995, transcript, p. 3 (hereafter cited as *Racism and Sexism Briefing Transcript*).

¹⁴ South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, March 2000, p. 40.

¹⁵ Missouri Advisory Committee to the U.S. Commission on Civil Rights, *Race Relations in Pemiscot County*, October 1994, pp. 23-24.

¹⁶ Charles Ogletree, statement before the U.S. Commission on Civil Rights, National Police Practices and Civil Rights Briefing, June 16, 2000, transcript, p. 14 (hereafter cited as *Police Practices Briefing Transcript*).

¹⁷ Ibid., p. 15.

¹⁸ James Fyfe, *Police Practices Briefing Transcript*, p. 20.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

lice departments in Baltimore, Memphis, Newark, and New Orleans average 7 percent non-white officers.²²

While acknowledging that the increase in diversity is impressive, Sandra Bass noted that more should be done. She promoted the idea of taking diversity goals a step further, recommending that police organizations become culturally competent by recognizing and responding in a systematic way to the diversity of their constituency by ensuring that this diversity is represented and respected within their own organizational structure and culture.²³ A culturally competent police organization could develop the means for delivering public services that respond to the diversity of its community.²⁴

Indeed, Robert Loudon advocated that a major study be done to determine how to increase diversity. In particular, he suggested the study look at municipal and local policing as opposed to departments in large cities or federal law enforcement agencies.²⁵ Hubert Williams, however, thought more modest steps should be taken and noted that the Presidential Commission on Law Enforcement recognized that some police personnel problems might be rectified if interested applicants could learn about the profession at a younger age.²⁶

Although diversity has been recognized as an ideal that should be achieved, the Commission has found that its realization has been, at best, difficult.²⁷ Indeed, even when some police departments made real efforts to increase diversity, they were unable to achieve their desired results. In Chicago, for example, although universal support existed for a diverse police force and great progress had been made in accomplishing that goal, the Chicago Police Department had a "significant under-representation of minorities in comparison with other city departments," especially with regard to leadership

positions such as lieutenants and captains.²⁸ Additionally, some law enforcement agencies such as Los Angeles, which increased diversity, could not maintain it, leading to high attrition rates among women and officers of color.²⁹

Many reasons exist for this lack of interest by women and people of color in joining and remaining in police departments. One is that the recruitment efforts of police departments are often too broad and fail to target minority groups and women. Some departments, when formulating a recruitment plan and advertising program, fail to consult leaders of communities from which they seek new recruits. This may partly account for why underrepresented groups tend to shy away from becoming police officers.

Another reason for the lack of interest appears to be that these groups do not look favorably upon the police force. As discussed in *Guardians* almost 20 years ago, many women and people of color have negative perceptions of police officers.³⁰ Indeed, James Fyfe explained at the briefing that for a long time the "social order" of things has held people at the bottom; therefore, "anyone who is at the bottom of the social totem pole has absolutely got to resent the police because they are seen as the people who are keeping them in their place, whether it is African Americans or Catholics in Belfast or Muslims in the former Yugoslavia."³¹ This perception hampers recruitment, especially when it is reinforced by statistics showing low rates of hiring, high levels of attrition, and lack of opportunity for advancement of women and officers of color.³²

In Washington, D.C., the Commission learned that many residents in the Hispanic community viewed police departments as "symbols of oppression."³³ The Commission found that in Los Angeles a "deep and long-standing schism" ex-

²² Ibid., p. 21.

²³ Sandra Bass, Police Practices Briefing Transcript, p. 17.

²⁴ Ibid., p. 18.

²⁵ Robert Loudon, Police Practices Briefing Transcript, p. 18.

²⁶ Hubert Williams, Police Practices Briefing Transcript, pp. 70-73.

²⁷ See generally Commission reports dealing with police practices listed in appendix A.

²⁸ Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Police Protection of the African American Community in Chicago: An Update*, June 1999, p. 37.

²⁹ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, May 1999, p. 89 (hereafter cited as USCCR, *Los Angeles Report*).

³⁰ USCCR, *Guardians*, p. 11.

³¹ Fyfe, Police Practices Briefing Transcript, p. 59.

³² Ibid.

³³ Racism and Sexism Briefing Transcript, p. 3.

isted between communities of color and the police.³⁴ In fact, officers of color suffered the same discriminatory behavior, including racial slurs, offensive comments, unjustified stops, and harassment, from fellow officers as that experienced by civilians.³⁵ Moreover, female officers reported that sex discrimination and harassment occurred within police departments, which many cited as primary reasons for leaving the force.³⁶

Negative perceptions of law enforcement are not confined to local departments but also extend to federal agencies. A recent lawsuit filed by African American Secret Service agents alleges that officers of color cannot break the "glass ceiling" in their respective departments and/or agencies. Ten current and former agents filed a federal class action suit in May 2000 alleging that "they were denied promotions, given dead-end assignments, unfairly disciplined, and subjected to repeated racial slurs in what they called a long-standing hostile work environment."³⁷ Since the suit was filed, the plaintiffs' attorneys said the remaining Secret Service agents have suffered reprisals, "including forced transfers to jobs with less responsibility and warnings by senior officials to some of the black agents that their careers could be in jeopardy as a result of the class-action lawsuit."³⁸ Jennell Walker Clark, who left the Secret Service after six years of service, stated, "The Secret Service cannot just say it was one office or a personality thing. We were in different offices with different supervisors. It's pretty pervasive."³⁹

Other factors seem to dissuade people from joining the police force. James Fyfe stated that "the desirability of the police job is inversely related to the state of the economy."⁴⁰ He said urban policing is at an all-time low due to recent

scandals.⁴¹ These two factors alone make it very difficult to recruit people for police work.

Dr. Fyfe pointed out another contributing problem: significant differences between urban and suburban police departments. A major point of tension appears to be the pay disparity between the two. Police officers in the suburbs are paid more than urban police officers. In fact, Dr. Fyfe considered the poor pay of urban police officers as a civil rights issue: "the low salaries of urban police officers have no doubt had a deleterious effect on the quality of police-citizen interaction on inner-city streets."⁴² He advocated increasing salaries for urban police officers because higher salaries attract people with professional skills.⁴³ He testified that during the past nine years he has watched suburban police departments achieve the higher standards of the profession while city police departments have not, and that this phenomenon is due to the fact that "you get what you pay for."⁴⁴

SELECTION

In its reports, the Commission found several problems with the selection process for hiring police officers, notably with regard to citizenship, psychological evaluation, and background investigations. In *Guardians*, for example, the Commission found that selection standards did not accurately measure qualities actually required for adequate performance as a law enforcement officer.⁴⁵ This factor contributed to the perpetuation of a "nonrepresentative police force" by disproportionately disqualifying people of color and women applicants.⁴⁶ Overall, biases seemed to exist within many recruit selection systems.⁴⁷

In areas with large immigrant populations, many people of color cannot apply to become officers because they lack U.S. citizenship despite

³⁴ USCCR, *Los Angeles Report*, p. 76.

³⁵ *Ibid.*

³⁶ *Ibid.*, p. 77.

³⁷ Bill Miller, "Black Agents Sue Secret Service; Federal Class Action Suit Alleges Bias in Hiring, Promotion Practices," *The Washington Post*, May 3, 2000, <<http://www.lexis.com/research/NewsGroupFile>> (July 24, 2000).

³⁸ David Johnston, "Black Secret Service Agents Say Agency Tried to Intimidate Them," *The New York Times*, June 2, 2000, <<http://www.lexis.com/research/NewsGroupFile>> (July 24, 2000).

³⁹ Miller, "Black Agents Sue Secret Service."

⁴⁰ Fyfe, *Police Practices Briefing Transcript*, p. 21.

⁴¹ *Ibid.*, pp. 21-22.

⁴² *Ibid.*, p. 23.

⁴³ *Ibid.*, p. 24.

⁴⁴ *Ibid.*

⁴⁵ USCCR, *Guardians*, p. 15.

⁴⁶ *Ibid.*

⁴⁷ See, e.g., U.S. Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000, p. 40 (hereafter cited as USCCR, *Police Practices in New York City*).

having lived in the country for decades.⁴⁸ In particular, Hispanic and Asian Americans and Pacific Islanders may be presumed ineligible regardless of their citizenship status. The citizenship factor may largely account for the racial and ethnic disparity among officers.

At the briefing, Robert Loudon noted that one of the selection factors, educational attainment, must be reviewed.⁴⁹ He called for a better educated police force. However, citing a Law Enforcement Management Administrative Statistics report, he stated that for major police departments in the country, only 1 percent require a four-year degree and 8 percent require a two-year degree as a prerequisite for selection.⁵⁰ Improving the educational attainment of police recruits would result in a more professional police force and put a more "culturally competent officer on the street," he said.⁵¹ Echoing testimony from James Fyfe, Dr. Loudon said one way to do so would be to increase police salaries to encourage college graduates to join the police.⁵²

The Commission also discovered that with regard to selection, the police misconduct problem is, in part, a function of the personality type attracted to police work. Thus, screening out those applicants predisposed to such behavior serves an important purpose with regard to civil rights.⁵³ Interviews, background checks, and psychological testing enable departments to detect individuals with the propensity to transgress.⁵⁴ However, the problems inherent in these examinations tend to eliminate women and people of color from candidacy. The lack of psychologists of color, biases in evaluating candidates of color from urban areas versus white candidates living in the suburbs, and the subjective nature of the entire process all play roles in building bias into the selection system.

TRAINING

A well-trained law enforcement professional deals effectively with community members and

works with them to create a safe and orderly society. Proper training on appropriate interaction with constituents, including the use of force, is the cornerstone of police-community relations. Twenty-first century police practices must manifest sensitivity to the increasingly changing communities being served to fully realize police departments' mandate to serve and protect.

Scholars have had a variety of opinions regarding appropriate training. In *Guardians*, the Commission found that training programs should give sufficient priority to "on-the-job training, programs in human relations, and preparation for the social service function of police officers."⁵⁵ Later reports focused on the biases and prejudices in the training process that may affect police-community relations. One commentator suggested that a value system existed that made officers "act like oppressors."⁵⁶ James Fyfe stated that a better way to define the police is to understand that they are there to maintain order and not necessarily to look for criminals.⁵⁷ He suggested this philosophy should pervade police training programs. He emphasized that nondiscriminatory behavior at basic training would make a significant impact since officers at the early stage in their careers are "eager and receptive," and such training would "stay with them throughout their careers."⁵⁸

Sandra Bass noted that inadequate training plays a role in situations where some police officers choose to refrain from intervening in potentially controversial situations, particularly in large public gatherings where a possibility exists that aggressive police action will create a violent reaction.⁵⁹ She cited the sexual attacks on women at a parade in New York and her personal experience at an Oakland, California, public lake where police officers allegedly failed to respond to calls for help because of their concern that the crowd might react violently.⁶⁰ Robert Loudon discussed the same incident and surmised that the problem stemmed not from training inadequacies, but from the failure of police

⁴⁸ See *ibid.*, p. 12, fn. 24.

⁴⁹ Loudon, Police Practices Briefing Transcript, p. 32.

⁵⁰ *Ibid.*, p. 33.

⁵¹ *Ibid.*, p. 32.

⁵² See Fyfe, Police Practices Briefing Transcript, p. 34.

⁵³ USCCR, *Guardians*, p. 18.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 23.

⁵⁶ Racism and Sexism Briefing Transcript, p. 3.

⁵⁷ Fyfe, Police Practices Briefing Transcript, p. 59.

⁵⁸ *Ibid.*

⁵⁹ Bass, Police Practices Briefing Transcript, p. 77.

⁶⁰ *Ibid.*

supervisors to control the officers and deploy them into action.⁶¹ He remarked: "I think supervision at that point in time was the key. You know, who was guarding the guardians?"⁶²

CULTURAL SENSITIVITY

Many law enforcement agencies do not provide adequate cultural sensitivity training to new recruits and veterans. Indeed, problems have occurred when police departments created their own cultural sensitivity training courses without community input. Some did not use outside experts or community leaders to formulate the learning materials or lectures. For example, at a Commission hearing on police practices and civil rights in New York City, testimony indicated that training materials designed to reduce or eliminate racial, religious, and sexual stereotypes were often laced with negative and potentially offensive stereotypes.⁶³ Input from community leaders, as well as ethnic and religious groups, could eliminate many of the limitations found in training programs across the country. However, many police departments have insisted on developing their own training programs on the use of force and cultural sensitivity without the insight and assistance of civic leaders.

PEOPLE WITH MENTAL DISABILITIES

An issue not specifically addressed in *Guardians* is how the police are trained to interact with people with mental impairments. Police officers, with limited or no training, often confuse the mentally retarded as drunk, mentally ill, or drug addicts.⁶⁴ One commentator noted:

Mental retardation should not be confused with mental illness. Mental retardation is lower than average intellectual functioning and is a lifelong condition. Mental illness is an emotional disorder that can often be treated.⁶⁵

Mental retardation and mental illness are distinct conditions. Thus, law enforcement officers should not treat members of those communities alike.⁶⁶ As stated in the Commission report *Sharing the Dream: Is ADA Accommodating All?* police should anticipate a dramatic increase in involvement with persons with disabilities as the trend toward full integration and participation for people with mental disabilities continues.⁶⁷

The Law Enforcement Resource Center (LERC) formulated a training program titled "Police and People with Disabilities," which discusses mental illness and retardation.⁶⁸ The LERC instructed trainees that "approximately ten million Americans . . . experience some emotional or mental disturbance serious enough to require treatment. As a law enforcement officer you will certainly encounter mentally ill individuals in the course of your work."⁶⁹ The LERC also reported that approximately 3 percent of Americans are developmentally delayed or mentally retarded.⁷⁰

Some commentators believe the expectation of law enforcement to easily recognize people with mental impairments is unrealistic. At a hearing held by the Commission, Hennepin County (Minnesota) Police Department senior human resources representative Jim Ramnarine testified that the American Medical Association reported that general practitioner doctors "are more likely not to diagnose someone who has a mental illness . . . than to identify that person with bipolar disorder or depression. So if you look at that premise, the people who are working as professional doctors in the field can't identify somebody who has a mental illness, I think it's really challenging to expect that police

⁶¹ Loudon, Police Practices Briefing Transcript, p. 85.

⁶² Ibid., p. 86.

⁶³ USCCR, *Police Practices in New York City*, p. 29.

⁶⁴ U.S. Commission on Civil Rights, *Sharing the Dream: Is ADA Accommodating All?* October 2000 (hereafter cited as USCCR, ADA Report) (citing Leigh Ann Davis, *People With Mental Retardation in the Criminal Justice System* (Arlington, TX: The Arc, October 1995), p. 2).

⁶⁵ Law Enforcement Resource Center, *Police and People with Disabilities: Facilitator's Guide* (Minneapolis, MN: Law Enforcement Resource Center, 1996), pp. 11-27.

⁶⁶ Most people with mental retardation live independently in the community and may not appear to have a significant disability. USCCR, ADA Report.

⁶⁷ Ibid. (Davis, *People With Mental Retardation in the Criminal Justice System*, p. 2). Law enforcement activities are covered by Title II of the ADA. Title II requires state and municipal governments to make all activities, programs, and public transportation accessible to persons with disabilities. 42 U.S.C. 12131-12165 (1990).

⁶⁸ Law Enforcement Resource Center, *Police and People with Disabilities*, pp. 11-27.

⁶⁹ Ibid., p. 11.

⁷⁰ Ibid., p. 25.

officers can do that based on an encounter."⁷¹ Nevertheless, law enforcement officers must receive instruction on how to communicate effectively with people with mental impairments when able to identify them.

The LERC recommends to police officers the following guidelines for interaction with the mentally retarded: (1) fully explain who you are, why you are there, and your expectations of the subject; (2) ask the subject directly, if you suspect he or she may be developmentally delayed; (3) use simple language, avoiding slang terms and "yes or no" questions (subjects may give you the answer they think you want to hear); (4) discuss one issue at a time, asking questions to ensure the subject understands; (5) develop an accord between you and the person; and (6) remain patient and calm.⁷² The Arc, a national organization of and for people with mental retardation and related disabilities and their families, recommends the following to law enforcement officers who deal with the mentally retarded: (1) request the person repeat each phrase of a Miranda warning in his or her own words to ensure understanding and not parroting, and (2) videotape interviews.⁷³

The LERC offers the following separate guidelines to police officers on dealing with mentally ill persons: (1) remain calm and nonthreatening; (2) be tactfully truthful; (3) inquire about medications (ascertaining the types of medications prescribed to the subject and when they were last administered to aid in assessing the situation); (4) be alert, as the behavior may be unpredictable; and (5) remember that most mentally ill people are not a threat.⁷⁴ The recommended long-term solution for police interaction with people with mental disabilities involves what the LERC calls "networking" or inter-agency agreements between law enforcement and human service providers.⁷⁵ The purpose of

such an agreement is to alleviate police interaction with mentally impaired persons unless police intervention is absolutely required.⁷⁶ In those situations where officer involvement is necessary, then the human service agency can provide expert assistance.⁷⁷

The following story is an example of unfortunate consequences when law enforcement officers have not been instructed on how to communicate with people with mental disabilities. In 1996, Deborah Stagg of Ithaca, New York, "was known around town as a woman so disturbed that she had once delivered her own baby by cutting her womb open with a penknife."⁷⁸ Ithaca police officers arrived at Ms. Stagg's apartment in response to a call from neighbors that she was "screaming and raving alone in there."⁷⁹ Ms. Stagg "bolted from her barricaded bathroom and stabbed (Ithaca) Inspector Michael A. Padula in the neck" with a steak knife.⁸⁰ The remaining officers opened fire on Ms. Stagg.⁸¹ Both Inspector Padula and Ms. Stagg died as a result of the injuries they sustained during the incident.⁸²

The Memphis (Tennessee) Police Department developed "one of the most effective programs" for teaching municipal police departments on how to effectively handle calls with emotionally disturbed persons.⁸³ The "Memphis Plan" requires police officers to form Crisis Intervention Teams and receive special training from mental health experts on how to handle crisis situations and de-escalate any violence. The Crisis Intervention Team is dispatched to defuse volatile situations and transport mentally disturbed people to local mental health crisis centers rather than police stations.⁸⁴ The model developed by the Memphis Police Department has been adopted by other police departments across

⁷¹ USCCR, ADA Report (citing Ramnaraine testimony, U.S. Commission on Civil Rights, Americans with Disabilities Act Hearing, Nov. 12-13, 1998, p. 81).

⁷² *Ibid.*, p. 26.

⁷³ *Ibid.* (citing The Arc, *A Police Officer's Guide*). See also Leigh Ann Reynolds, *Understanding Mental Retardation: Training for Law Enforcement* (Arlington, TX: The Arc, 1998).

⁷⁴ *Ibid.*, p. 12.

⁷⁵ *Ibid.*, p. 14.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Laurie Goodstein, "Trying to Prevent the Next Killer Rampage," *The New York Times*, Sept. 6, 2000, p. A1.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

the country.⁸⁵ The police department in Ithaca, New York, implemented the Memphis Plan with a variation that addressed prevention. Police resources are used to follow-up on people with chronic problems who refuse treatment.⁸⁶ For example, Lieutenant John Saul of the Ithaca Police Department and social worker Terry Garahan persuaded a "paranoid factory worker who wanted the police to investigate 'mind intrusion machines' that he insisted were planted in his home and workplace" to enter into treatment.⁸⁷

Recent history brought the term "suicide by cop" into discussions on police practices. Amnesty International defines "suicide by cop" as "incidents in which suicidal individuals have overtly provoked the police into shooting them."⁸⁸ One such incident occurred in Denver, where a young man, distraught over the breakup with his girlfriend, "ran towards an officer with a kitchen knife in his hand yelling 'shoot me, shoot me.'"⁸⁹ Effective training on how to handle all situations with emotionally disturbed persons under the Memphis Plan would also assist officers with encounters with suicidal individuals.

GAY, LESBIAN, BISEXUAL, AND TRANSGENDERED COMMUNITY

The headlines have not been filled with accounts of abuse against members of the gay, lesbian, bisexual, and transgendered (GLBT) community at the hands of law enforcement. Nevertheless, as integration of this community grows, police officers will encounter openly gay, bisexual, and transgendered Americans. The Committee United Against Violence is one of few organizations collecting data on police-community relations with GLBT people. In 1998, the committee reported that "[it] received information on 51

documented incidents of anti-GLBT violence by law enforcement officers in the USA (up from 42 in 1997)."⁹⁰ The committee also reported that police officers allegedly selectively enforce and entrap gay Americans.⁹¹ The alleged entrapment occurs when undercover police officers approach gay men and then charge them with lewd conduct.⁹²

Some police departments incorporate nonhomophobic instruction in their diversity training. For example, the New York City Police Department's Executive Development Program for high-ranking officers offers an optional course on issues involving law enforcement officers with gays and lesbians.⁹³

USE OF FORCE

Officers with limited experience tend to rely on force to achieve order.⁹⁴ At a 1992 Commission hearing in Washington, D.C., then-chairman of the Metropolitan Police Labor Committee of the Fraternal Order of the Police, Officer Gary Hankins, concluded that "when officers don't have that kind of confidence, don't have the knowledge they need about alternatives, [they] may resort to their authority or the color of their authority to hide their fear."⁹⁵

In *Guardians*, the Commission found that "[t]raining in the use of deadly force is essential but usually insufficient and subject to ambiguities."⁹⁶ Recent headlines have been filled with tales of minorities allegedly suffering injuries, indignities, and even death at the hands of police officers.⁹⁷ As a result, there has been a trend to

⁸⁵ Ibid. The report lists the following municipal police departments as implementing the Memphis model for handling calls from emotionally disturbed persons: Albuquerque, New Mexico; Portland, Oregon; Seattle, Washington; and Waterloo, Iowa.

⁸⁶ Ibid., p. A18. The article lists Los Angeles, California, and Birmingham, Alabama, as cities that have paired law enforcement with social workers.

⁸⁷ Ibid.

⁸⁸ Amnesty International, *United States of America: Race, Rights and Police Brutality*, no. AMR51/147/99 (September 1999), p. 11.

⁸⁹ Ibid., quoting an August 1999 *Denver Post* report.

⁹⁰ Ibid., p. 17.

⁹¹ Ibid.

⁹² Ibid.

⁹³ USCCR, *Police Practices in New York City*, p. 33 (citing Task Force on New York City Police/Community Relations: Report to the Mayor, March 1998, pp. 64–65).

⁹⁴ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report*, 1993, p. 31 (hereafter cited as USCCR, *Mount Pleasant Report*).

⁹⁵ Ibid. (citing Officer Gary Hankins, Fraternal Order of Police, testimony, Hearing Before the U.S. Commission on Civil Rights, Washington, D.C., Jan. 29–31, 1992, transcript, vol. 2, p. 266) (hereafter cited as USCCR, *Mount Pleasant Hearing Transcript*).

⁹⁶ USCCR, *Guardians*, p. 29.

⁹⁷ See the stories summarized in the introduction.

train officers on how to avoid the use of deadly force. One example comes from Montgomery County, Maryland. In a Memorandum of Agreement between the U.S. Department of Justice and the Montgomery County Police Department,⁹⁸ the police department must integrate "incident de-escalation techniques" into its training program.⁹⁹

Governor John Rowland of Connecticut developed a Law Enforcement Council that reported its findings on police use of deadly force.¹⁰⁰ Although the council concluded that there "is no evidence that officer-involved shootings are not effectively and fairly investigated" in Connecticut, it also made recommendations regarding the use of force.¹⁰¹ The recommendations of the council include the following: (1) establish a statewide policy on the use of deadly force; (2) emphasize the use of nondeadly force by providing equipment effective in controlling aggressive behavior but not lethal to persons; and (3) implement procedures that reveal an officer's predisposition to use excessive force.¹⁰²

Some experts find value in exploring alternative methods to diffuse potentially volatile situations. Dr. Loudon said policy changes sometimes occur in response to a critical incident.¹⁰³ He recalled a case in which a citizen was shot and killed by a police tactical team.¹⁰⁴ Dr. Loudon

explained that these types of incidents cause law enforcement agencies to ask, "How can we do things differently?"¹⁰⁵ He opined that although incidents of persons being shot by police will not be eliminated, alternative approaches should be used before officers take "more affirmative physical action."¹⁰⁶ "Maximizing safety for the officers, we're trying to figure out can we do it in a—if you will—a kinder, gentler way before we have to revert to the final use of force," he said.¹⁰⁷

Even within the ranks of police departments, perceptions vary regarding the consistent use of physical force. One report found that 31.1 percent of officers agree that police are not permitted "to use as much force as is often necessary" in making arrests.¹⁰⁸ Even more law enforcement officers (42.9 percent) agree that "always following the rules is not compatible with getting the job done."¹⁰⁹ However, officers do believe that police seldom "use more force than is necessary to make an arrest."¹¹⁰

The majority of our nation's police force believe officers do not "always report serious criminal violations involving abuse of authority by fellow officers."¹¹¹ Most police officers (52.4 percent) also agree that "it is not unusual for a police officer to turn a blind eye to improper conduct by other officers."¹¹²

When the statistics are divided based on race, officers disagree. Most white officers (95 percent)

⁹⁸ Memorandum of Agreement between the U.S. Department of Justice (DOJ), Montgomery County, Maryland, the Montgomery County Department of Police, and the Fraternal Order of Police, Montgomery County Lodge 35, Inc., executed on Jan. 14, 2000. The agreement was executed under the authority given to the DOJ in Title VI of the Safe Streets Act under, Title VI of the Omnibus Crime Control and Safe Streets Act of 1968. The DOJ may investigate complaints of alleged discrimination by law enforcement agencies and attempt to resolve those matters through nonadversarial means. Implementation of Title VI of the Civil Rights Acts of 1964, 28 C.F.R. §§ 42.101–42.112 (1999). See also Implementation of § 815(c)(1) of the Justice System Improvement Act of 1979, 28 C.F.R. §§ 42.201–42.215 (1999).

⁹⁹ Montgomery County Police Department Agreement, sec. VII (B).

¹⁰⁰ Rachel Gottlieb, "A New Look at Deadly Force; Special Panel Urges Policy Changes; Skeptics Say Racial Tensions Will Remain," *The Hartford Courant*, Dec. 16, 1999, p. A1.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Loudon, Police Practices Briefing Transcript, p. 36.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ David Weisburd, Rosann Greenspan, Edwin Hamilton, Hubert Williams, and Kellie Bryant, *Police Attitudes Toward Abuse of Authority: Findings from a National Study*, National Institute of Justice, May 2000, p. 2 (hereafter cited as Weisburd and others, *Police Attitudes Toward Abuse of Authority*). The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹⁰⁹ Ibid. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹¹⁰ Ibid., p. 3. Sixteen percent of officers answered that police never use more force than necessary to make an arrest; 21.7 percent answered that police "sometimes, often or always" use more force than necessary to make an arrest.

¹¹¹ Ibid., p. 5.

¹¹² Ibid. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

do not believe police are more likely to use physical force against blacks and other minorities than against whites in similar situations.¹¹³ The majority of black and other minority officers (69.5 percent) believe persons who look like them are more likely to receive physical force from police.¹¹⁴ The officers were also divided regarding their views on the use of physical force on persons of different socioeconomic classes. When asked if police officers are more likely to use force against poor people than against middle-class people in similar situations, 91.2 percent of white officers disagreed,¹¹⁵ while 71.6 percent of black and other minority officers agreed.¹¹⁶ Nearly all law enforcement supervisors (97.3 percent) agree "good first-line supervision can help prevent police officers from abusing authority."¹¹⁷ Most supervisors (54.5 percent) also agree that police department policy should be no stricter than the law.¹¹⁸

Dr. Fyfe expressed concern at the Commission's June 2000 briefing on national police practices and civil rights about the militarization of the police force.¹¹⁹ The basis for this concern was rooted in the new vernacular of law enforcement, including "street survival," "edged weapons," and "zones of safety."¹²⁰ Dr. Fyfe opined that some police officers are distracted from their focus on resolving the problems they were hired to solve by an unrealistic concern for their own safety.¹²¹ He conceded that officers should be aware of

safety issues "but [an officer's unrealistic concern for his or her own safety] is a form of unhealthy paranoia that in my experience has caused some impressionable young officers to become too quick on the trigger."¹²²

RACIAL PROFILING

Racial profiling was not discussed in *Guardians* but has become a major problem throughout the nation. Attitudes and theories on racial profiling vary considerably. Both law enforcement professionals and scholars voiced their opinions at the Commission's briefing on how the beliefs of individuals are not easily shed when they carry their badges.

Commission Chairperson Mary Frances Berry asked whether racial profiling issues are related to training.¹²³ In response, James Fyfe maintained that when he was a witness for the public defender in Gloucester County, New Jersey, racial profiling was a matter of official policy and training.¹²⁴ In that case, the municipal police department used a training video where a Jamaican American officer "talked about Jamaican posses" and "included scenes from the old Jimmy Cliff movie, *The Harder They Come*."¹²⁵ The video, Dr. Fyfe said, "pointed out that Jamaicans can be identified because they wear dreadlocks. But that lots of Jamaicans have gotten wise to the fact that the police identify them on the basis of dreadlocks so a lot of them don't wear dreadlocks. So, what the message I got out of that was any black man was fair game."¹²⁶ This example shows that officers of color are capable of engaging in racial profiling. The perpetuation of stereotypes encourages an "us versus them" mentality that can infect any police department. As a result, even the most objective officer of color can look at a person of color with insolence and suspicion, he said.¹²⁷

¹¹³ Ibid. The percentage in the text is the total of those officers who answered that they strongly disagree or disagree with the statement.

¹¹⁴ Ibid. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹¹⁵ Ibid. The percentage in the text is the total of those officers who answered that they strongly disagree or disagree with the statement.

¹¹⁶ Ibid. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹¹⁷ Ibid., p. 11. The percentage in the text is the total of those supervisors who answered that they strongly agree or agree with the statement.

¹¹⁸ Ibid. The percentage in the text is the total of those supervisors who answered that they strongly agree or agree with the statement.

¹¹⁹ Fyfe, Police Practices Briefing Transcript, p. 29.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid., p. 31.

¹²³ Chairperson Mary Frances Berry, Police Practices Briefing Transcript, p. 78.

¹²⁴ Fyfe, Police Practices Briefing Transcript, p. 79.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Charles Ogletree Jr. and others, *Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities* (Boston: Northeastern University Press, 1995), p. 121.

Some experts believe that such attitudes are not accidental but result from a history of oppression. Hubert Williams testified that the fundamental role of the police is to equitably enforce and uphold the rule of law without regard to race, ethnicity, or socioeconomic status.¹²⁸ Nevertheless, Mr. Williams explained that the nation's history involves a legal order that "has not only countenanced but sustained slavery, segregation, and discrimination, and the fact that police were bound to uphold that order set a pattern for police behavior and attitudes towards minority communities that has persisted until the present day."¹²⁹ The enforcement of laws that are mechanisms for discrimination further divides police officers and the community. As stated by Mr. Williams, the obligation of police to enforce unjust laws, as during the Jim Crow era, perpetuates the legacy of fear and mistrust in minority communities.¹³⁰

Mr. Williams added that the responsibility for racial profiling should be placed directly with top police personnel.¹³¹ He stressed the importance of enforcing departmental regulations throughout the upper levels of police management, as well as among the rank-and-file members.¹³² By doing so, it would reduce the incidence of racial profiling. For example, while discussing the war on drugs,

every indicator of drug use outside of those police statistics, like the NIDA household surveys, and emergency hospital room entrants, . . . shows a completely different breakdown in terms of who the drug users in this country are. The police statistics tell you that the great majority of drug users are African Americans and minorities.¹³³

In other words, Mr. Williams believed that racial profiling could be, in part, the result of police departments trying to demonstrate that they have made a significant number of arrests in combating the drug problem in America.¹³⁴

¹²⁸ Williams, Police Practices Briefing Transcript, p. 49.

¹²⁹ *Ibid.*, pp. 49–50.

¹³⁰ *Ibid.*, p. 50.

¹³¹ *Ibid.*, pp. 86–87.

¹³² *Ibid.*

¹³³ *Ibid.*, p. 87.

¹³⁴ *Ibid.*, pp. 88, 91. "[T]here are police officers that have biases, prejudices and they are looking to harass people. I

The American Civil Liberties Union issued a special report in June 1999 which argued that racial profiling should be viewed in its proper historical context.¹³⁵ It found that "[p]olice abuse against people of color is a legacy of African-American enslavement, repression, and legal inequality." During the National Advisory Commission on Civil Disorders (the Kerner Commission) hearings in the fall of 1967 "one of the complaints lodged repeatedly was 'the stopping of Negroes on foot or in cars without obvious basis.'" ¹³⁶

The ACLU report indicates that a U.S. Drug Enforcement Administration (DEA) special agent developed the first profile in the early 1970s.¹³⁷ The special agent developed a drug courier profile while assigned to the Detroit Metropolitan Airport.¹³⁸ By 1979, the agent's drug courier profile was in use at more than 20 airports. The components of the DEA drug courier profile were behavioral, not racial. Some of the characteristics included in the profile were: "Did the person appear to be nervous? Did he pay for his airline ticket in cash and in large bills? Was he going to or arriving from a destination considered a place of origin of cocaine, heroin or marijuana? Was he traveling under an alias?"¹³⁹

The previously color-blind profile changed considerably. In 1982, the Reagan administration intensified its war on drugs by establishing the Task Force on Crime in South Florida. Then-Vice President George Bush managed the task force whose mission was "to intensify air and sea operations against drug smuggling in the South Florida area."¹⁴⁰ By 1985, the Florida Department of Highway Safety and Motor Vehicles joined in the war on drugs in the state and developed guidelines titled "The Common Characteristics of Drug Couriers." Troopers were in-

don't consider this to be big numbers. I think this is a small percentage of officers." *Ibid.*

¹³⁵ David A. Harris, "Driving While Black: Racial Profiling on Our Nation's Highways; An American Civil Liberties Union Special Report," American Civil Liberties Union, June 1999, <<http://www.aclu.org/profiling/report/index.html>> (Sept. 27, 2000).

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

structed to be suspicious of (1) rental cars; (2) drivers who did not "fit the vehicle," wear "lots of gold," or are obedient to traffic laws; and (3) racial groups associated with the drug trade. State troopers, using this overtly race-based profile, made countless traffic stops.¹⁴¹

The Los Angeles police force has been credited as the originator of the "professionalism" model of policing once used by the department.¹⁴² Under the professionalism model, the emphasis was crime control.¹⁴³ LAPD officers cruised the streets in an attempt to identify "possible criminals by their appearance and their demeanor."¹⁴⁴ People, believing they were viewed as potential criminals, began to mistrust the police department.¹⁴⁵ The mistrust was not limited to Los Angeles and may have been more pervasive among people of color. A 1968 eleven-city Johns Hopkins University study showed that the "urban lower class" was disproportionately African American and that "dark skin is to the police a statistically significant cue to social status and thus potential criminality."¹⁴⁶

The Fourth Amendment to the U.S. Constitution recognizes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."¹⁴⁷ Any warrant issued in compliance with

the Fourth Amendment shall "particularly describ[e] the place to be searched, and the persons or things to be seized."¹⁴⁸ As the Commission has stated:

Stopping an individual based on statistical probabilities or demographics is prohibited; individualized suspicion remains the relevant standard for initiating a legal stop. As the United States Supreme Court concluded in *Terry*, [the] demand for specificity in the information upon which the police action is predicated is the central teaching of this Court's fourth amendment jurisprudence.¹⁴⁹

The U.S. Supreme Court determined that police officers stopping a vehicle with probable cause to believe the traffic code was violated is reasonable under the Fourth Amendment.¹⁵⁰ In *Whren v. U.S.*,¹⁵¹ the petitioners were stopped at a stop sign in a "high drug area" when they were noticed by police officers in an unmarked car.¹⁵² After the officers made a U-turn to return to the location of the petitioner's car, the driver suddenly turned right, without signaling, and at an "unreasonable speed."¹⁵³ When the officers overtook the petitioner's vehicle, one of the officers approached the driver's window and "observed two large plastic bags of what appeared to be crack cocaine" in the petitioner's hands.¹⁵⁴ The

¹⁴¹ *Ibid.*

¹⁴² USCCR, *Los Angeles Report*, p. 29 (citing David Shaw, "Chief Parker Molded LAPD Image—Then Came the 1960's," *The Los Angeles Times*, May 25, 1992, p. A1). See generally Joseph Gunn, assistant deputy mayor, city of Los Angeles, letter to U.S. Commission on Civil Rights, May 15, 1998. The tenures of LAPD police chiefs Brown, Reddin, and Murdoch immediately followed Chief Parker's. Chief Gates became chief of police after Chief Murdoch's tenure. USCCR, *Los Angeles Report*, p. 29, n. 138.

¹⁴³ *Ibid.* (citing Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 1991, pp. 98–99) (hereafter cited as *Christopher Commission Report*).

¹⁴⁴ USCCR, *Los Angeles Report*, p. 29 (citing Shaw, "Chief Parker Molded LAPD Image").

¹⁴⁵ *Ibid.* (citing *Christopher Commission Report*, pp. 99–100). See also Shaw, "Chief Parker Molded LAPD Image."

¹⁴⁶ USCCR, *Los Angeles Report*, p. 29, fn. 142 (citing Daniel E. Georges-Abeyie, "Symposium: Law Enforcement and Racial and Ethnic Bias," *Florida State University Law Review*, vol. 19 (Winter 1992), p. 717).

¹⁴⁷ U.S. CONST., amend. IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, sup-

ported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume VI: The New York Report*, December 1999, p. 106 (citing *Terry v. Ohio*, 392 U.S. 1, at 21 (1968)) (hereafter cited as USCCR, *New York Report*).

¹⁵⁰ *Whren v. U.S.*, 517 U.S. 806, 819 (1996).

¹⁵¹ *Id.*

¹⁵² *Id.* at 808.

¹⁵³ *Id.* "Their [the MPD officers] suspicions were aroused when they passed a dark Pathfinder truck with temporary license plates and youthful occupants waiting at a stop sign, the driver looking down into the lap of the passenger at his right. The truck remained stopped at the intersection for what seemed an unusually long time—more than 20 seconds. When the police car executed a U-turn in order to head back toward the truck, the Pathfinder turned suddenly to its right, without signaling, and sped off at an 'unreasonable' speed. The policemen followed, and in a short while overtook the Pathfinder when it stopped behind other traffic at a red light." *Id.*

¹⁵⁴ *Id.* at 808–09.

Court determined that the Fourth Amendment's emphasis on the reasonableness of a search and seizure allows certain actions to be taken regardless of the subjective intent.¹⁵⁵

The *Whren* decision does not extend to the sidewalks to allow officers to randomly stop pedestrians. In *Florida v. J.L.*,¹⁵⁶ the U.S. Supreme Court determined that the anonymous tip received by a Miami-Dade police officer that a young black man was at a bus stop, wearing a plaid shirt and carrying a gun was insufficient to stop and frisk the defendant fitting that description.¹⁵⁷ The Court determined that the detention of J.L. was unlawful because (1) the officer did not observe any unusual conduct upon which he could reasonably conclude that criminal activity may be afoot, and (2) there were no indicia of reliability of the tip.¹⁵⁸ Thus, the law remains that without probable cause, individuals' right to be secure in their persons, houses, papers, and effects must not be breached.

According to Charles Ogletree, the African American community does not want to choose between public safety and civil rights.¹⁵⁹ He argued, "They don't want to have to sacrifice their rights to walk in the streets and to avoid profiling, while insisting that they have security in their communities, and I don't think that because of your race you should have to make that compromise."¹⁶⁰

As the Commission stated previously:

One of the real problems with many forms of "profiling" is that the characteristics that are typically compiled tend to describe a very large category of presumably innocent persons. This point was expressly recognized by the United States Supreme Court in *Reid v. Georgia*, 448 U.S. 438 (1980). Indeed, using profiles that rely on racial or ethnic stereotypes is no better, and in many respects is far worse, than allowing individual officers to rely on inchoate and unparticularized suspicions or "hunches," which is clearly not permitted under Fourth Amendment jurisprudence.¹⁶¹

¹⁵⁵ *Id.* at 807, 813–16.

¹⁵⁶ 120 S. Ct. 1375, 146 L. Ed.2d 254 (2000).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Ogletree, Police Practices Briefing Transcript, p. 10.

¹⁶⁰ *Ibid.*

¹⁶¹ USCCR, *New York Report*, p. 106.

In 1999, William Brewer, then-director of the Department of Public Safety for the Oglala Sioux Tribe, agreed that some police officers engage in racial profiling.¹⁶² Mr. Brewer stated that many residents were afraid to drive into the next town because "[c]hances are they're going to get pulled over."¹⁶³

At a 1999 community forum sponsored by the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, former Rapid City (South Dakota) Police Chief Thomas Hennies explained that prejudices and racism exist among all people, including law enforcement officers.¹⁶⁴ Mr. Hennies recalled:

When I first became a policeman here, if you found a drunk Indian downtown, you'd put him in a garbage can. And when he got out, he was sober enough to leave, and that's just the way things were. I can tell you if those things do occur [today], and I'm not so naïve as to say never, but if they do occur, they will be dealt with because we are trying to make a difference.¹⁶⁵

At a 1992 Commission hearing in Washington, D.C., members of the Latino community and other D.C. residents testified regarding police conduct allegedly targeted to the Latino community. They reported the pervasive nature of misconduct and insensitivity from the Metropolitan Police Department.¹⁶⁶ An attorney who worked with the Latino community testified that "members of the Latino community may be subject to police misconduct . . . at any time, notwithstanding their socioeconomic status, language skills, profession, location, or even their conduct."¹⁶⁷ Another attorney testified that such slurs as "spic" and "wetback" were commonly used by

¹⁶² South Dakota Advisory Committee, *Native Americans in South Dakota*, p. 26.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.* The South Dakota Advisory Committee community forum entitled "Native Americans and the Administration of Justice in South Dakota" was held in Rapid City, SD, on Dec. 6, 1999. At the time of the forum, Hennies had been elected to the South Dakota State Legislature.

¹⁶⁵ *Ibid.*

¹⁶⁶ USCCR, *Mount Pleasant Report*, p. 20.

¹⁶⁷ *Ibid.* (citing Daryl Veal, attorney, Fulbright & Jaworski, Mount Pleasant Hearing Transcript, vol. 2, p. 12).

police officers at that time.¹⁶⁸ Several Latino witnesses testified about alleged false arrests, harassment, demeaning language, and excessive force from officers.¹⁶⁹ One young Latino man testified that a Latino officer allegedly approached him while sitting in front of a school, told him to leave, choked, and beat him.¹⁷⁰ In another case, while parking a friend's car, officers allegedly pulled their guns, verbally abused, and accused the young Latino driver of stealing the car.¹⁷¹ The officers allegedly left without an apology after checking the witnesses' identification and the car's papers.¹⁷²

Some law enforcement officials have supported using ethnicity as part of the determination to detain a citizen if "objective crime trend analysis validates the use of these characteristics as 'risk factors' in predicting and responding to criminal activity."¹⁷³ The data used in support of such statistics may mirror the stereotypes of those reliant upon these statistics. When police rely on arrest data that they have generated as a result of targeted drug enforcement efforts, such statistics can create a self-fulfilling prophecy.¹⁷⁴ According to an ACLU report, *Driving While Black*, law enforcement officers look for "drugs primarily among African Americans and Latinos [and consequently] they find a disproportionate number of them with contraband. Therefore, more minorities are arrested, prosecuted, convicted, and jailed, thus reinforcing the perception that drug trafficking is primarily a minority

activity. This perception creates the profile that results in more stops of minority drivers."¹⁷⁵ This cycle repeats despite the statistic that 80 percent of cocaine users are typically "middle-class, white suburbanite[s]."¹⁷⁶

Dr. Fyfe expressed the view that law enforcement training and policy issues tend to dictate how officers perform when confronted with split-second decisions.¹⁷⁷ Dr. Fyfe spoke specifically about the Amadou Diallo case¹⁷⁸ and said every officer with whom he spoke believed he would react in the same manner in those four or five seconds.¹⁷⁹ "[T]he question in that case has always been where the liability lies rather than whether the liability existed," he said.¹⁸⁰

Many officers (48.8 percent) admit that they are more likely to "arrest a person who displays what he or she considers to be a bad attitude."¹⁸¹ Law enforcement officers (88.9 percent) deny that they are "more likely to use physical force against blacks and other minorities than against whites in similar situations."¹⁸² But the story is much different when the officers' answers are split by race. When officers were asked if "police officers often treat whites better than blacks and other minorities," most black and other minority officers (74.7 percent) agreed¹⁸³ and most white officers (88.2 percent) disagreed.¹⁸⁴

During the Commission's briefing on national police practices, Dr. Fyfe posed the question of whether it is appropriate to criminalize profes-

¹⁶⁸ Ibid. (citing Juan Milanes, attorney, D.C. Latino Civil Rights Task Force, Mount Pleasant Hearing Transcript, vol. 2, p. 17).

¹⁶⁹ Ibid., pp. 20–21.

¹⁷⁰ Ibid., p. 21 (citing Emilio Chavez, Mount Pleasant Hearing Transcript, vol. 2, pp. 103–04). The witness testified that he was sitting in front of the Bell School when an officer told him to move. The witness asked him if he was prohibited from being there. The officer allegedly answered in the affirmative, threw the witness against the wall, and choked him. The witness testified that the officer did not handcuff him because he felt "sorry" for the witness and did not want to see him deported. Also, the officer allegedly told the witness that he "should change." Ibid.

¹⁷¹ Ibid. (citing Omar Centurian, Mount Pleasant Hearing Transcript, vol. 2, pp. 82–83).

¹⁷² Ibid.

¹⁷³ Interim Report of the State of New Jersey Police Review Team Regarding Allegations of Racial Profiling, Apr. 20, 1999, p. 56.

¹⁷⁴ Ibid., p. 58.

¹⁷⁵ Harris, "Driving While Black."

¹⁷⁶ Ibid.

¹⁷⁷ Fyfe, Police Practices Briefing Transcript, p. 85.

¹⁷⁸ Ibid. Dr. Fyfe testified for the accused police officers in the Diallo case. See introduction for more information on the Diallo case.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Weisburd and others, *Police Attitudes Toward Abuse of Authority*. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹⁸² Ibid. The percentage in the text is the total of those officers who answered that they strongly disagree or disagree with the statement.

¹⁸³ Ibid., Exhibit 7. The percentage in the text is the total of those officers who answered that they strongly agree or agree with the statement.

¹⁸⁴ Ibid. The percentage in the text is the total of those officers who answered that they strongly disagree or disagree with the statement.

sional mistakes by the police, as in the Amadou Diallo case. He concluded that racial profiling is a policy and training issue.¹⁸⁵ Sandra Bass stated cultural competence is more than how many people of color are hired and promoted and the number of hours of diversity training.¹⁸⁶ Culturally competent organizations not only understand and consistently respond to their constituencies, but also ensure diversity by representing and respecting the community within their own organizational structure and culture.¹⁸⁷

COMMUNITY POLICING

*"The police department is the place where the criminal justice system and the community converge."*¹⁸⁸

Community policing requires a partnership between law enforcement and citizens. The implementation of community policing programs is oftentimes a result of "a forced change rather than voluntary movement."¹⁸⁹ The Bureau of Justice Assistance defines community policing as "a collaboration between the police and the community that identifies and solves community problems. With the police no longer the sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of neighborhoods."¹⁹⁰ The Community Oriented Policing Services Division of the U.S. Department of Justice defines community policing as "proactive, solution-based, and community driven." It occurs when "a law enforcement agency and law-abiding persons work together to do four things: arrest offenders, prevent crime, solve

ongoing problems, and improve the overall quality of life."¹⁹¹

The Community Oriented Policing Services (COPS) office was created by Attorney General Janet Reno to implement and promote community policing.¹⁹² The COPS office declared that 105,000 community policing officers were funded and 30,000 grants were awarded to more than 12,000 law enforcement agencies, covering 87 percent of the country. In fact, some reports indicate that crime has dropped to its lowest level since 1968.¹⁹³ A benefit of the COPS program, and a critical part of its legacy, has been its focus on training. The COPS regional network of training institutes across the country has trained officers in areas including building partnerships within the community, supporting victims of domestic violence, and problem-solving. COPS has also made a substantial contribution to numerous police integrity initiatives and is continuing to develop additional resources to strengthen this critical area.¹⁹⁴

Sandra Bass said research has shown fear of punishment and obtaining a favorable outcome were not the most important factors for the public's perception of fairness in the American justice system.¹⁹⁵ "[T]he belief that they were treated fairly, equitably, and respectfully were more critical indicators for determining overall satisfaction with criminal justice agents, like the police, and positively affected their decision to voluntarily comply with the law in the future."¹⁹⁶ Thus, law enforcement treating residents with respect deters crime and may prevent future crime problems.¹⁹⁷

In the 1970s, the Los Angeles Police Department instituted a version of community policing known as the "Basic Car Plan."¹⁹⁸ Under the

¹⁸⁵ Ibid., pp. 79-83.

¹⁸⁶ Bass, Police Practices Briefing Transcript, p. 17.

¹⁸⁷ Ibid.

¹⁸⁸ Williams, Police Practices Briefing Transcript, p. 49.

¹⁸⁹ Bass, Police Practices Briefing Transcript, p. 19. Dr. Bass attributed the above quote to "one scholar." Ibid. However, the name of the scholar and his or her study were not identified. Ibid.

¹⁹⁰ U.S. Department of Justice, Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, August 1994.

¹⁹¹ U.S. Department of Justice, Office of Community Oriented Policing Services, <http://www.usdoj.gov/cops/news_info/bg_info/bg_definition.htm>.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ U.S. Department of Justice, Office of Community Oriented Policing Services, <http://www.usdoj.gov/cops/news_info/press_releases/pr_9_13_00f.htm>.

¹⁹⁵ Bass, Police Practices Briefing Transcript, p. 18.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid., pp. 18-19.

¹⁹⁸ USCCR, *Los Angeles Report*, p. 29 (citing National Advisory Commission on Criminal Justice Standards and Goals,

plan, a team of officers patrolled a specific area and held monthly community meetings.¹⁹⁹ Lack of community support and budgetary restrictions abolished the team policing approach in 1979.²⁰⁰ In 1991, the Christopher Commission²⁰¹ advised that a community policing model would improve the LAPD's relationship with the community.²⁰² The perception of the Christopher Commission was that community policing emphasized problem-solving, not arrest statistics.²⁰³ The Christopher Commission also found that consistent communication and interaction with community members were necessary to prioritize their concerns and inform them of police efforts to prevent crime in their neighborhoods.²⁰⁴ As a result, the LAPD implemented the Community Policing Advisory Board composed of residents in each geographic region served by the department. The boards meet monthly to identify quality of life and law enforcement issues, discuss possible resolutions, and recommend police priorities.²⁰⁵ LAPD stations house Community Police Academies, which explain police procedures to residents and allow the community to become familiar with how the department operates.²⁰⁶ The instruction is offered in English and Spanish.²⁰⁷

The LAPD solicited the input of various community groups in developing its cultural diversity training.²⁰⁸ The ethnic communities within the LAPD's jurisdiction were not only

included in developing the materials for the cultural diversity programs, but also participated in training programs.²⁰⁹ The LAPD's cultural awareness training goal is to assist officers in the following areas: (1) identifying their own biases about cultural groups; (2) understanding how those biases negatively affect the performance of their duties ranging from problem-solving, community policing, and officer safety; (3) emphasizing skills required to overcome differential treatment of other people; and (4) offering guidelines on how to communicate effectively with specific groups.²¹⁰

Former Rapid City (South Dakota) Police Chief Thomas Hennies contended sensitivity training does not work.²¹¹ Alternatively, Mr. Hennies thought recruitment of qualified persons that mirrored the makeup of the community was the best approach to cultural awareness within the department.²¹² Nevertheless, the Rapid City Police Department conducted cultural training that included a member of the community teaching the Lakota language.²¹³

Former New York City Police Commissioner Howard Safir testified that the community was involved in developing the curriculum for the police department's diversity training.²¹⁴ The issues addressed in the NYPD diversity training included community-police relations, officer attitudes and their effects on job performance,

Report on Police (Washington, D.C.: Government Printing Office, 1973), p. 157).

¹⁹⁹ Ibid.

²⁰⁰ Ibid. (citing Gerald Woods, *The Police in Los Angeles: Reform and Professionalization* (New York: Garland Publishing, 1993), pp. 310–12).

²⁰¹ Ibid., p. 1. After the Rodney King incident (see introduction for details), Warren Christopher headed an independent commission mandated to "examine any aspect of the law enforcement structure in Los Angeles that might cause or contribute to the problem of excessive force." Ibid. (citing *Christopher Commission Report*, p. ii).

²⁰² Ibid., p. 30 (citing *Christopher Commission Report*, p. 100).

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid., p. 160.

²⁰⁷ Ibid.

²⁰⁸ Ibid., p. 93 (citing *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Los Angeles Hearing*, June 15–17, 1993, transcript, p. 118).

²⁰⁹ Ibid.

²¹⁰ Ibid., p. 68 (citing Los Angeles Police Department, "Cultural Awareness for Law Enforcement: Living and Working in Our Diverse Society" (course materials), 1996, p. 1). For example, many Central and South American immigrants may be reluctant to talk to police because of the differing functions and activities of law enforcement in those countries. Ibid., p. 167.

²¹¹ South Dakota Advisory Committee, *Native Americans in South Dakota*, p. 26.

²¹² Ibid.

²¹³ Ibid., p. 27.

²¹⁴ USCCR, *Police Practices in New York City*, p. 33 (citing Howard Safir, police commissioner of the city of New York, testimony before the U.S. Commission on Civil Rights on Police Practices and Civil Rights in New York City, Hearing, New York, NY, May 26, 1999, p. 194 (hereafter cited as *New York Police Practices Hearing Transcript*). Safir testified that the City University of New York, Columbia University, and St. Johns University collaborated on the cultural diversity training. Ibid. Safir also testified that the Columbia University director of the African Studies Institute, Dr. Manning Marable, advised on the curriculum. Ibid.

stereotypes, avoiding stereotypical language, and discussions with community leaders about their concerns.²¹⁵

At the Commission's briefing, Dr. Loudon discussed his involvement in New York's Streetwise program.²¹⁶ The Streetwise program deals with "language, cultural, and people issues."²¹⁷ The curriculum was developed by police academics, anthropologists, foreign language professors, "cultural people," and "police people" to remove stereotypes from police training.²¹⁸ The course provides in-depth information on the culture and language of five groups of Americans: Hispanic, African/Caribbean, Chinese, Haitian, and Russian.²¹⁹

At a Commission-sponsored 1995 community forum on race relations in rural Kansas, Dodge City (Kansas) Police Chief Oakley C. Ralph defined community policing as a "partnership" between the community and law enforcement.²²⁰ Through a community policing funding grant received by the Dodge City Police Department, one officer: (1) conducts community surveys where residents identify issues requiring resolution, (2) coordinates the community policing program, (3) provides training in community policing philosophy, and (4) develops closer community relations.²²¹

At the community forum, Ford County (Kansas) Sheriff Arlyn Leaming discussed the "youth out-of-school suspension program" as part of the

department's community policing efforts.²²² The Ford County program, called Community Education Opportunity, performed the following services (1) conducted individual assessments of youth to identify problems, (2) referred youth to appropriate community agencies, and (3) assigned a mentor.²²³ Sheriff Leaming said the program is a "good gang prevention approach that uses parent groups."²²⁴

Another county in Kansas tried to bridge the gap between law enforcement and the Hispanic community. Then-Finney County (Kansas) sheriff, Grover Craig, reported that his department "encourages" officers to be bilingual.²²⁵ Sheriff Craig stated the department issued some community bulletins in Spanish.²²⁶

Some scholars of community policing suggest that a benefit of the practice is a reduction in the possibility that law enforcement will engage in gross forms of corruption, such as extortion. Statistics also support the belief that community policing increases the chance that law enforcement will engage in softer forms of corruption, such as receiving free lunches, professional discounts, or "gifts of appreciation."²²⁷

²¹⁵ Ibid. (citing Safir, New York Police Practices Hearing Transcript, pp. 158-60).

²¹⁶ Loudon, Practices Briefing Transcript, p. 37.

²¹⁷ Ibid.

²¹⁸ Loudon, Police Practices Briefing Transcript, p. 38. See also USCCR, *Police Practices in New York City*, pp. 32-33. The course is titled Streetwise Language, Culture and Police Work in NYC. Ibid.

²¹⁹ Ibid. (Safir, New York Police Practices Hearing Transcript, pp. 159-60).

²²⁰ Kansas Advisory Committee to the U.S. Commission on Civil Rights, *Race Relations in Rural Western Kansas Towns*, June 1998, p. 11 (citing Kansas Advisory Committee to the U.S. Commission on Civil Rights, Community Forum on Race Relations in Rural Kansas Towns, Garden City, Dec. 13-14, 1995 (hereafter cited as Kansas Advisory Committee, Kansas Race Relations Transcript), pp. 348-49).

²²¹ Ibid. The text of the report does not identify the source of the funding for the grant received by the Dodge City Police Department. At the time of the Kansas community forum, Police Chief Ralph had been an officer for 32 years and the chief of the Dodge City Police Department for 25 years. Ibid.

²²² Ibid., p. 12 (citing Kansas Advisory Committee, Kansas Race Relations Transcript, pp. 377-78). Sheriff Leaming managed the Ford County jail at the time of the community forum. Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid. (citing Kansas Advisory Committee, Kansas Race Relations Transcript, pp. 382-84). At the time of the community forum, Sheriff Craig had been in his position for 25 years and had 37 years of experience as a law enforcement officer.

²²⁶ Ibid.

²²⁷ Weisburd and others, *Police Attitudes Toward Abuse of Authority*, p. 7 (citing David Weisburd, Jerome McElroy, and Patricia Hardyman, "Maintaining Order in Community Oriented Policing," in *Police and Policing*, ed. Dennis J. Kenney (New York: Praeger, 1989)). It was also suggested that community policing had no effect on police corruption. Ibid. Nationally only 7.1 percent of officers believe that community policing increases the risk of corrupt behavior. Of the law enforcement officers questioned regarding the effect of community policing on the use of excessive force, 50.9 percent believe that the practice decreases the use of excessive force. Weisburd and others, *Police Attitudes Toward Abuse of Authority*, p. 8. When that sampling of officers is divided by race, the answers vary; 1.2 percent of white officers believe community policing increases the number of incidents involving excessive force while 10.5 percent of black and other minority officers join in that contention. Ibid., p. 10.

At the Commission's briefing, Dr. Fyfe responded to an inquiry regarding the rewards for police officers who participate in preventing crime.²²⁸ Dr. Fyfe reported that making arrests for possessory offenses has become a police goal.²²⁹ Dr. Fyfe shared that a former law enforcement partner found that "the problem with policing is that there is no credit for prevents."²³⁰

According to Hubert Williams, African Americans are only 13 percent of the drug-using population but are arrested at a rate five times greater than white Americans.²³¹ Mr. Williams noted that discriminatory enforcement of laws against any minority community undermines the ability of law enforcement to engage persons in partnership for policing.²³² Information vital for crime control does not filter to police without community participation and support.²³³ Dr. Loudon added that people should be taught how to respond when detained by law enforcement.²³⁴ "We train cops how to stop people. We don't tell people how to be stopped," he said.²³⁵

Professor Larry Hajime Shinagawa of Sonoma State University in California participated in the Sonoma County Police Department training focusing on police relations with the Asian American and Pacific Islander community.²³⁶ Professor Shinagawa found the training to be fragmented and noted that diversity training must reflect the changing realities of the jurisdiction.²³⁷ Diversity training should be holistic, broad-based, and have a comparative approach

for officers.²³⁸ Culturally competent organizations deliver services that respond to the diversity of their constituency, whether the diversity is in race, ethnicity, sexual orientation, language, or gender.²³⁹

CONSENT DECREES

Training may be changed as a result of consent decrees that law enforcement agencies enter into with the federal government. The Justice Department, under the Violent Crime Control and Law Enforcement Act of 1994,²⁴⁰ may enter into consent decrees with municipal police departments alleged to engage in a "pattern or practice" of conduct that infringes upon the civil rights of its persons, as afforded by federal, state, and local laws.²⁴¹ A city does not have to admit to any violations to enter into a consent decree.²⁴² Training is one of many areas within which the Justice Department may negotiate with local police departments in consent decrees.

An example of some of the areas covered by such agreements can be found in the consent decree between the United States and the New Jersey State Police (executed December 30, 1999).²⁴³ The decree appointed an independent monitor to review and evaluate training offered by the New Jersey State Police regarding motor vehicle stops.²⁴⁴ It required police academy educators to receive training in adult learning skills, leadership, teaching, and evaluation.²⁴⁵ It further provided that "all recruits and troopers" shall continue mandatory in-service cultural diversity training, including "interactions with persons from different racial, ethnic, and religious groups, persons of the opposite sex, persons having a different sexual orientation, and persons with disabilities; communication skills; and integrity and ethics, including the duties of

²²⁸ Chairperson Berry and Vice Chairperson Reynoso, Police Practices Briefing Transcript, pp. 68–69.

²²⁹ Fyfe, Police Practices Briefing Transcript, p. 69.

²³⁰ Ibid. Dr. Fyfe did not identify the former partner to whom he referred.

²³¹ Williams, Police Practices Briefing Transcript, p. 50. Mr. Williams did not cite a source for the statistical information.

²³² Ibid., p. 52.

²³³ Ibid.

²³⁴ Loudon, Police Practices Briefing Transcript, p. 100.

²³⁵ Ibid.

²³⁶ California Advisory Committee to the U.S. Commission on Civil Rights, *Community Concerns about Law Enforcement in Sonoma County*, May 2000, p. 21. Professor Shinagawa participated in the training from 1992 to 1994.

²³⁷ Ibid. (citing California Advisory Committee to the U.S. Commission on Civil Rights, Police Practices and Police-Community Relations in Sonoma County Forum, Santa Rosa, CA, Feb. 20, 1998, transcript, p. 25).

²³⁸ Ibid.

²³⁹ Bass, Police Practices Briefing Transcript, p. 18.

²⁴⁰ The Violent Crime Control and Law Enforcement Act of 1994 is discussed in-depth in chapter 5.

²⁴¹ 42 U.S.C. 14141 (Supp. IV 1998).

²⁴² *Id.*

²⁴³ Ralph Siegel, "Two experts selected to monitor State Police," *The Associated Press State & Local Wire*, Mar. 29, 2000.

²⁴⁴ Ibid., ¶ 94.

²⁴⁵ Ibid., ¶ 99.

truthfulness and reporting misconduct by fellow troopers, the importance of avoiding misconduct, professionalism, and the duty to follow civilian complaint procedures and to cooperate in misconduct investigations.”²⁴⁶

PROMOTION AND RETENTION

James Fyfe said at the briefing that police departments have a problem retaining high quality personnel in municipal police departments because candidates perceive other law enforcement agencies, such as the Federal Bureau of Investigation, the Drug Enforcement Agency, and state police departments, as challenging and prestigious, while considering municipal policing as a “poorly paid, low status, and eventually corrupting endeavor.”²⁴⁷ He recommended current personnel problems of urban police departments should be investigated.²⁴⁸

The experts discussed the promotion and reward system at the briefing and found it to be seriously flawed. Robert Loudon argued that a major problem with police departments today stems from their reward systems.²⁴⁹ Currently, departments reward officers for activities such as arresting people and seizing large quantities of narcotics.²⁵⁰ However, the system neglects other activities and it fails to “see the value in selling to the public the other services that [officers] do.”²⁵¹ Dr. Loudon did not describe what those other services might be, but the system does not recognize them favorably. In other words, the perception of “good” police work and “bad” police work must be revised.

Dr. Bass explained that the reward system and racial profiling affect each other. She suggested that racial profiling might be encouraged by the reward system.²⁵² Dr. Bass cited the Rampart Division case in Los Angeles as an example of how the incentives structure, which rewards police officers based on their numbers of arrests, may actually promote the perception among some officers that certain people commit

crimes and therefore, they should be arrested in greater numbers.²⁵³

CONCLUSION

In sum, the problems reported 20 years ago persist with very little meaningful change over time, and other problems, such as racial profiling have developed. Despite repeated recommendations to make significant internal changes that would considerably curb police misconduct and improve police-community relations, few police departments seem to have fully adopted the Commission’s recommendations, resulting in continued abuse of civilians at the hands of police officers. Police departments throughout the nation must improve diversity within their ranks, incorporate cultural sensitivity into their training and police culture, and work closely with the communities they serve to create a new partnership. New developments such as racial profiling could be curbed if police departments addressed basic structural and systemic problems. Continued disregard of these recommendations will only aggravate current problems while further disenfranchising the very communities that most need police protection.

CHAPTER 2: FINDINGS AND RECOMMENDATIONS

The Commission reiterates its findings and recommendations set forth in *Guardians* and subsequent police practices reports, many of which have not yet been realized.

Recruitment

Finding 2.1: The lack of diversity in the ranks of law enforcement officers continues to be a major problem with departments throughout the country. The serious underutilization of people of color and women will continue to prevent police departments from functioning effectively.

Finding 2.2: Some police departments have been unable to maintain diversity even though specific actions have been taken to increase minority representation. Several reasons account for this problem. Recruitment efforts are not specifically directed to communities of color and women. A negative perception of police officers and police departments persists. Claims of harassment and oppression along with low job satisfaction, espe-

²⁴⁶ Ibid., ¶ 100.

²⁴⁷ Ibid., ¶ 21.

²⁴⁸ Ibid.

²⁴⁹ Loudon, Police Practices Briefing Transcript, p. 62.

²⁵⁰ Ibid.

²⁵¹ Ibid., p. 63.

²⁵² Bass, Police Practices Briefing Transcript, p. 75.

²⁵³ Ibid., pp. 75–76.

cially the disparity in pay, account for only a fraction of the barriers to attracting people of color and women to law enforcement.

Finding 2.3: A large percentage of law enforcement officers live outside the communities they serve. Employing police officers who live in the jurisdictions they patrol would create familiarity between the residents and the officers. Officers would learn more about the local communities, have a greater stake in safe neighborhoods, and gain understanding and respect from residents. Community input is necessary to effectuate real change within police departments.

Finding 2.4: Programs such as the NYPD's Cadet Corps and Explorers programs have increased minority recruitment into the force.

Recommendation 2.1: As was recommended in *Guardians* and several subsequent reports, law enforcement agencies should develop and implement affirmative action plans so that ultimately the agencies reflect the composition of the communities they serve. Increased hiring of city residents would greatly contribute to that effort.

Recommendation 2.2: As discussed in previous reports, all law enforcement agencies should evaluate and revise their recruitment plans. They must increase the numbers of applicants and cadets from local communities of color. Large cities with large minority populations should institute aggressive affirmative action programs. They should also establish permanent minority recruitment units with adequate funding. At a minimum, they should increase their preference points for local residents.

Recommendation 2.3: At each and every law enforcement agency, more people of color, bilingual personnel, and resident officers should be hired. Incentives such as hiring bonuses should be instituted to encourage applications from these individuals. Public perception of local police departments should be improved. Involving community leaders at every stage in the selection and recruitment process would assist departments in fully implementing these recommendations.

Selection

Finding 2.5: As discussed in previous reports, the disproportionate representation of people of color and women in law enforcement stems, in part, from the application process.

Some law enforcement agencies receive fewer applications from people of color and women than white men. Moreover, biases may exist that eliminate candidates of color during the application process, including within background checks and psychological testing.

Finding 2.6: The selection process contains several problematic requirements. Many communities of color include noncitizen residents who are ineligible for police work. The lack of psychologists of color, biases in evaluating candidates from the urban areas versus white candidates from the suburbs, and the subjective nature of the process all play roles in building bias into the selection system.

Finding 2.7: Some law enforcement agencies require that new cadets have at least 60 college credits and at least a 2.0 grade point average. Although laudable, a more stringent requirement should be instituted to professionalize the police force. A professional police force would develop officers who possess sound judgment, good reasoning abilities, knowledge of law, and the maturity to deal effectively with the people they serve.

Recommendation 2.4: Law enforcement agencies should encourage all new police recruits to have a college degree. They should also build closer ties with local colleges and universities to recruit cadets, provide career guidance, and utilize faculty in their training programs. Additionally, programs such as the NYPD's Cadet Corps and Explorers groups should be created in major American cities with low minority representation.

Training

Finding 2.8: Good basic training on diversity issues would make a significant impact on law enforcement personnel at the earliest stage in their training and stay with them throughout their careers. Inadequate training reveals itself at the time when officers have to make quick and life-altering decisions.

Cultural Sensitivity

Finding 2.9: Training is essential in developing good police officers. Cadets may not receive enough training time and experience, especially diversity training. Some law enforcement agencies use training materials with offensive and

prejudicial racial, ethnic, religious, sexual, and gender stereotypes. Such materials exacerbate racial and ethnic tensions by oversimplifying and generalizing facts about the communities that are served. Additionally, sexual harassment training is often inadequate.

Finding 2.10: The quality of instructors conducting diversity and sexual harassment training and the number of instructors of color need improvement. Poor instruction leads to harmful misunderstandings among trainees. Further, trainees do not take such training seriously. Some training academies fail to use outside experts and community leaders to formulate curriculum. Many departments include diversity training as part of their police academy curriculum with no supplemental or follow-up training.

Finding 2.11: Basic police training is inadequate to address officer interaction with people with mental disabilities. Trained medical professionals have difficulty diagnosing mental illness; therefore, it is unrealistic to expect police officers to always be able to discern if someone has a mental impairment, especially from one encounter.

Finding 2.12: Only a few law enforcement agencies incorporate nonhomophobic instruction into their diversity training curriculum. As gays, lesbians, bisexuals, and transgendered individuals (GLBT) become more mainstreamed, the need for such training grows.

Recommendation 2.5: Based on these ideas, appropriate police training remains an imperative for all law enforcement agencies, particularly courses focusing on cultural sensitivity. Some law enforcement agencies should strengthen their diversity training and sexual harassment programs. As the characteristics of American residents continue to evolve, law enforcement should become increasingly aware of the unique characteristics of the various racial and ethnic groups and gain an appreciation for their cultures. They should include members of the local communities in developing courses.

Negative stereotypes embedded within training materials should be eliminated. Materials should explore the meaning of racism, sexism, bias, oppression, stereotyping, peer pressure, and related concepts. Implementing training on appropriate interaction with the GLBT communities as part of diversity training would be appropriate for many jurisdictions. Trainees should

be tested on the material. Law enforcement agencies should make it imperative that police officers receive training on how to interact effectively with the disabled community.

Recommendation 2.6: Municipal police departments should implement some variation of the Memphis Plan and partner with local social services offices for training and assistance with interaction with people who have mental disabilities.

Recommendation 2.7: Community cultural leaders and scholars should be consulted in all phases of law enforcement diversity training, including course implementation. Police departments should mandate annual diversity training for all officers, regardless of rank.

Use of Force

Finding 2.13: Law enforcement officers with limited experience tend to resort to using force before implementing nonviolent alternatives more than experienced officers. When abuses of law enforcement authority occur, they are seldom reported.

Recommendation 2.8: Police departments should implement de-escalation procedures that offer officers alternatives to use of force, particularly deadly force, in diffusing potentially volatile situations.

Racial Profiling

Finding 2.14: Racial profiling persists throughout the United States and is an egregious violation of civil rights.

Finding 2.15: Law enforcement officers may stop cars with probable cause that the traffic codes have been violated. Some officers, however, engage in racial profiling or the practice of initiating contextual stops with no individualized suspicion of criminal conduct.

Finding 2.16: Communities of color do not want to choose between public safety and civil rights.

Recommendation 2.9: To break the cycle of racial profiling, law enforcement should apply the *Florida v. J.L.* test to these racial profiles. Indeed, without some reliable tip or individualized suspicion of criminal conduct, the officer does not have the legal authority to detain any citizen. States should pass legislation against the practice of racial profiling similar to those

enacted or introduced in California, Pennsylvania, New Jersey, and Oklahoma.

Recommendation 2.10: Officers guilty of engaging in racial profiling must be subject to sanctions up to and including personal liability. The Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) empowers the Attorney General to bring civil actions against state and local law enforcement agencies that are found to engage in a pattern or practice of depriving persons of the rights endowed to them by the Constitution of the United States.²⁵⁴ Upon a finding that an officer persists in engaging in racial profiling after explicit warnings to cease, then he or she should be subject to individual liability. Individual liability would be an effective deterrent to profiling.

Recommendation 2.11: Police departments should institute a zero tolerance policy against racial profiling. Any officer found to engage in racial profiling should be subject to immediate dismissal from the police force.

Community Policing

Finding 2.17: Community policing occurs when a law enforcement agency and law-abiding people work together to arrest offenders, prevent crime, solve ongoing problems, and improve the overall quality of life in the community. Good police-community relations deter crime.

Finding 2.18: Effective diversity training is essential to successful community policing. Police-community relations are tainted when police officers lack understanding about the cultures of the department's constituency.

Recommendation 2.12: Community policing should be instituted in all local law enforcement agencies.

Recommendation 2.13: Law enforcement agencies should mandate supplemental diversity training that incorporates changes to the communities patrolled. Local community leaders should be consulted and used as resources for that training.

Consent Decrees

Finding 2.19: Consent decrees are useful in eliminating a pattern or practice of police misconduct that infringes upon civil rights. Entering

into consent decrees with the U.S. government allows an independent monitor to review and evaluate training and other policies. These consent decrees eliminate expensive and lengthy litigation and address the immediate concerns of local community members.

Recommendation 2.14: Those law enforcement agencies targeted by the U.S. Department of Justice as engaging in a pattern or practice of misconduct violating civil rights should immediately begin negotiating consent decrees to prevent further abuses and infringements on civil rights.

Recommendation 2.15: The U.S. Department of Justice should be fully funded to support review of local law enforcement agencies for possible violations of the VCCLEA.

Promotion and Retention

Finding 2.20: The promotion and reward system of many law enforcement agencies is seriously flawed. As discussed in previous reports, having officers of color in command-level positions improves police-community relations and decreases the likelihood of police misconduct. However, officers of color have difficulty reaching command levels. There may be biases built into the process such as pressuring officers to produce summonses, arrests, and seizures while neglecting to provide incentives for officers who protect individuals' civil rights. This encourages officers to engage in unlawful and illegal practices. Some retaliation by law enforcement agencies against officers who report such misconduct may occur. Further, the pressure harms police relationships with local communities.

Finding 2.21: Racial profiling may be encouraged by some aspect of the reward system.

Recommendation 2.16: Law enforcement agencies should evaluate their retention and promotion process to determine what biases exist in the system and seek ways to improve the promotion of officers of color and avoid racial profiling. A system of rewards should be implemented that rewards crime prevention and not simply arrests.

Recommendation 2.17: Claims of retaliation should be investigated vigorously, and departments doing such investigations should be properly funded and empowered with the appropriate authority to be effective.

²⁵⁴ 42 U.S.C. 14141 (Supp. IV 1998).

Internal Regulation of Police Departments

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals Task Force on Police observed that “[n]o police agency could maintain internal order if employee misconduct were rampant, just as it could not maintain social order if public anarchy were rampant.”¹ However, in contemporary times, national law enforcement agencies still face the challenges of preventing, monitoring, and addressing police misconduct incidents.

Several methods that are used to maintain internal order in police departments include reducing incidents of unnecessary deadly force, identifying substantiated civilian complaints of police misconduct, monitoring routine encounters between the police department and the public, conducting internal investigations, and recommending discipline for officer misconduct. Accordingly, this section of the report provides an overview of how various police departments in the United States are addressing these primary issues.

POLICIES TO REDUCE INCIDENTS OF UNNECESSARY DEADLY FORCE

Statistics on the Use of Deadly Force

The number of police shooting incidents that resulted in the death of civilians differs throughout the nation.² The following is a small sample of statistics from various jurisdictions:

¹ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, p. 35, n. 1 (hereafter cited as USCCR, *Guardians*).

² See also Diane Carman, “Deadly Force Out of Hand,” *The Denver Post*, Oct. 5, 1999, p. B1. The author refers to a Human Rights Watch study which maintained that “incidents of police brutality, including shoving, beating and manhandling suspects as well as unjustified shootings, have in-

Connecticut

In December 1999, the Governor’s Law Enforcement Council issued a report on improving the public’s confidence in investigations of police shootings in the state of Connecticut. The report noted that “there were five fatal shootings by police in 1998; four each in 1995, 1996 and 1997; one in 1994; six each in 1992 and 1993; and two each in 1990 and 1991.”³ Among other recommendations, the council advised that the state should implement a standard policy on the use of deadly force, educate the public on police training in the use of deadly force, and mandate that law enforcement agencies provide a greater response to legitimate public concerns on the use of deadly force.⁴

California

According to Los Angeles Police Department reports, since 1994, LAPD officers have shot 37 people who exhibited symptoms of mental illness—25 of them were killed.⁵

Illinois

In Chicago, while the number of police-related shootings declined between 1998 and 1999, the number of individuals killed by police

creased dramatically in 14 major cities over the past five years.” Ibid.

³ “Law Enforcement Council’s Recommendations Not Yet Fully Adopted,” *The Associated Press State & Local Wire*, BC cycle, Hartford, CT, Feb. 16, 2000. “Six people were fatally shot in 1999 by police officers in Hartford (where two deadly shootings occurred), Meriden, North Branford, New London and Clinton. A seventh man was killed by FBI agents in Bridgeport.” Ibid.

⁴ Ibid.

⁵ Steve Berry and Josh Meyer, “Mistakes Seen in LAPD Shootings of Mentally Ill,” *The Los Angeles Times*, Nov. 7, 1999, p. A1.

gunfire was approximately the same.⁶ There were 16 fatalities in 1999 and 15 in 1998.⁷

Washington, D.C.

In the 1990s, District of Columbia police officers shot and killed more individuals per resident than any other major U.S. city police force.⁸ However, police shootings fell by almost 66 percent when compared with 1998 data. "[S]ince January 1999, D.C. police have shot 11 people—four fatally—compared with 32 shootings—12 fatal—in 1998. Although District police killed fewer people in shootings in 1999, the percentage of those shot by police who ultimately died remained about the same."⁹

Legal Standards

The 1985 U.S. Supreme Court case of *Tennessee v. Garner*¹⁰ remains as controlling legal authority on law enforcement agencies' use of deadly force. In *Garner*, the Court was asked to decide the constitutionality of a Tennessee statute that stated, "If, after notice of the intention to arrest the defendant, he either flee[s] or forcibly resist[s], the officer may use all the necessary means to effect the arrest."¹¹ The Court examined whether deadly force could be used to avert the escape of an unarmed alleged felon.¹² Specifically, the Court recognized that when police officers use deadly force to apprehend a suspect, a Fourth Amendment "seizure" has taken place. As a result, deadly force is only constitutional if it is "reasonable."¹³ The Court also "con-

clude[d] that such force may not be used unless it is necessary to prevent the escape *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."¹⁴

Policies on the Use of Deadly Force

At the Commission's June 2000 briefing on police practices, James Fyfe, professor of criminal justice at Temple University, discussed the development of a police standard of care, which is now comparable to a "reasonableness" standard. He maintained that at the time the Commission published *Guardians* in 1981, there were no policies on policing, and it has been difficult to encourage police administrators to develop these strategies.¹⁵ One contributing factor to the development of a police standard of care was the U.S. Supreme Court case of *Monell v. New York Department of Social Services*.¹⁶ The Court in *Monell* observed that civil rights violations committed by a public employee can impose liability on the employer, if it can be shown that the employee was poorly trained or poorly supervised and those deficiencies caused the violations.¹⁷

According to Dr. Fyfe, this case changed police departments' perspectives: "[i]f you look at what goes on in the civil courts today you'll see that there is a police standard of care."¹⁸ He observed that the International Association of Chiefs of Police (IACP), which resisted policymaking in 1980, has developed guidelines for

⁶ Todd Lighty, "Shootings by Police Drop Off Sharply," *The Chicago Tribune*, Jan. 6, 2000, p. 1 (hereafter cited as Lighty, "Shootings").

⁷ *Ibid.*

⁸ Cheryl W. Thompson and Phuong Ly, "Shootings by D.C. Police Decline 66 Percent in 1999," *The Washington Post*, Jan. 1, 2000, p. B1 (hereafter cited as Thompson and Ly, "D.C. Police").

⁹ *Ibid.* Police Chief Charles Ramsey indicated that a new lethal force policy and more police training and supervision are reasons for this decline.

¹⁰ 471 U.S. 1 (1985).

¹¹ *Id.* at 4-5 (citing TENN. CODE ANN. § 40-7-108 (1982)).

¹² 471 U.S. 3.

¹³ *Id.* at 6-7; see also Gregory Howard Williams, "Controlling the Use of Non-Deadly Force: Policy and Practice," *Harvard BlackLetter Journal*, vol. 10 (1993), p. 79. The author notes that determining whether a suspect's seizure meets the constitutional standard of "reasonableness" requires

additional policy guidance from local police departments. *Ibid.*, p. 89.

¹⁴ 471 U.S. 3 (emphasis added); see *id.* at 12, 15. The *Garner* Court essentially eliminated the prevailing "fleeing felon" common law rule, which had permitted law enforcement authorities to use deadly force to subdue suspected escaping felons. See also Stephen Beaven, "When to Shoot: A Split Second Call—Deadly Force is Officer's Last Resort," *Indianapolis Star*, Mar. 15, 2000, p. A1. Police training in the use of force began to change after the *Garner* ruling. This was also due to an emphasis on nonviolent options to physical confrontations. *Ibid.*

¹⁵ James Fyfe, statement before the U.S. Commission on Civil Rights, National Police Practices and Civil Rights Briefing, June 16, 2000, transcript, p. 25 (hereafter cited as Police Practices Briefing Transcript).

¹⁶ 436 U.S. 658 (1978).

¹⁷ See *Monell*, 436 U.S. 694-95.

¹⁸ Fyfe, Police Practices Briefing Transcript, p. 25.

governing police activity, and the Commission on Accreditation has created police department administration standards.¹⁹ Dr. Fyfe noted that the IACP and the Commission on Accreditation standards are irrefutable in court and have become the standard of care.²⁰

Law enforcement entities have created policies on the use of deadly force that incorporate the federal "reasonableness" standard and state mandates. Despite this incorporation, police departments have varying interpretations of what policies satisfy the "reasonableness" requirement.²¹ For example, in Tennessee, the Metro Davidson County Police Department's policy permits officers to use deadly force when they reasonably believe "the action is immediately necessary to prevent death or serious bodily injury of a human being, including the officer."²² Similarly, the Indianapolis Police Department guidelines were amended in August 1999 to indicate that police officers "must not fire under conditions that would subject others to possible injury or death, except to preserve life or prevent serious bodily injury."²³ In the District of Columbia, officers can employ "only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others."²⁴ Lastly, the Lakeland (Florida) Police Department requires its officers to use deadly force when faced with the "immediacy" of a threat of death or serious injury to an

officer.²⁵ The state of Florida mandates a slightly less stringent standard of requiring a law enforcement officer to "reasonably believe [that any level of force is] . . . necessary to defend himself or herself or another from bodily harm while making the arrest."²⁶

Factors That Influence Use of Deadly Force Policies and Incidents

A number of variables, such as a police chief's stance on internal misconduct policies, the preferred forms of restraint methods, and type of ammunition police officers use, can affect police departments' perspectives and policies on deadly force. For example, a 1991 American Civil Liberties Union report, *Police Brutality and its Remedies*, examined how police officers perform their duties in the field. The study determined that their performance is "heavily influenced by the leadership of their department. . . . When incidents of brutality, misconduct or racism occur, the chief's immediate reaction to these incidents will have a great impact on whether the incident will be repeated in the future."²⁷ Further, "[t]he tone can be conveyed by the detection and punishment of misconduct, but more positively by reinforcing appropriate conduct."²⁸

This perspective was also emphasized in a survey by the Police Foundation that revealed the impressions of 925 randomly selected American law enforcement officers from 121 police departments on the abuse of police authority. According to the survey, approximately 85 percent of the respondents "agreed or strongly agreed that a police chief's strong position against the abuse of authority can make a big difference in deterring officers from abusing their authority."²⁹ Almost 67 percent of the respondents also

¹⁹ Ibid., p. 26.

²⁰ Ibid.

²¹ See USCCR, *Guardians*, p. 156. In 1981, the Commission found that police guidelines on the use of deadly force are often ambiguous.

²² Kathy Carlson, Dorren Klausnitzer, and Thomas Goldsmith, "Deadly Force Training Under Scrutiny," *The Tennesseean*, Apr. 25, 2000, p. 1A (hereafter cited as Carlson, Klausnitzer, and Goldsmith, "Deadly Force"). According to Sergeant Bob Allen, a 19-year police veteran of the Metro Davidson County Police Department, the department does not have a "shoot-to-kill" policy for using deadly force. "We shoot to stop the threat. . . . When the threat stops and the subject is under control, the force is stopped." Ibid.

²³ Beaven, "When to Shoot." Indianapolis police can only use deadly force after all other options have been considered and utilized. Ibid.

²⁴ Thompson and Ly, "D.C. Police." The District of Columbia Metropolitan Police Department's policy provides a four-part "use-of-force continuum" that ranges from presence and verbal persuasion, hand-control procedures, protective weapons (e.g., using tactical batons), to deadly force.

²⁵ Rick Rousos, "Officers Have Strict Policy on Use of Force," *The Ledger*, Dec. 23, 1999, p. B1.

²⁶ FLA. STAT. § 76.05(1) (2000).

²⁷ The Police Foundation, *Police Use of Force: Official Reports, Citizen Complaints, and Legal Consequences*, vol. I, 1993, p. 27 (hereafter cited as Police Foundation, *Use of Force*) (citing American Civil Liberties Union, *Police Brutality and its Remedies*, 1991, p. 6).

²⁸ Ibid.

²⁹ David Weisburd, Rosann Greenspan, Edwin Hamilton, Hubert Williams, and Kellie Bryant, *Police Attitudes Toward Abuse of Authority: Findings from a National Study*, National Institute of Justice, May 2000, p. 6.

indicated that first-line supervisors play an important role in preventing police officers from abusing their authority.³⁰

The types of restraint methods that police officers use should also be considered in a department's use of deadly force protocol. In 1981, the nation's law enforcement authorities and local communities were confronted with examining the effectiveness of techniques used to restrain and subdue suspects. During that time, a controversy arose throughout the United States over the employment of the chokehold, which was a primary method of subduing individuals that sometimes resulted in their deaths.³¹ As an example, the "modified carotid" was one of the upper body control techniques that were used by the Los Angeles Police Department in the early 1980s.³² According to former LAPD Chief Daryl Gates,

[a]ppplied correctly, from behind, a police officer places his bicep[s] and forearm on either side of the suspect's neck, pressing the carotid arteries and cutting off the flow of blood to the brain for a split second. The individual goes limp. You handcuff him and cart him off

to jail. We felt this control hold was far superior to banging someone over the head with a PR-42 baton.³³

Local Los Angeles officials and community residents questioned the LAPD's use of chokeholds between 1975 and 1982, when 16 people died after being subdued by these restraints.³⁴ In response, the LAPD's leadership supported eliminating the department's use of the "bar-arm chokehold," while continuing to employ the "modified carotid" restraint.³⁵ Ultimately, the Los Angeles Police Commission suspended the department's use of both chokeholds, but permitted the modified carotid to respond to a threat of serious injury or death.³⁶

In addition to these restraint methods, the type of ammunition that law enforcement agencies issue to their officers has also become a source of public concern. Most police departments in the United States started out using standard-issue, or "full metal jacket," bullets in weapons.³⁷ According to Rich Weaver, secretary and treasurer of the Detroit Police Officer's Association, who researched types of ammunition for the Detroit Police Department, "[t]he full-metal jacket bullets often go clean through a person's body with enough force to cause damage to other people."³⁸ Additionally, Dr. Fyfe discussed the death of Amadou Diallo, an unarmed African immigrant, and reinforced the effect of full metal jacket ammunition:

³⁰ Ibid.

³¹ See Daryl F. Gates and Diane K. Shah, *Chief: My Life in the LAPD* (New York: Bantam Books, 1992), p. 246; see also Amnesty International, "United States of America: A Briefing for the UN Committee Against Torture," no. AMR 51/56/00, May 2000, <<http://www.amnesty.it/ailib/aipub/2000/AMR/25105600.htm>> (Oct. 20, 2000) (hereafter cited as Amnesty International, "A Briefing"). "In October 1999 Demetrius J. Brown died after being placed in a neck-hold while guards tried to strap him into a restraint chair in Duval County jail in Jacksonville, Florida; his was the second chokehold death in the same jail in 16 months, and led to an eventual ban on the procedure in that jail." Ibid.

³² Gates and Shah, *Chief*, p. 246. In the other type of restraint, the "bar-arm" control hold, "[a]n officer places his forearm across the trachea, cutting off the supply of oxygen to the lungs. The problem with this hold is that a person instinctively fights harder when deprived of air. The police officer uses more pressure and, if not careful, can break the hyoid bone, causing death." Ibid. See also "Man Dies After Police Use Carotid Chokehold," *The Associated Press State & Local Wire*, May 1, 1983, Sunday a.m. cycle, San Diego (hereafter cited as AP, "Man Dies"). Police officers from the San Diego Police Department arrested a 23-year-old African American man, Barry Andrew Preston Jr. He was then restrained with handcuffs and leg restraints. When Mr. Preston allegedly became violent, the police restrained him further by applying a carotid chokehold. Although he initially regained consciousness, he was later found unconscious and died soon after.

³³ Gates and Shah, *Chief*, p. 246.

³⁴ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 1991, p. 195 (hereafter cited as *Christopher Commission Report*); AP, "Man Dies"; see generally *City of Los Angeles v. Lyons*, 461 U.S. 95, 114–15 (1982) (Marshall, J., dissenting) (recounting use of chokehold by LAPD officers on Adolph Lyons, a 24-year-old black man); Cf. U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, 1999, pp. 49–52 (hereafter cited as USCCR, *Los Angeles Report*) (recounts how law enforcement authorities view the use of pepper spray as a safer means to subdue suspects, although critics maintain it can cause death).

³⁵ Gates and Shah, *Chief*, pp. 246–47.

³⁶ *Christopher Commission Report*, p. 195.

³⁷ See George Hunter, "Police Get Deadly Ammo—Detroit Cops Say Hollow-point Rounds Protect Bystanders, Critics Plan to Protest," *The Detroit News*, Aug. 2, 2000, p. 1.

³⁸ Ibid.

The [NYPD] . . . equipped all the officers in the city with steel ball ammunition, full metal jacketed ammunition, which are designed for the military. These are bullets that don't deform when they hit an individual and they go right through them. And those are not appropriate for policing because they run the risk of hitting bystanders. The shots that were fired at Mr. Diallo included 19 hits; 16 of them went right through him. Only three of them remained in him. Of the 16 that went right through, several bounced right back at the police officers. . . . The physical evidence in the case was absolutely consistent with their story that he stood through the whole episode. They were hitting him with bullets that did not knock him down and that were inappropriate for policing.³⁹

Currently, large urban police departments in cities such as Chicago, San Francisco, New York, and Los Angeles prefer "hollow point bullets" to standard-issue ammunition.⁴⁰ Supporters of hollow point bullets indicate that they are safer for police officers to use, since they are less likely to pass through their targets and strike innocent bystanders.⁴¹ These bullets are characterized by their soft inner core and their expansion on impact when entering a human body, which ultimately creates severe internal damage.⁴² Specifically, according to an affidavit submitted in the *Workman v. Bell* murder case by a Fulton County (Georgia) deputy chief medical examiner who has examined approximately 40 corpses with hollow point bullet wounds,

in every one of the cases, the .45 silver tip hollow point bullet expanded upon entering the human body involved; that approximately 90 percent of the time, the hollow point bullet never emerged from the victim's body at all; that [i]n the remaining instances [i.e., the remaining three or four cases], the exit wound created by the .45 silver tip hollow point was significantly larger than the entrance wound the bullet created.⁴³

Critics of hollow point bullets for police officers indicate that because this ammunition causes tremendous internal damage to body organs, the Geneva Convention's rules of war have

prohibited their use.⁴⁴ However, supporters of hollow point bullets contend that they are more effective to use in "shoot-to-kill" circumstances, especially in those situations when suspects have access to similar weaponry.⁴⁵ Although the controversy regarding police use of hollow point bullets continues, it is important to note that officers in New York's Transit and Housing Bureaus have used hollow point bullets since 1990, although the New York City Civilian Complaint Review Board later supported the use of this ammunition for the NYPD in July 1998.⁴⁶

Finally, some law enforcement agencies have adopted another strategy to control excessive force among police officers. During the hiring phase of employment, this approach seeks to predict and screen out those police candidates inclined to exhibit excessive force.⁴⁷ Two researchers have examined characteristics of officers who frequently resort to excessive force.⁴⁸

³⁹ Hunter, "Police Get Deadly Ammo." See Donna De La Cruz, "NYPD Switch to Hollow Point Bullets Draws Protests," *The Associated Press State & Local Wire*, Mar. 10, 1999, Wednesday a.m. cycle, New York (hereafter cited as De La Cruz, "NYPD Switch"). Despite demonstrations denouncing the NYPD's decision to use hollow point bullets, Police Commissioner Howard Safir announced that the department would begin using the new ammunition after officers had been qualified at a shooting range.

⁴⁰ Hunter, "Police Get Deadly Ammo." See generally "Lyndhurst (NJ) Gun Suspect Allegedly Tied to Mob," *The Record* (Bergen County, NJ), Dec. 21, 1999, p. L1 (law enforcement officers arrested a 56-year-old male suspect who had \$12,000 in cash, and a semi-automatic Glock 9mm pistol that was loaded with 10 hollow point bullets. The suspect was allegedly connected with the Gambino organized crime family); "Florida Man Indicted on Charge of Illegally having Weapons," *Asbury Park Press* (Neptune, NJ), Aug. 15, 2000, p. B5 (a Florida man was arrested on three counts of possession of a prohibited weapon, i.e., "hollow-point bullets, [an] . . . expandable police baton, and a large-capacity ammunition magazine; and unlawful possession of an assault firearm"). Ibid.

⁴¹ De La Cruz, "NYPD Switch"; Fyfe, Police Practices Briefing Transcript, p. 82. "When those [9 mm] guns were adopted by the police department in New York there were lots of protests about the adoption of a hollow point bullet, even though the police department had been using them in the 38's for years." Ibid.

⁴² Police Foundation, *Use of Force*, p. 150.

⁴³ Ibid., p. 150 (citing E.B. Croft, Ph.D., *Police Use of Force: An Empirical Analysis*, 1985; Robert E. Worden, "The 'Causes' of Police Brutality," unpublished draft prepared for William A. Geller and Hans Toch, eds., *Police Use of Excessive Force and Its Control: Key Issues Facing the Nation* (Washington, D.C.: Police Executive Research Forum, 1992)).

³⁹ Fyfe, Police Practices Briefing Transcript, pp. 82-83.

⁴⁰ Hunter, "Police Get Deadly Ammo." See Fyfe, Police Practices Briefing Transcript, p. 82.

⁴¹ See Fyfe, Police Practices Briefing Transcript, p. 82.

⁴² *Workman v. Bell*, 178 F.3d 759, 767 (6th Cir. 1998).

⁴³ *Id.* at 767.

They determined that factors associated with minimal force usage are the officer's education, age, experience, and African American origin.⁴⁹ Other authorities concluded that certain perspectives, such as narrow, negative, and prejudicial attitudes, increase the likelihood of an officer using excessive force.⁵⁰

Training

The nation's police departments use in-service training to familiarize officers with departmental policies on the appropriate use of force. Training also serves to decrease unnecessary incidents of deadly force and to instruct officers on appropriate techniques of employing both nonlethal weapons and deadly force.

In the Chicago Police Department, the current training program includes using a firearm simulator to evaluate officers' responses in life-and-death situations.⁵¹ Similarly, the Toccoa (Georgia) Police Department uses a Professional Range Instruction Simulator (PRISM), an interactive video game to improve police officers' judgment and shooting ability. Officers react to each scenario by issuing verbal commands to the visual images, moving behind a barrier, and shooting a modified Glock handgun that fires lasers.⁵² In response, Butch Newkirk, the PRISM trainer can shoot harmless plastic balls at each officer, which represent gunshots.

[PRISM's] computer is loaded with 107 scenarios that officers might walk into, such as "Garage Rape," "School Violence" and "Traffic Stop." Each scenario has four or five variations. An officer will often face two variations of the same scenario that call for two entirely different reactions. . . . Sometimes the bad guys (in the training scenario) give up peacefully. . . . Newkirk can even change a scenario in midstream to make the actors more passive or aggressive. "I can

make them lay the weapon down and then pick it back up," he said. Each officer face[s] four scenarios. When the shooting is over, Newkirk plays the scene back and grades the officer in areas such as weapon handling, voice commands, shooting positions and marksmanship. "It's really a pass-fail," Newkirk said.⁵³

The San Diego Police Department focused on other training areas, after the department was involved in two fatal shootings in July 1999 and February 2000. San Diego Police Chief David Bejarano announced to City Council members at a February 2000 meeting that police officers would begin to defuse potentially dangerous situations without using their guns.⁵⁴ The strategy provides that "every officer will carry in their cars a beanbag shotgun and [a] long-range Taser stun, and undergo two days of training in 'tactical communication skills.'"⁵⁵ In terms of instructing methods of employing deadly force, according to Bill Geller, a national expert on use of force policies, most police departments instruct their officers to aim their weapons at the suspect's torso to ensure that the individual's actions are stopped.⁵⁶ This approach is contrary to the opinion of many members of the public. Their perspective is that police officers could aim their weapons at other areas of the body, which

⁴⁹ Ibid.

⁵⁰ Ibid. (citing Worden, "The 'Causes' of Police Brutality"; Donald J. Black and Albert J. Reiss Jr., *Patterns of Behavior in Police and Citizen Transactions: Field Surveys III, Studies in Crime and Law Enforcement in Major Metropolitan Areas*, vol. 2 (Washington, D.C.: Government Printing Office, 1967)).

⁵¹ Lighty, "Shootings." The department also asked the John Marshall Law School to review its policies on police chases and use of deadly force. Ibid.

⁵² Ralph Ellis, "A 'Game' of Life-and-Death Law Enforcement," *The Atlanta Journal and Constitution*, Nov. 26, 1999, p. D10.

⁵³ Ibid.

⁵⁴ Tony Perry, "California and the West: San Diego Police Chief Vows Focus on Non Lethal Weapons," *The Los Angeles Times*, Feb. 23, 2000, p. A3.

⁵⁵ Ibid. Previously, only sergeants had access to Tasers, while use of the beanbag shotguns was restricted to the SWAT team. The department plans on using more police dogs, a more realistic video training simulator on subduing combative suspects without employing weapons, and pepper spray projectiles. Ibid.

⁵⁶ Nancy Calaway, "Deadly Force by Police Debated Nationwide," *Arlington (TX) Morning News*, July 11, 1999, p. A1 (hereafter cited as Calaway, "Deadly Force Debated"). See Carlson, Klausnitzer, and Goldsmith, "Deadly Force." A 19-year police veteran of the Metro Police Department in Tennessee maintained that police officers are instructed to aim at a suspect's midsection in order to prevent injuries to bystanders and to end the threat that the suspect poses. Ibid. But see Maria Elena Fernandez, "Grant Plan Targets D.C. Police Training, Federal Panel Would Study Use of Force," *The Washington Post*, May 5, 1999, p. A14. According to Representative Jose E. Serrano (D-NY), most police departments in the nation do not adequately teach use of force policies. Ibid.

may result in injuries to, but not the death of an alleged suspect.⁵⁷

Other police departments are also using nonlethal methods to restrain suspects. According to University of Portland criminologist Nick McRee, nonlethal weapons reduce the possibility that police officers will use deadly force.⁵⁸ In Boston, Police Commissioner Paul F. Evans announced in March 2000 that patrol supervisors would begin to be trained to use a nonlethal weapon, "the Super Sock," which shoots pellets wrapped in fabric to incapacitate suspects.⁵⁹ Police officers, however, are skeptical of the Super Sock's effectiveness. Captain William Broderick, president of the police union, said rank-and-file members are not convinced the device is the best method to address those street encounters that require force.⁶⁰

Kirkland (Washington) Police Department officers also shared this perception of the effectiveness of beanbag launching devices. The police department's tactical team has had access to launchers that shoot beanbags filled with shot for the past seven years.⁶¹ Lieutenant Eric Olsen explained that this system was not accurate, and only nine SWAT members were trained to use it. Instead, the Kirkland Police Department employs a "Sage SL6" device that shoots a champagne-cork-shaped polyurethane projectile at 240 feet per second.⁶²

⁵⁷ Calaway, "Deadly Force Debated."

⁵⁸ Sarah E. Richards, "Kirkland Police Seek Less Lethal Weapons," *The Seattle Times*, July 21, 2000, p. B1. *But see* *ibid.* "Such tools [nonlethal weapons] are useful, especially in a volatile situation, but they're not foolproof, warned Captain Bruse Vestal, head of training at Bellevue [Washington Police Department]. 'We've had people shot with (the baton), and it doesn't do anything,' he said, adding that a weapon's effectiveness depends on an assailant's mental capacity." *Ibid.*

⁵⁹ John Ellement and Francie Latour, "HUB Police to Get Training on Pellet-Bag Weapon," *The Boston Globe*, Mar. 8, 2000, p. B3. Specifically, the Super Sock is a shotgun shell that ultimately fires a high-impact pellet bag.

⁶⁰ *Ibid.* Captain Broderick noted that the Super Sock's manufacturer warns that striking an individual in the thorax and other areas of the body could be fatal.

⁶¹ Richards, "Kirkland Police Seek Less Lethal Weapons."

⁶² *Ibid.* " 'This gives us the tool to fill in the gaps between pepper spray and/or a nightstick, or, God forbid, a gun,' said [Lieutenant] Olsen. 'This allows an officer to stand back 15 to 20 yards from a guy waving a knife around.' Officers are trained to shoot at large muscular portions of the body, such as the buttocks or thighs, since direct hits to the head or

The SL6 provides enough force to knock someone down and cause bad scrapes and bruises, but not enough to kill. Instead of being stored at the station house, the two machines Kirkland bought in January ride around in the supervisors' patrol cars so that there are two SL6 launchers on the streets of Kirkland 24 hours a day.⁶³

ROUTINE ENCOUNTERS BETWEEN POLICE OFFICERS AND THE COMMUNITY

Stop, Question, and Frisk

The Fourth Amendment of the U.S. Constitution protects individuals against unreasonable searches and seizures by law enforcement officers. It provides that:

[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁶⁴

Generally, for police officers to search or seize an individual or his or her property, this intrusion must be made pursuant to a warrant based upon probable cause. The U.S. Supreme Court examined a limited exception to the Fourth Amendment's probable cause requirements in the case of *Terry v. Ohio*.⁶⁵ *Terry* permitted a police officer to briefly detain an individual, and question and frisk him or her, to determine if the person possesses a dangerous weapon. As a result, the Court concluded that the appropriate constitutional standard should be a less stringent standard of "reasonable suspicion," instead of probable cause.⁶⁶ This "reasonable suspicion" must be based on the existence of some wrongdoing, as "the police officer must be able to deline-

heart are potentially fatal. However, 'the SL6 has not been linked with any deaths since it became available in 1992,' said John Klein, president of Sage Control Ordnance, based in Michigan." *Ibid.*

⁶³ *Ibid.*

⁶⁴ U.S. CONST. amend. IV. *See* *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). The framers of the Constitution drafted the Fourth Amendment "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Id.*

⁶⁵ 392 U.S. 1 (1968).

⁶⁶ *Terry*, 392 U.S. 20-22.

ate specific and articulable facts" that support the government's intrusion. The officer must not rely upon "inchoate and un-particularized suspicion or [a] 'hunch.'" ⁶⁷

Subsequently in *Florida v. Royer*,⁶⁸ the Supreme Court explained that police officers do not infringe upon an individual's constitutional rights if they approach an alleged suspect in a public location and inquire whether he or she would be willing to answer some questions.⁶⁹ However, the Court further held that:

[t]he person approached . . . need not answer any question put to him; . . . he may decline to listen to the questions at all and may go on his way. . . . He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds. . . . If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed.⁷⁰

Moreover, the Court determined in *Whren v. United States*,⁷¹ that it is reasonable for a police officer to stop a motorist when the officer has probable cause to believe the civilian has committed a traffic violation. Hence, when the officer concludes a traffic violation has occurred, there is no Fourth Amendment violation of unreasonable searches and seizures.⁷²

Secondly, neither the equal protection clause of the Fourteenth Amendment⁷³ nor the Fourth Amendment prevents the use of race when it is

essential to a law enforcement investigation and does not result in unequal application of state laws. However, the Constitution does not permit police officers to stop, question, and frisk individuals based *solely* on their race.⁷⁴ Despite this ruling, the United States Federal Court of Appeals for the Second Circuit maintained in *Brown v. Oneonta*⁷⁵ that when race is a part of the description of an alleged suspect, it can be used as a legitimate basis for questioning individuals of that race or ethnicity.⁷⁶

Racial Profiling

Members of ethnic and racial groups have historically maintained that law enforcement authorities view them with increased suspicion.⁷⁷ Stops and frisks have been justified based on legal precedent, which allowed the use of an alleged suspect's race and also granted further deference to police officers' interpretations of whether reasonable suspicion and probable cause have been established.⁷⁸ This heightened suspicion routinely results in an increased probability of people of color being subjected to stops, questioning, and/or arrests on the nation's highways, public streets, and college campuses, as

⁷⁴ *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975). The Court determined that the appearance of Mexican ancestry does not furnish reasonable belief for questioning the occupants of a car in search of illegal aliens.

⁷⁵ 195 F.3d 111 (2d Cir. 1999), *reh'g denied*, 203 F.3d 153 (2d Cir. 1999).

⁷⁶ 195 F.3d at 119.

⁷⁷ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report*, 1993, pp. 20–30 (hereafter cited as USCCR, *Mount Pleasant Report*) (describes the historic tension between the Latino community and the Metropolitan Police Department in Washington, D.C.); Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Police Protection of the African American Community in Chicago*, 1993, pp. 13, 27–31 (includes witnesses' testimonies on frequent incidents of alleged police brutality and the lack of police protection in black neighborhoods in Chicago); USCCR, *Los Angeles Report*, pp. 150–58 (reviews the relationship between immigrant populations and the Los Angeles Police Department); see South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, March 2000, pp. 2–3 (provides an overview of testimony from Native American community members of alleged administration of justice violations).

⁷⁸ David Cole, "The Color of Justice," *The Nation*, Oct. 11, 1999, p. 12.

⁶⁷ *Id.* at 21, 27. Further, the Court indicated that a search must be "strictly circumscribed by the exigencies which justified its initiation." *Id.* at 26.

⁶⁸ 460 U.S. 491 (1983).

⁶⁹ *Id.* at 497.

⁷⁰ *Id.* at 497–98. *But see* *United States v. Cortez*, 449 U.S. 411 (1981); *United States v. Sokolow*, 490 U.S. 1 (1989). The Supreme Court began to grant greater deference to police officers' assessments of alleged criminal activity as a foundation for the required degree of reasonable suspicion.

⁷¹ 517 U.S. 806 (1996).

⁷² *Id.* at 809–10.

⁷³ U.S. CONST. amend. XIV. In relevant part, the equal protection clause of the 14th Amendment provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

well as in retail stores and airports.⁷⁹ African and Hispanic Americans have been stopped with such frequency that these instances have commonly been coined as "driving while black" on highways and "flying while black or Hispanic" in airports.⁸⁰ As an example, in Maryland,

blacks were 70 percent of those stopped and searched by Maryland State Police from January 1995 through December 1997, on a road where 17.5 percent of the drivers and speeders were black. New Jersey reported that 77 percent of those stopped and searched on its highways were black or Hispanic, even though only 13.5 percent of the drivers were black or Hispanic.⁸¹

In addition, Asian Pacific Americans have contended that law enforcement officers have detained or searched them without justification. In California, it is alleged that police authorities have stopped and photographed many Asian American youth.⁸² These photographs were sub-

sequently included in Asian gang mug books without the knowledge or consent of the youths' parents or guardians.⁸³ Currently, however, racial profiling against Asian Pacific Americans has taken the forms of governmental investigations and prosecutions that question their loyalties to the United States.⁸⁴ This scrutiny is primarily the result of the Wen Ho Lee case, in which Mr. Lee, a scientist and an American citizen of Taiwanese descent was charged with 59 counts of mishandling secret computer data at the Los Alamos National (nuclear weapons) Laboratory.⁸⁵ As a result, Asian Pacific Ameri-

⁷⁹ See generally *ibid.*; Christy Hoppe, "Race Disparity Found in Traffic Stops," *The Dallas Morning News*, Oct. 4, 2000, p. A1; Mary Allen and Christopher Munsey, "Do the Police Stop Too Many Minorities?" *The Capital* (Annapolis, MD), May 9, 1999, p. A1; Tammerlin Drummond, "It's Not Just in New Jersey: Cops Across the U.S. Often Search People Just Because of their Race, A Study Says," *Time*, June 14, 1999, p. 61.

⁸⁰ Lars-Erik Nelson, "Changing the Profile at Customs," *The Daily News* (New York), Oct. 15, 2000, p. 43; Michael Gougis, "Improbable Cause," *New Times Los Angeles*, Sept. 7, 2000, Features Section. In May 1999, LAPD officers stopped Carlos Gonzalez, a 28-year-old Hispanic math teacher in South Central Los Angeles, while he was driving a 1994 red Mustang convertible. Mr. Gonzalez was not asked for his license, registration, or proof of insurance. He was also not informed why he had been stopped. According to Mr. Gonzalez, the police officers asked him for his name; when he replied, "they told him he was lying, unsnapped the holsters holding their service pistols, and handcuffed him." He was ultimately given a ticket for going 38 miles an hour in a 25-mile zone, on a 900 foot long street that has three speed bumps. *Ibid.*

⁸¹ Cole, "The Color of Justice." See also Thomas Zolper, "Minority Traffic Stops Still Highest On Turnpike—Statistics Rekindle Racial Profiling Debate," *The Record* (Bergen County, NJ), June 28, 2000, p. A1. "The statistics also show that minorities are far more apt to be arrested than whites, compared to their numbers in the population. For example, 57 percent of those arrested on all state highways were minorities even though they account for only 26 percent of New Jersey's population, according to census figures." *Ibid.*

⁸² Robin Toma, Esq., human relations consultant, Los Angeles County Human Relations Commission, telephone interview, Aug. 6, 1996 (hereafter cited as Toma, Telephone Interview); see also Richard Marosi, "Trial Ordered on Racial Profiling Claim," *The Los Angeles Times*, Aug. 9, 2000, p. B1.

In 1996, the Anaheim Police Department wrongly detained Yong Ho Choi for two days on suspicion of killing California Highway Patrol Officer Don Burt Jr. Another Asian man was later arrested and convicted for the murder. As a result, Mr. Choi filed suit in federal district court and alleged that he was a victim of racial profiling. Although the lower court dismissed his claim, the U.S. Court of Appeals for the Ninth Circuit subsequently ruled that there was sufficient evidence to begin a trial on whether the police department violated Mr. Choi's civil rights.

⁸³ Toma, Telephone Interview. Mr. Toma described how Garden Grove, California, law enforcement officers routinely stop Asian teenagers, accuse them of being members of Asian gangs, photograph them without their parents' knowledge or consent, and ultimately do not arrest them.

⁸⁴ H. Josef Hebert, "Energy Probe Finds Racial Profiling in Wake of Wen Ho Lee Case," *The Associated Press State & Local Wire*, Jan. 20, 2000, BC cycle (hereafter cited as Hebert, "Energy Probe").

⁸⁵ Bob Drogin, "How FBI's Flawed Case Against Lee Unraveled," *The Los Angeles Times*, Sept. 13, 2000, p. A1. Mr. Lee was fired from his job at Los Alamos, spent approximately 277 days in jail, and was viewed as a convicted terrorist or spy. His proposed plea agreement would arrange for him to plead guilty to the felony of one charge of unlawful retention of national defense information. The remaining charges would be dropped, and he would not receive any penalties. However, before this agreement occurred, "Lee was indicted on 59 charges and arrested . . . Dec. 10, [1999] for allegedly transferring top-secret nuclear weapon data to unsecured computers and portable tapes at Los Alamos. . . . The weapon data were not formally classified when Lee copied them. . . . Thirty-nine of the charges, all carrying life sentences, alleged that Lee acted with intent to harm the United States and to aid a foreign power. Seven of the tapes could not be located, despite what the FBI said was one of the largest searches in its history. Lee's lawyers claimed that he destroyed the tapes but offered no proof. . . . Lee's lawyers sent letters to the Justice Department shortly before he was indicted, specifically offering to let him take a polygraph test to answer questions about the tapes. The offer was ignored. . . . In early 1999, [Robert Vrooman, then head of counterintelligence at Los Alamos] repeatedly testified in closed-door sessions before the House and Senate Intelligence committees and several investigative review boards. Their message: No espionage had occurred and Lee

can scientists and engineers at various nuclear laboratories in the United States report that their employers and colleagues have unfairly scrutinized their actions, as well as created hostile work environments replete with anti-Asian jokes, lack of promotional opportunities, and lower compensation for comparable work.⁸⁶

Furthermore, law enforcement agencies' legitimate national security concerns about terrorism and narcotics trafficking have also provided an opportunity for racial profiling, particularly against American citizens of Middle Eastern and Latin American descent. Customs agents at the Miami, Chicago, and Newark, New Jersey, airports, which are ports of entry for international travelers, have been accused of almost exclusively selecting, detaining, and frisking people of color.⁸⁷ Black female travelers who arrived at O'Hare Airport in Chicago alleged they were repeatedly subjected to unwarranted strip searches. As a result, they filed a class action lawsuit

against the U.S. Customs Service.⁸⁸ Similarly, one such allegation of racial profiling and violations of various constitutional protections originated from Janneral Denson, an African American Florida woman:

[Ms.] Denson was handcuffed and taken to Jackson Memorial Hospital in Miami by Customs agents who searched her luggage at Fort Lauderdale/Hollywood International Airport when she was returning from Jamaica. After finding nothing in her suitcases, [her lawsuit] . . . claims she was held at Jackson Memorial where, for three days, she was shackled to a bed, denied calls to her family or a lawyer, and forced to take a laxative she said might hurt her unborn child. Denson was never charged with a crime. Twelve days after her release, her son was born prematurely.⁸⁹

In contrast to those who contend that police authorities engage in racial profiling, law enforcement officials maintain that their criminal justice research and experience are the basis for their use of race, ethnicity, and gender to create a characteristic "profile" of an individual likely to commit a certain type of crime, such as drug trafficking. This perspective was reflected in comments from a New York City police official, who indicated that police officers stop and question members of the public whose identities match crime victims' descriptions of suspects.⁹⁰ Other authorities recognize that some of this

had been unfairly targeted because he is Chinese American." Ibid.; see generally Sasha Talcott, "UC Lab Employee Tells What It's Like Being an Asian at Work," *Daily Californian via U-Wire*, Aug. 30, 2000 (hereafter cited as Talcott, "UC").

⁸⁶ Talcott, "UC." Dorothy Ng, a civil engineer and an American citizen who is employed at the University of California and managed Lawrence Livermore National Laboratory, was born in Hong Kong. She maintains that she is hesitant to visit her homeland because her colleagues may question her allegiance to the United States; Hebert, "Energy Probe." But see Jason Ma, "Feinstein Speaks on Asian American Issues: Says Racial Profiling Did Not Occur in Labs," *The Ethnic NewsWatch—AsianWeek*, Feb. 2, 2000, p. 9. California Senator Dianne Feinstein responded to a request from San Francisco's Asian American community leaders for assistance in arranging bail for former Los Alamos scientist, Wen Ho Lee. "I would urge everyone not to jump to conclusions. . . . I truly believe in my heart of hearts that racial profiling has not been the case here. . . ." Senator Feinstein also stated that Mr. Lee's incarceration in solitary confinement without bail was "a very unusual prerequisite in our system of justice." Ibid.

⁸⁷ Nelson, "Changing the Profile at Customs"; Beth Gardiner, "Executive Files 'Racial Profiling' Complaint Against Customs," *The Associated Press*, Nov. 17, 1999, a.m. cycle, New York (hereafter cited as Gardiner, "Executive"). Yvette Bradley, a black female traveler who arrived at Newark (New Jersey) International Airport reported that she and eight of the nine other African American female passengers on a flight from Jamaica, West Indies, were subjected to body and baggage searches, while white passengers were not stopped or searched.

⁸⁸ Gardiner, "Executive"; see also Pat Milton, "Raymond Kelly, Head of the U.S. Customs Service," *The Associated Press State & Local Wire*, Oct. 21, 2000, BC cycle, New York. "In 1998 [Amanda] Buritica, a teacher from Port Chester, N.Y., was returning from a Hong Kong vacation. When a San Francisco Customs inspector noticed that she was a native of Columbia, she was searched, X-rayed, given laxatives and held 22 hours. No drugs were found; she won a \$400,000 settlement." Ibid.

⁸⁹ "Customs Defines Criteria for Airport Drug Searches," *Sun-Sentinel* (Fort Lauderdale, FL), Aug. 12, 1999, p. A1 (hereafter cited as "Customs Defines").

⁹⁰ Howard Safir, NYPD police commissioner, testimony before the U.S. Commission on Civil Rights on Police Practices and Civil Rights in New York City Hearing, May 26, 1999, transcript, p. 165 (hereafter cited New York Hearing Transcript). "We do not select our suspects, as they are identified not by us but by the victims. We deploy our officers where violent crime occurs, and we question individuals who fit the description of crime suspects. This is basically strategy implemented without regard to race or ethnicity but, rather, as a part of our commitment to eradicate crime in every neighborhood in the city." Ibid. See also Rudolph Giuliani, New York Hearing Transcript, p. 49.

nation's police chiefs and law enforcement officers equate "good police work" as questioning anyone who somehow does not fit into the immediate surroundings.⁹¹

In a poor neighborhood, sometimes that's the person driving a car with a shiny paint job and no dents. [T]he National Black Police Association director and a former patrol officer, saw it every time he was assigned a white cop as his partner. When you would ride with one of these ignorant people, they would say, "I'm going to pull this black guy over because he looks like he's doing something suspicious. . . ."

[David Harris, a University of Toledo law professor and another leading expert on racial profiling] says Blacks and minorities are just going to look "out of place" more often in a white-majority society . . . This isn't about racism. This is about institutional practices. Officers don't do this because they are racist. They do it because they think it's a way to stop crime.⁹²

Internal Mechanisms to Monitor and Control Racial Profiling

Although controversy exists as to whether the nation's law enforcement and investigating authorities routinely stop, question, frisk, and/or arrest members of ethnic and racial groups without sufficient justification for alleged legal violations, it is apparent that people of color are disproportionately subject to greater police scrutiny. Accordingly, the U.S. Customs Service recently indicated that it had no specific policy on determining which travelers should be stopped for questioning or frisks.⁹³ The agency subsequently instituted several policy changes that increased discoveries of drugs and contraband by 23 percent, while decreasing the number of searches it performed by 70 percent in 1999.⁹⁴ Specifically, "[a] supervisor must approve a personal search or a pat-down [of a traveler]. If an X-ray or a more intrusive search is necessary, the highest ranking port supervisor must authorize the transfer to a hospital, and only after

a staff attorney is consulted. . . ."⁹⁵ Furthermore, the agency established that Customs inspectors' handbooks should be revised to include new policies on personal search methods; a significant number of supervisors who exhibited managerial difficulties at the Miami, Atlanta, and Chicago airports should be transferred; and a working relationship should be created with the agency, the FBI, and the CIA.⁹⁶

Other law enforcement entities have initiated dialogues with their respective local communities to educate people on what to anticipate when they are approached by a police officer. For example, in Buffalo, New York, several Buffalo police officers participated in a diversity training workshop sponsored by the Erie County Chiefs of Police and the National Conference of Community and Justice.⁹⁷ Members of the public contributed to this forum by asking questions relating to traffic stop procedures, receiving information on eliminating stress when stopped by the police, and viewing a video on perspectives of police and community relations.⁹⁸

Moreover, although police departments in seven states have begun to collect internal statistics on the race of individuals stopped by the police, there is no national initiative to require every state to do so, due to resistance from law

⁹¹ Gougis, "Improbable Cause."

⁹² Ibid.

⁹³ Milton, "Raymond Kelly." U.S. Customs Service Commissioner Raymond Kelly revealed that in the past, individual Customs inspectors decided which passengers could be detained. Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid. But see Michael Arena, "New Body Scanners at Airports Proving to be Revealing," *Newsday*, Dec. 30, 1999, p. A6. "International travelers who are suspected of smuggling drugs or carrying weapons are being offered the body scan (a new high-tech scanner that can see through passengers' clothing and search for contraband with an x-ray image that shows the naked body) as an alternative to a physical pat-down when they pass through ports of entry at airports across the country. . . . [P]rivacy advocates say the capability to show the full external contours of the body, including male and female private areas, is an 'electronic strip search' that erodes constitutional protections." Ibid.

⁹⁶ Ibid.; see also "Customs Defines." "The agency is instituting a system based on criteria that focus on a passenger's behavior and such factors as whether the suspect has given inconsistent answers to an inspector's questions, is the subject of an intelligence report or has been detected by a drug-sniffing dog. . . . [T]he agency will no longer detain airline travelers suspected of smuggling narcotics for more than four hours without specific approval of a federal magistrate." Ibid.

⁹⁷ Harold McNeil, "A Plea for Calm Between Police and Public," *The Buffalo News*, June 21, 2000, p. B1; see also Darla Carter, "Guidance Offered on Stops by Police," *The Courier-Journal* (Louisville, KY), Aug. 23, 2000, p. B1.

⁹⁸ McNeil, "A Plea for Calm Between Police and Public."

enforcement organizations.⁹⁹ Nevertheless, several studies show that people of color are disproportionately stopped and questioned more frequently than whites.¹⁰⁰

INTERNAL INVESTIGATIONS AND DISPOSITIONS

Police departments conduct their own inquiries into alleged police misconduct, primarily through their internal affairs divisions (IADs), which are charged with providing consistent and secure investigation strategies and issuing dispositions of complaints.¹⁰¹ In addition, the International Association of Chiefs of Police (IACP) recommended that the IADs monitor investigations of civilian complaints against police officers.¹⁰² Although the IACP maintained that first-line police supervisors could address minor misconduct complaints, the most optimal situation would also allow IADs to review these incidents.¹⁰³

Mechanisms for Detecting Officer Misconduct Previous Reform Efforts

Internal affairs divisions of the nation's police departments have seen reforms due to reports from various police review commissions, incidents of alleged police misconduct, community pressure, and strategic police management. In 1968, the New York City Police Department was at the center of a corruption scandal that involved merchants and builders paying police officers to avoid compliance with administrative codes and Sunday "blue laws."¹⁰⁴ As a result of

the media attention surrounding this controversy, then-Mayor John V. Lindsay appointed a panel, the Knapp Commission, to investigate the matter.¹⁰⁵ Concomitantly, Police Commissioner Patrick V. Murphy had begun to initiate radical reform measures in the NYPD, which included strengthening the internal affairs division:

[He] made it his work the job of all commanders by establishing decentralized field internal affairs units and by creating an integrity officer position in every department precinct and squad. He authorized the IAD to conduct "integrity tests"—phoning in fictitious complaints against officers to determine whether supervisors discouraged or ignored complaints, for example—and made public examples of those who failed these tests. He created an Internal Affairs "field associates" program that recruited anonymous officers to report surreptitiously on any misconduct they witnessed at work. His IAD investigators and field associates identified "corruption hazards" in each of the city's seventy-five police precincts and held commanders, integrity officers and supervisors accountable for making certain that officers did not fall prey to them. In short, and although his department's major problem was money corruption rather than brutality, Murphy used his three and a half years in office to create an environment that loudly and clearly condemned abusive police conduct, those who engage in it, and—equally important—those who *tolerate* it.¹⁰⁶

In the early 1990s, the Boston Police Department's leadership and management were analyzed in the St. Clair Commission report. This report uncovered various barriers to effective policing and made several recommendations

⁹⁹ Gougis, "Improbable Cause."

¹⁰⁰ Ibid.; see generally *ibid.* The author discusses a number of studies. For example, Professor John Lambert of Temple University researched driving and traffic stops on the New Jersey Turnpike from 1988 to 1991. He found that despite a similar rate of traffic violations, "only 13.5 percent of the cars had a black driver or passenger, [and] nearly 35 percent of the traffic stops—and 73 percent of the arrests—involved blacks." Ibid.

¹⁰¹ USCCR, *Guardians*, pp. 58–59, 71–74.

¹⁰² Ibid., p. 59 (citing International Association of Chiefs of Police, *Managing for Effective Police Discipline: A Manual of Rules, Procedures, Supportive Law and Effective Management* (2d rev. ed., 1977), p. 48).

¹⁰³ Ibid.

¹⁰⁴ Jerome H. Skolnick and James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* (New York: The Free Press, 1993), p. 178; see Martin Gottlieb, "13 Police Suspensions: Lessons of '68," *The New York Times*, Sept. 25, 1986, p. B4.

¹⁰⁵ Skolnick and Fyfe, *Above the Law*, p. 178.

¹⁰⁶ Ibid., p. 180 (emphasis in original); see Gottlieb, "13 Police Suspensions"; see also George James, "New York Calls for Precincts to Control Police Monitoring," *The New York Times*, June 15, 1995, p. A1. The prevention of police corruption continued to be a goal of New York City officials in the 1990s. In 1995, Mayor Rudolph W. Giuliani and Police Commissioner William J. Bratton announced a new initiative to provide police precinct commanders with direct responsibility for investigating their subordinates. Internal Affairs inquiries about rank-and-file staff would also be provided to precinct commanders. Previously, information about IAD investigations was exclusively accessible to the IAD. But see Gottlieb, "13 Police Suspensions." In 1986, Chief Anthony Bouza, who had been an NYPD commander, commented on the field-associate program. "I don't see evidence of its success . . . If it was really working, the union would be hysterical, cops would be abusing officers they think are field associates, and there would be a lot more uncovering of crime." Ibid.

relating to the department's internal affairs division. The study found that the IAD had inadequate record-keeping and documentation, conducted haphazard inquiries and hearings of police misconduct allegations, and caused lengthy investigative delays.¹⁰⁷ The report revealed:

Given the Internal Affairs Division's . . . failure to routinely provide thorough and timely investigations of alleged misconduct, and the fact that the department sustains less than 6 percent of complaints against officers, it is no surprise that the overwhelming majority of community residents we spoke to have little confidence in the department's ability or willingness to police itself. The IAD reports to the commissioner, and its shortcomings adversely reflect on his performance.¹⁰⁸

Furthermore, the St. Clair Commission's review of IAD files also found a pattern of complaints of excessive force against a small number of police officers, who remained on the police force.¹⁰⁹ The report recommended the IAD's investigative process be revised and a community appeals board be created to review IAD investigations.¹¹⁰

Current Approaches

Throughout the nation, various impressions exist regarding the effectiveness of the internal affairs divisions of police departments. In the Baltimore Police Department, police officers have asserted that their disciplinary process was "unfair, retaliatory, and treated blacks more harshly than whites."¹¹¹ As a result, the depart-

ment acknowledged the existence of disparate treatment and began using a revised disciplinary system to correlate misconduct violations with consistent disciplinary options.¹¹² Sergeants and other immediate supervisors also no longer have discretion in addressing minor complaints; they must now forward all misconduct allegations to the department's headquarters. However, critics of this new system indicate police investigators are not sufficiently investigating serious misconduct complaints, due to their current focus on minor offenses.¹¹³

Similarly, Deputy Chief John Martinez of the Dallas Police Department, who supervises the department's IAD, instituted an initiative to rotate investigators assigned to its IAD, in order to address allegations of disparate treatment based on race in disciplining police officers.¹¹⁴ This plan was a response to a discrimination settlement reached with a Dallas police officer, Sergeant Lee Bush, as well as a federal probe into the department's disciplinary practices.¹¹⁵ Deputy Chief Martinez is also considering implementing penalty ranges for specific complaints of police misconduct, which would change the current practice of police supervisors resolving discipline incidents on a case-by-case basis.¹¹⁶ The

EEOC concluded . . . [that] the Department violated civil rights laws by retaliating against officers who accused the Department of racism." Ibid.

¹¹² Ibid.

¹¹³ Ibid. But see *ibid.* "We may be spending more time with day-to-day rules infractions," said Major Odis L. Sistrunk, Jr., who is in charge of making sure punishment is consistent. "But we would not have the organization we can be proud of if we didn't handle the smaller things. Just because we go a year without finding a police officer who took money from a drug dealer doesn't mean they aren't out there. . . . but it doesn't mean we aren't interested in cleaning our own house." Ibid.

¹¹⁴ Dave Michaels, "Dallas Police Rotating Internal Affairs Duties," *The Dallas Morning News*, July 2, 2000, p. A29.

¹¹⁵ Ibid. "Sergeant Bush was a recruiter in the personnel division in 1997 when he wrote a letter to former Chief Click that accused supervisors of trying to stop him from receiving a commendation and complaining that black officers were not allowed to travel as frequently as whites and Hispanics. Commanders suspended him for two days after investigating his claims and determining that he had made them up. . . . In April of 2000, the city agreed to pay . . . Bush \$300,000 plus back pay, purge his personnel file and promote him to sergeant to settle the officer's discrimination claim." Ibid.

¹¹⁶ Ibid. Some department sources maintain that this discretion results in minority police officers being more harshly

¹⁰⁷ "St. Clair Report," *The Boston Globe*, Jan. 15, 1992, p. 24.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.; see also Maggie Mulvihill and Joseph Mallia, "Cop Faces Brutality Rap—Second Lawsuit Filed Against Officer who Beat Colleague," *The Boston Herald*, Apr. 29, 1999, p. 32. "A Boston police officer found liable in the vicious beating of a fellow officer has been charged in a federal lawsuit with brutality a year later against a nightclub patron. The suit, filed last week, claims that officer David C. Williams was allowed to remain on the street even as he faced previous brutality complaints because police brass ignored reforms. . . . The suit charges that the highly touted St. Clair Commission report recommending Internal Affairs reforms has been virtually ignored by police." Ibid.

¹¹⁰ Ibid. The Community Appeals Board could also request that the IAD conduct additional investigations of complaints.

¹¹¹ "Rooting Out Wrongdoers Among City Protectors," *The Baltimore Sun*, Jan. 28, 1999, p. A1. In December 1998, "the

initiative also would install new software in the IAD to give investigators an improved method of monitoring the disposition of discipline cases.¹¹⁷

Observers in other jurisdictions maintain that IADs routinely spend a lengthy period of time to investigate civilian complaints of police misconduct.

In 1998, the [Prince George's County Maryland Police] Department's IAD completed 75 investigations of cases in which civilians alleged that officers used excessive force, harassment or abusive language. On average, the investigations took 427 days to complete before the results were turned over to the Prince George's Citizen Complaint Oversight Panel, an independent review board that monitors allegations of police misconduct.

In contrast, the department needed only 191 days to investigate complaints in 1995, according to a report released by the oversight panel [in September of 1999]. The investigations have taken longer and longer each year since then, rising to 280 days in 1996 and 339 days on average in 1997. . . .¹¹⁸

Secondly, in some jurisdictions, the role and effectiveness of IADs are unclear to the general public and to local officials. The Detroit Police Department's IAD does not inform the public about its investigations. In addition, the number and types of IAD complaints are not public information, and there are no standardized complaint forms.¹¹⁹ Similarly, during a City Council meeting in 1998, the Sacramento City Council heard accounts from many citizens who had complaints involving alleged police misconduct.¹²⁰ City Council members said they had not

disciplined than their white counterparts for similar infractions.

¹¹⁷ Ibid. The initiative also includes expediting IAD investigations of complaints.

¹¹⁸ Craig Whitlock, "Police Take More Time to Probe Complaints," *The Washington Post*, Oct. 6, 1999, p. A3. See Matthew Dolan, "Internal Affairs—When Citizens File Complaints About Officers," *The Virginian-Pilot* (Norfolk, VA), May 18, 1999. The Portsmouth (Virginia) Police Department's IAD is now focusing on reducing delays in completing investigations. Ibid.

¹¹⁹ Human Rights Watch, "Shielded From Justice: Police Brutality and Accountability in the United States," <<http://www.hrw.org/hrw/reports98/police/uspo62.htm>> (Sept. 22, 2000).

¹²⁰ Andy Furillo, "City to Police: Give Us Accountability," *The Sacramento Bee*, Jan. 14, 1998, p. B1.

received an update on police-related tort claims filed against the city of Sacramento from the police department or other city legal officials since 1985.¹²¹ However, the chief of police and a Sacramento city attorney then explained that California state regulations prohibit a public disclosure of internal affairs cases.¹²²

One strategy for alleviating the public's uncertainty of the IADs' role in investigating civilian complaints is occurring in Austin, Texas. In May 2000, civil rights advocates and police union officials reached a compromise in determining public access into the activities of the Austin IAD, which currently investigates all civilian complaints and refers disciplinary decisions to the chief of police.¹²³ The proposed plan requires that a city-hired police monitor be notified of all civilian complaints. In addition, the police monitor would have full access to IAD files and can participate in witness interviews.¹²⁴ Previously, public access to a police officer's personnel file would only be permitted if the IAD validated a civilian complaint against the officer.

Barriers to Effective Internal Investigations

According to Hubert Williams, director of the Police Foundation, internal accountability of police departments is considered to be more effective in monitoring police conduct.¹²⁵ A 1977 Police Foundation study revealed that the lack of systemwide data hinders police departments throughout the nation from developing innovative training programs and enforcement policies.¹²⁶ Mr. Williams indicated that a subsequent 1998 Human Rights Watch report found a need for data on police misconduct and mechanisms to address these incidents. This report also found that an oversight system was needed that held

¹²¹ Ibid.

¹²² Ibid.

¹²³ Jason Spencer, "Police Plan is Result of Trade-Offs," *The Austin American-Statesman*, May 30, 2000, p. B1.

¹²⁴ Ibid. But see *ibid.* Civil rights advocates were disappointed with the compromise plan. They preferred that it include the establishment of an independent review board with subpoena powers, a jury trial environment for each hearing, and civilian members who were not appointed by the City Council.

¹²⁵ See Hubert Williams, *Police Practices Briefing Transcript*, pp. 49–50.

¹²⁶ Ibid., p. 52.

supervisors accountable for the actions of their staff, and evaluated supervisors' effectiveness in managing problem officers.¹²⁷

Moreover, Mr. Williams explained that police misconduct is usually due to the failure of police management to strongly voice and enforce departmental policies, as well as the inability to appropriately monitor employees' actions that violate laws and police policies.¹²⁸

To address these concerns, the Police Foundation developed two mechanisms to analyze police accountability and to improve service delivery and community satisfaction. The Risk Analysis Management System "centralizes key performance data, identifies critical risk areas, and allows for early intervention and strategic response to reduce the potential for liability, to assist officers and to promote community confidence."¹²⁹ Secondly, the organization designed a Quality of Service Indicator to collect and analyze traffic stop data, in order to provide police administrators with a quantitative performance measure. Mr. Williams further said police management should:

proactively institute and enforce strong policies governing conduct as well as systems to collect and analyze data relative to police/citizen contacts such as complaints, use of force incidents, traffic stops. Such efforts would inform policy, guide recruitment and training and build accountability necessary to restore and maintain public trust in the police.¹³⁰

At the Commission's briefing, in response to a question from Commissioner Christopher Edley on how police departments relate to communities of color, Mr. Williams explained that when police officers exercise their discretion in ways that do not result in arrests or trigger other criminal justice mechanisms, their actions are not subject to review by their supervisors or the judicial system.¹³¹ This unsupervised discretion provides an opportunity for discriminatory activity.

Mr. Williams also remarked that police departments used to consider themselves as the

exclusive authority in combating crime, although they currently want the assistance of the public to solve crime problems.¹³² In addition, police departments are now more diverse with better educated personnel. Mr. Williams then recommended that the Commission review *The Challenge of Crime in a Free Society*, which is one source that examines the criminal justice system and proposes many recommendations that have not been acted upon.¹³³ He then discussed the Kerner Commission's observation of how police officers' unfamiliarity with local neighborhood residents can be the predecessor to civil unrest.¹³⁴

Mr. Williams said most chiefs of police are extremely concerned about any potential federal inquiry into the internal management practices and policies of their police departments. As a result, police chiefs and organizations are requesting access to those investigation standards that the U.S. Department of Justice uses when conducting a federal inquiry, in order to establish these policies in their respective police departments before a federal investigation.¹³⁵ Mr. Williams viewed this type of federal intervention as an important factor in reforming police practices.

Another participant at the briefing, Charles Ogletree, the Jesse Climenko Professor of Law at Harvard Law School, remarked that the problem with law enforcement is that there is a growing number of police officers who remain silent when they observe misconduct.¹³⁶ He noted the case of an African American undercover police officer in Boston who was beaten by black and white police officers, none of whom came forward to acknowledge their wrongdoing.¹³⁷ Thus, the problem of acquiescence persists throughout law enforcement, regardless of the officer's race.¹³⁸ And, although Commission Vice Chair Cruz Reynoso made reference to a survey in Santa Rosa, California, that indicated 82 percent of the

¹²⁷ Ibid., p. 53.

¹²⁸ Ibid., p. 54.

¹²⁹ Ibid., p. 55.

¹³⁰ Ibid., p. 56.

¹³¹ Ibid., p. 60.

¹³² Ibid., pp. 70-71.

¹³³ Ibid., pp. 71-72.

¹³⁴ Ibid., p. 72.

¹³⁵ Ibid., pp. 104-05.

¹³⁶ Charles Ogletree, Police Practices Briefing Transcript, pp. 43-44.

¹³⁷ Ibid., p. 44.

¹³⁸ Ibid.

city's residents were happy with the police, Dr. Ogletree cautioned against using such statistics to support the position that there is no problem with police misconduct.¹³⁹ He added that while communities may have problems with their local police departments as a whole, the individual "Officer Friendly" who is well known throughout the neighborhood may be highly respected and accepted by community residents.¹⁴⁰ Finally, Dr. Ogletree recommended that these issues of community policing and others should be examined more closely, perhaps in closed-session meetings with the law enforcement community, and not in response to a crisis.¹⁴¹

James Fyfe then provided a discussion on arbitration boards that review police disciplinary actions. He said the boards are a disaster and he did not "know of any police chief who would not like to get rid of them."¹⁴² Dr. Fyfe suggested that the Commission examine the effects of arbitration boards as the final step in the disciplinary process. He stated that in New Jersey, Pennsylvania, and Massachusetts, arbitration boards have eroded the ability of "right-minded, well-meaning" police chiefs to manage their agencies appropriately.¹⁴³

CONCLUSION

Successful internal management of the nation's police departments will depend on how well law enforcement authorities can reduce incidents of unnecessary deadly force, effectively design and utilize civilian complaint procedures, as well as monitor internal investigations. Although police use of deadly force is regulated by legal constraints and internal law enforcement guidelines, unnecessary fatalities of civilians and police officers continue to occur throughout the nation. In addition, incidents of excessive deadly force could be reduced by clear policy stances on misconduct guidelines and infraction disposition from police administrators, selective use of certain restraint methods of alleged suspects, identifying those police candidates, before an offer of

employment is made, who may be prone to use unnecessary excessive force, and training police officers on appropriate ways of using both deadly and nonlethal methods of force. The Commission recognizes that while some progress has been made, particularly in employing specialized training methods and curricula on the use of force, other obstacles remain (e.g., inequitable dispositions and time-consuming IAD investigations).

Routine encounters between police officers and members of the public have now become unfortunate opportunities for alleged racial profiling. Current legal precedent permits the use of race to justify stopping civilians when it is an essential factor in a law enforcement investigation. Contemporary case law also grants deference to police officers' interpretations of what constitutes reasonable suspicion and probable cause to stop and question civilians they suspect of wrongdoing. Furthermore, institutional law enforcement practices tend to view people of color as "outsiders" who are likely to have committed an offense, which results in a disproportionate number of them becoming the focus of law enforcement authorities' inquiries and investigations.

Lastly, police departments' internal affairs divisions continue to investigate alleged police misconduct and provide disposition of sustained complaints. Previous police reform movements emphasized the need for IADs to provide accurate record-keeping, rapid disposition of complaints, and appropriate procedural inquiries into allegations of misconduct. Current strategies reflect these goals. IADs also face the problems of equitably imposing discipline for all police officers who commit offenses, regardless of their race and gender; and efficiently managing problem officers and those police officers who have knowledge of their fellow officers' wrongdoing. Ultimately, effectively addressing these concerns will contribute to the internal order of the nation's law enforcement agencies.

¹³⁹ Ibid., pp. 42-45.

¹⁴⁰ Ibid., p. 46.

¹⁴¹ Ibid., p. 47.

¹⁴² Fyfe, Police Practices Briefing Transcript, p. 30.

¹⁴³ Ibid., p. 31.

CHAPTER 3: FINDINGS AND RECOMMENDATIONS

Reducing Incidents of Unnecessary Deadly Force

Finding 3.1: In *Guardians*, the Commission recommended that police officers should continue to be trained in the use of deadly weapons, as well as report discharges of firearms within 24 hours of the occurrence.¹⁴⁴ The Commission continues to support these recommendations. However, current police policies in local jurisdictions have varying interpretations as to what constitutes a legitimate use of deadly force in order to satisfy the federal “reasonableness” standard delineated in *Garner*.

Recommendation 3.1: Federal, state, and local law enforcement authorities should conduct further analysis to determine whether a uniform policy can be constructed for their respective internal departments on the use of deadly force.

Finding 3.2: Unnecessary deaths of civilians and police officers continue. Police officers require clear guidance from their chiefs of police and first-line supervisors on internal misconduct policies and disciplinary procedures on the use of excessive force. In addition, a significant number of police departments have begun to employ hollow point bullets as their preferred type of ammunition, in spite of public opposition. Training in nonlethal and deadly use of force methods is usually part of police departments’ curricula.

Recommendation 3.2: The Commission strongly encourages the establishment of routine policy guidance from chiefs of police and first-line supervisors on the use of excessive force, as well as informing police officers of corresponding disciplinary procedures for those who commit these offenses. Secondly, law enforcement agencies should initiate a series of routine public forums that discuss topics that concern members of the public, e.g., current restraint methods and use of hollow point bullets. These forums may alleviate public concern and inform police departments of anticipated police issues.

Routine Encounters between Police Officers and the Community: Racial Profiling

Finding 3.3: There appear to be differences in perspectives of when racial profiling occurs.

People of color and other civilians have clear opinions about being stopped, investigated, frisked, or searched by police authorities without justification. In contrast, law enforcement officers tend to view the use of an alleged suspect’s race and ethnicity as appropriate police work. As stated in its report *Police Practices and Civil Rights in New York City*, the Commission defines racial profiling as the detention, interdiction, or other disparate treatment of an individual based on racial or ethnic stereotypes that has the effect of treating persons of color differently from other persons.¹⁴⁵ Police departments have also been resistant to collecting statistics on alleged suspects’ race or ethnicity in order to document possible instances of racial profiling.¹⁴⁶

Recommendation 3.3: Continuing dialogue between law enforcement entities and the public is required to establish an understanding of what constitutes racial profiling. The nation’s police authorities should begin to redefine appropriate policing techniques that do not target any particular race or ethnicity, yet accomplish overall law enforcement objectives such as crime prevention. In addition, police departments should begin to document instances of racial profiling that are routinely generated by specific police officers. This information should become part of the officer’s personnel file and be reviewed for performance evaluation and discipline purposes. Moreover, the Commission recommends that law enforcement agencies establish a departmental system of records to permit the consistent collection and evaluation of data to determine whether racial profiling is occurring, and if so, when and why.

¹⁴⁵ U.S. Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000, p. 106, fn. 134.

¹⁴⁶ See also USCCR, *Mount Pleasant Report*, p. 144. Previously, the Commission recommended that the Federal Bureau of Investigation be “directed to collect, classify, and publish nationwide statistics on police abuse incidents and discipline of officers for use in law enforcement administration and management and to facilitate more accurate assessment of the extent of police abuse in the United States. Data collection should include race, ethnicity, sex, and age of offenders; race, ethnicity, resident status, sex, and age of victims; arrest information; type of injury; and type of weapon or force involved.” *Ibid*.

¹⁴⁴ USCCR, *Guardians*, p. 156.

Internal Investigations and Dispositions

Finding 3.4: IADs continue to be charged with investigating allegations of police misconduct and providing disposition of complaints. However, their effectiveness is being hampered by complaints of unequal measures of discipline for officers who have committed the same types of offenses,¹⁴⁷ lengthy investigations, the “code of silence” among police officers, the lack of public knowledge about police misconduct complaints and their dispositions, and the lack of computerized data systems that may assist in collecting needed information on misconduct incidents.

Recommendation 3.4: Police administrators and IAD officials should routinely examine

their disciplinary procedures and dispositions to ensure equitable treatment for all police officers, and adjust their policies accordingly. In addition, discussions should take place among rank-and-file police officers, police officials, and union representatives to address the code of silence issue and its ultimate impact on internal regulation of police departments. These discussions should also include a focus on how the code of silence has a negative impact on both the public’s safety and the well-being of fellow law enforcement officers. Lastly, sufficient resources should be made available to IADs to provide them with the mechanisms to perform their duties effectively.

¹⁴⁷ See also USCCR, *Los Angeles Report*, p. 212. The Commission found that rank-and-file LAPD police officers contend that they are punished more severely than command officers for similar infractions, which affects the overall morale of the department; USCCR, *Guardians*, p. 159. The Commission determined that efforts to discipline wayward police officers is hindered by ultimately recommending these officers for departmental awards and promotions.

External Controls

Most police departments around the country have an internal affairs division that is responsible for investigating misconduct allegations and disciplining officers.¹ But internal review measures have not always proven effective. Critics disagree with the notion of the police “policing” themselves and find such a system to be inherently flawed and lacking in objectivity. Consequently, many citizens and civic organizations support aggressive external controls as the most effective means to combat police misconduct and brutality.

In *Who Is Guarding the Guardians?* the Commission documented several problems that existed nationwide with the external review of police misconduct.² Unfortunately, many of the same concerns expressed in *Guardians* remain unresolved. Some city government officials continue to negatively influence the relationship between the public and the police in their jurisdictions. Despite the Commission’s recommendations, most civilian review boards remain without disciplinary power or meaningful authority over internal investigations into police misconduct.

Although federal, state, and local officials have instituted some changes that have affected the way in which police misconduct cases are handled, most communities studied by the Commission since *Guardians* was issued in 1981 do not show any marked improvement in the oversight of local police departments. Many communities share two central issues related to the correction and elimination of police misconduct: ineffective monitoring by federal and state

government officials and a lack of adequate independent civilian review.

CITY GOVERNMENT

City officials at various levels of government continue to exercise great influence over how external review procedures are conducted. As the Commission found in *Guardians*, “the chief executive officer (mayor or city manager) or his designee is not only granted the power to appoint and dismiss the chief of police at will but sets the tone for the conduct of the entire force.”³ Some mayors, police chiefs, and police commissioners are more involved in law enforcement matters than others. Generally, larger municipalities with higher crime rates tend to have government officials who demonstrate greater concern and control over police department affairs. In these cities, the mayor, police chief, and police commissioner will often determine the extent to which the battle against police brutality will be waged. Hubert Williams, president of the Police Foundation, explained, “Most police chiefs are honest and have integrity, but they fail due to an ignorance of what is occurring in their own departments.”⁴ According to the Human Rights Watch, “police brutality will only subside once higher-ranking police officials judge their subordinates—and are judged themselves—on their efforts to provide sufficient and consistent oversight.”⁵ The following section ex-

¹ See chapter 3 for a complete discussion of internal controls of police misconduct.

² U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981 (hereafter cited as USCCR, *Guardians*).

³ *Ibid.*, finding 4.1, p. 160.

⁴ U.S. Department of Justice, National Institute of Justice, *Police Integrity: Public Service With Honor*, National Institute of Justice and Office of Community Oriented Policing Services, January 1997, p. 33.

⁵ Human Rights Watch, “Shielded from Justice: Police Brutality and Accountability in the United States,” June 1998, <<http://www.hrw.org/reports98/police/uspo24.htm>> (Sept. 14,

amines a few of the external control measures city governments have adopted since the Commission published *Guardians*.

Reforms in City Government Oversight of Police Misconduct

In April 1991, Tom Bradley, the mayor of Los Angeles at the time, created the Independent Commission on the Los Angeles Police Department (the Christopher Commission) to temporarily oversee certain law enforcement issues in the city.⁶ The Christopher Commission issued a report recommending significant changes in the Los Angeles Police Department, including a restructuring of the entire discipline system, the appointment of an inspector general within the Police Commission to oversee the disciplinary process, and the imposition of term limits for the police chief.⁷ Shortly after the report was issued, Police Chief Daryl Gates retired and was replaced with Willie L. Williams.⁸ During his five-year tenure, Chief Williams was credited with instituting many of the improvements outlined by the Christopher Commission.⁹ He appointed Katherine Mader as inspector general to monitor the resolution of civilian complaints, and since 1991 the total number of "use of force" incidents decreased dramatically.¹⁰ Chief Williams attrib-

uted the decline in these incidents, in part, to improved training and to some officers' awareness that there is a "higher review" of their behavior, "not just within the organization, but outside through the public."¹¹ He added, "There's been an unequivocal message from me, as Chief of Police, that we will not tolerate any of these issues."¹²

Los Angeles Mayor Richard Riordan and Police Chief Bernard Parks have also expressed a commitment to ending police misconduct.¹³ According to Mayor Riordan, his office, the City Council, the Police Commission, and the police chief "are committed to strong oversight systems and procedures for the Police Department."¹⁴ This renewed sense of commitment may have been inspired by a four-year investigation by the U.S. Department of Justice into the LAPD and its use of excessive force.¹⁵ During its investigation, the Justice Department paid particular attention to the LAPD's Rampart Division, which garnered national attention when reports emerged that officers within the division had shot, beaten, and falsely arrested innocent people, 100 of whom later had their convictions overturned.¹⁶ At the time of this report, the Justice Department was negotiating a consent decree with Los Angeles that includes "strict guidelines for using confidential informants; an unprecedented degree of community outreach, open meetings and public information; a computerized system to track problem officers; holding the police chief more accountable for disciplinary decisions, and tightening control of anti-gang units."¹⁷ Therefore, as demonstrated in Los Angeles, the concerted efforts and cooperation of city government and police officials can dramatically change the manner and effectiveness of external controls on police misconduct.

2000) (hereafter cited as Human Rights Watch, "Shielded from Justice").

⁶ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, May 1999, p. 22 (hereafter cited as USCCR, *Los Angeles Report*).

⁷ *Ibid.*, p. 32.

⁸ *Ibid.*, p. 33. Chief Bernard Parks succeeded Chief Williams in 1997. See Terry McDermott, "Behind the Bunker Mentality: Professional, Aggressive Policing Made LAPD a Global Model," *The Los Angeles Times*, June 11, 2000, p. A1.

⁹ USCCR, *Los Angeles Report*, p. 37.

¹⁰ *Ibid.*, pp. 36-37. For example, police officers' use of the baton declined from 15 percent of all uses of force to 2 percent in 1995. Katherine Mader eventually left her position as inspector general, reportedly due to her frustration caused by unreasonable limitations on her authority. According to one source, Mader was told that she was limited in what she could investigate and restricted to having access only to aggregate data, not individual case files. She was even instructed that she could not speak to the civilian Police Commission that manages the department, but instead could report only to its executive director. See Erwin Chemerinsky, "Learning the Wrong Lessons from History: Why There Must be an Independent Counsel Law," *Widener Law Symposium Journal*, vol. 5 (2000), p. 8.

¹¹ USCCR, *Los Angeles Report*, p. 39.

¹² *Ibid.*

¹³ Doug Shuit, "Mayor Vows Tracking System for Officers," *The Los Angeles Times*, May 8, 2000, p. B3. Richard Riordan and Bernard Parks succeeded Tom Bradley and Willie Williams as the mayor and police chief of Los Angeles, respectively.

¹⁴ *Ibid.*

¹⁵ Editorial Writers Desk, "Rampart: Seizing an Opportunity," *The Los Angeles Times*, Sept. 18, 2000, p. B6.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

Other municipalities around the nation have also been credited with changing the attitude of law enforcement regarding police misconduct issues. For example, in New Orleans, Mayor Marc Morial and Police Superintendent Richard Pennington have been recognized for their commitment to ending police abuses within the department.¹⁸ During their tenure, an integrity division was established to uncover police corruption.¹⁹ This initial effort demonstrates Mayor Morial's interest in addressing police misconduct in New Orleans.

Similarly, in Prince George's County, Maryland, the police chief, John Farrell, promised to "root out corrupt and brutal officers with a series of initiatives designed to restore confidence in the troubled force, including the immediate installation of video cameras in patrol cars and the appointment of an FBI agent to oversee disciplinary affairs."²⁰

Some cities are testing the idea of using an independent auditor or inspector general to review police brutality cases and to recommend appropriate action directly to police department authorities. In July 2000, officials in Omaha, Nebraska, met with civic leaders and community members to discuss the possibility of appointing an auditor who would have the authority to ask that a deputy police chief or the police chief investigate a police misconduct complaint further.²¹ Inspectors general or auditors are currently in use in Portland, Oregon; San Jose, California; Los Angeles County; and the city of Los Angeles.²² The San Jose auditor, Teresa Guerrero-Daley, explained that at the time of her appointment in 1993, she was met with resistance from the former police chief and the police union, but since then she had received in-

creasing support from the City Council and other city leaders.²³ And in the cities of Portland and Seattle, which have existing auditors, officials are considering the development of civilian review boards to supplement the auditor's oversight of police misconduct.²⁴ The use of these independent authorities could provide an additional level of oversight that would increase public confidence in the integrity of police disciplinary systems.

Barriers to Effective City Government Control of Police Misconduct

In cities where officials are less involved in the external control of police misconduct the public is more likely to have a strained relationship with the police. According to the Human Rights Watch, in each of the 14 major cities that the organization examined, "police leadership on this issue is lacking. Most high-ranking police officials . . . seem uninterested in vigorously pursuing high standards for treatment of persons in custody."²⁵ In Hampton, Virginia, and Wichita, Kansas, for instance, information about internal investigations of complaints and disciplinary actions against officers was not made available to the public.²⁶ The Commission has observed that this practice fosters distrust and animosity between police officers and the communities they serve. Similar sentiments were evident throughout communities in Chicago, South Dakota, Nevada, Wisconsin, New York, and California, where many citizens expressed the view that there is simply no effective disciplining of the police.²⁷ Thus, without meaningful oversight by

¹⁸ Human Rights Watch, "Shielded from Justice," Police Administration, The Key to Reform.

¹⁹ The United States Conference of Mayors, "New Orleans Mayor Marc Morial Reelected," Feb. 13, 1998, <http://www.usmayors.org/USCM/this_week_with_mayors/documents/New_Orleans_Mayor_Marc_Morial_Reelected_021398.html> (Sept. 20, 2000).

²⁰ Fredrick Kunkle and Jamie Stockwell, "Cracking Down in Prince George's," *The Washington Post*, Sept. 22, 2000, p. A1.

²¹ Rick Ruggles, "Who Polices Police?" *The Omaha-World Herald*, July 19, 2000, p. 1.

²² Human Rights Watch, "Shielded from Justice," Citizen Review Mechanisms.

²³ Rick Ruggles, "Do Police Auditors Have an Impact?" *The Omaha-World Herald*, July 26, 2000, p. 1.

²⁴ Ibid.

²⁵ Human Rights Watch, "Shielded from Justice," Police Administration, The Key to Reform.

²⁶ Virginia Advisory Committee to the U.S. Commission on Civil Rights, *Unequal Justice: African Americans in the Virginia Criminal Justice System*, April 2000, p. 43; Kansas Advisory Committee to the U.S. Commission on Civil Rights, *Police-Community Relations in the City of Wichita and Sedgewick County*, July 1980, p. 34.

²⁷ See Illinois Advisory Committee to the U.S. Commission on Civil Rights, *Police Protection of the African American Community in Chicago*, September 1993, p. 29; South Dakota Advisory Committee to the U.S. Commission on Civil Rights, *Native Americans in South Dakota: An Erosion of Confidence in the Justice System*, March 2000, pp. 13-14; Nevada Advisory Committee to the U.S. Commission on

city officials, the credibility and effectiveness of police departments around the country are being undermined by the officials' failure to respond to disciplinary problems adequately.

Some city officials may altogether oppose using external controls to address police misconduct. In Bangor, Maine, for example, Representative Michael J. McAlevey (R-Waterboro), rejected the notion that civilians should be involved in the correction of police misconduct.²⁸ To illustrate his view that civilians are not qualified to conduct police investigations, Representative McAlevey stated, "I don't want a plumber to take my teeth out."²⁹ And in New York City, local officials have been widely criticized for resisting independent oversight of the police department's misconduct issues.³⁰ Although crime rates declined 55 percent since Mayor Rudolph Giuliani first took office in New York in 1993, according to a poll commissioned by the City Council most city residents think that police brutality is a serious issue, that the department cannot effectively police itself, and that it needs an independent monitor.³¹

Moreover, the Commission to Combat Police Corruption, which was created by Mayor Giuliani in 1995, found extensive deficiencies in the internal disciplinary process of the police department.³² But the Giuliani administration

repeatedly rejected several proposed forms of external control (including federal and city-run monitors), insisting that the city would never agree to oversight of or any outside intrusion into the police department.³³ Such views have prompted strong opposition from Mayor Giuliani's critics, who accuse him of being less than objective in police misconduct issues. Rev. Al Sharpton, a civil rights activist and president of the National Action Network, expressed reservations about the appointment of the new police commissioner, Bernard Kerik, who some think can effect positive change in the department's administration. But Rev. Sharpton stated, "The fact that they have a new commissioner doesn't mean anything. The police commissioner in New York is Rudy Giuliani. He just changed deputies."³⁴

According to Robert Loudon, director of the Criminal Justice Center and Security Management Institute at the John Jay College of Criminal Justice, any deterrent against police misconduct must focus on "the elected officials and the persons that those elected officials appoint to run their police departments."³⁵ Thus, the predominant concern for achieving integrity in the oversight of police misconduct cases requires the involvement of city officials who can remain fair and impartial, and whose primary objective is to ensure justice prevails.

Increasing numbers of city officials have taken a firm stance against police brutality in their jurisdictions. Indeed, some of the most creative programs designed to combat this problem have come from the offices of mayors, police commissioners, and police chiefs. Too many, however, are unwilling to yield to public pressure for stiffer penalties against officers who violate the law. Unfortunately, significant changes in the external control of abusive officers are often not made until a tragedy occurs. It remains to be seen what effect, if any, some of the newer

Civil Rights, *Police-Community Relations in Reno, Nevada*, May 1992, pp. 24-25; Wisconsin Advisory Committee to the U.S. Commission on Civil Rights, *Police Protection of the African American Community in Milwaukee*, November 1994, p. 44; U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume VI: The New York Report*, December 1999, pp. 14-15 (hereafter cited as USCCR, *New York Report*); U.S. Commission on Civil Rights, Western Regional Office, *Police-Community Relations in San Jose*, April 1980, p. 7.

²⁸ Emmet Meara, "Legislative Panel Nixes Civilian Review Board," *The Bangor Daily News*, Jan. 11, 2000.

²⁹ Ibid. Later, Representative McAlevey explained that he did not oppose civilian input on public policy and the findings of investigations, but he reiterated that trained law enforcement professionals should conduct the investigations.

³⁰ See Juan Gonzalez, "Abusive Cops Roam Free," *The Daily News* (New York), Feb. 26, 1999, p. 20.

³¹ C.J. Chivers, "Approval and Wariness in Poll on Police," *The New York Times*, Sept. 15, 2000, p. B9.

³² William Rashbaum, "Mayor's Panel Faults Police Department on Discipline System for Officers," *The New York Times*, p. A1.

³³ Mike Claffey and John Marzulli, "Deal Near on Cop Probe," *The Daily News* (New York), July 6, 2000, p. 5.

³⁴ Dave Goldiner, "Rev. Al Presses Reno, Urges Federal Monitor of NYPD, Raps Commish," *The Daily News* (New York), Aug. 26, 2000, p. 8.

³⁵ Robert Loudon, statement before the U.S. Commission on Civil Rights, National Police Practices and Civil Rights Briefing, June 16, 2000, transcript, p. 103 (hereafter cited as Police Practices Briefing Transcript).

forms of external controls being developed by city governments will have in bringing an end to the problem of police misconduct.

STATE PROSECUTIONS AND FEDERAL OVERSIGHT

State prosecution of police misconduct has been criticized as being infrequent and ineffective, in part, because local prosecutors are reluctant to prosecute the officers upon whom they must rely for the investigation and prosecution of criminal cases.³⁶ As the Commission found in *Guardians*, "[t]he criminal law is a limited vehicle for preventing or deterring police misconduct. Nonetheless, vigorous prosecution of such cases by local prosecutors is essential."³⁷ In most police abuse cases, however, local prosecutors decline to bring criminal charges, often with the explanation that the officers' use of force was "justified."³⁸ Under these circumstances, many citizens have lost faith in the ability of their local governments to discipline the police, and instead have begun to seek aggressive federal intervention to curb police misconduct.

State Prosecutors

State prosecutors around the country have been criticized for taking a tough approach to the prosecution of civilian defendants but being more lenient and sympathetic when the accused is a police officer. Biases a prosecutor may hold in favor of a particular defendant will typically conflict with his or her ability to pursue a fair and just outcome. This is particularly true in the case of police brutality because the accused is often the same person that the county or district attorney relies upon for help in the investigation and prosecution of criminal defendants.

³⁶ USCCR, *Los Angeles Report*, p. 117.

³⁷ USCCR, *Guardians*, finding 4.2, p. 160.

³⁸ See, e.g., U.S. Commission on Civil Rights, *Policing in Cincinnati, Ohio: Official Policy vs. Civilian Reality*, January 1981, pp. 37-39. At the time the report was issued, no Cincinnati police officer had ever been prosecuted for assault against a civilian while on duty. Similarly, in Chicago, between 1982 and 1992, local and federal prosecutors prosecuted only six police officers for abuse of citizens. Five of the six were acquitted, and the sixth was convicted of a misdemeanor. U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume III: The Chicago Report*, September 1995, p. 137 (hereafter cited as USCCR, *Chicago Report*).

Four reasons that local prosecutors may choose not to pursue a case against a police officer accused of misconduct, even though the evidence may support such prosecution, include:

- the traditionally close relationship between district or county attorneys and police officers, who usually work together to prosecute criminals;
- difficulties in convincing grand juries and trial juries that a police officer did not merely make an understandable mistake, but committed a crime;
- special proceedings that, in some jurisdictions, provide additional protections for police officers accused of criminal behavior; and
- lack of information about cases that could be prosecuted or systems for reviewing possibly prosecutable cases.³⁹

These obstacles can prevent state prosecutors from being as aggressive in their pursuit of abusive officers as they are with civilians who have been accused of committing a crime. Without an additional layer of analysis of the facts, most officers who face criminal allegations will avoid any type of meaningful prosecution.

Special Prosecutors

As Louis Schwartz, professor at the University of Pennsylvania, determined in his study on police violence, "the District Attorney's office has not been, and, in the nature of things, could not be, an effective instrument for controlling police violence."⁴⁰ Local prosecutors' offices face "a hopeless conflict-of-interest" in handling police violence complaints because, in most cases, the district attorney's office must investigate the defendant's allegations of brutality against the police while simultaneously investigating the police charges against the defendant.⁴¹ According to Peter Davis, professor of law at Touro College, the "symbiotic relationship" that the police share with local prosecutors "virtually guaran-

³⁹ Human Rights Watch, "Shielded from Justice," Local Criminal Prosecution.

⁴⁰ Louis B. Schwartz, "Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office," *University of Pennsylvania Law Review*, vol. 118 (1970), pp. 1023-24.

⁴¹ *Ibid.*

tees that no local district attorney—in Philadelphia, Los Angeles, or elsewhere—will pursue police brutality prosecutions vigorously.”⁴²

The appointment of a special prosecutor to pursue criminal charges against officers on the state level may help to eliminate the “conflict of interest”⁴³ that plagues local prosecution of police misconduct cases. In its reports on police practices in Los Angeles and New York, the Commission recommended that a special prosecutor be assigned to investigate high-profile police brutality cases.⁴⁴ In Los Angeles, for instance, the Commission found that “[t]he district attorney’s reliance on police cooperation for prosecuting crimes conflicts with its duty to prosecute police misconduct.”⁴⁵ More than a year after the Commission’s report was issued, a report initiated by the police union in Los Angeles reiterated the need for a permanent special prosecutor to investigate misconduct.⁴⁶ In January 1993, California State Senator Art Torres introduced a bill creating a special prosecutor to investigate and prosecute misconduct complaints against peace officers.⁴⁷ The bill, which was ultimately defeated, was intended to negotiate the legitimate interest of the district attorney’s office in cultivating police cooperation with the public’s interest in vigorous prosecution of police misconduct.⁴⁸ In June 1996, a group of 25 relatives of people killed by law enforcement officers held a demonstration in front of the district attorney’s office and then made their way to the Board of Supervisors meeting to lobby for an independent

prosecutor.⁴⁹ Later, at a hearing before the Congressional Black Caucus in Washington, D.C., Michael Zinzun, executive director of the Coalition Against Police Abuse, also called for the creation of independent prosecutors to investigate and prosecute police misconduct under a national review board.⁵⁰ Similarly, Erwin Chemerinsky, professor at the University of Southern California, strongly recommended the creation of a permanent special prosecutor to investigate and prosecute wrongdoing by Los Angeles police officers.⁵¹

Testimony at the Commission’s hearing on police practices in New York indicated that “the independence of a special prosecutor is necessary to ensure that where credible evidence exists to support a charge against an officer, that charge is pursued in as vigorous a fashion as possible.”⁵² The results from the poll conducted by New York’s City Council further demonstrate that most city residents desire more objectivity in police misconduct cases.⁵³

In rural municipalities, where the local prosecutor and police department may share a particularly close relationship due to the relatively small size of their jurisdictions, there may be an even greater need for independent review by an objective, unbiased prosecutor. A state law in Nebraska, for example, requires that a grand jury meet and a special prosecutor be appointed each time someone dies in police custody.⁵⁴ In Louisville, Kentucky, and Beckley, West Virginia, local prosecutors requested that special prosecutors be appointed to investigate police brutality allegations due to conflicts of interest in those cases.⁵⁵ Removing the prosecution of

⁴² Peter L. Davis, “Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Police Brutality When the Prosecutor Declines to Prosecute,” *Maryland Law Review*, vol. 53 (1994), p. 291.

⁴³ A “conflict of interest” is generally defined as “a situation in which regard for one duty tends to lead to disregard of another.” *BLACK’S LAW DICTIONARY* 299 (6th ed. 1990).

⁴⁴ See U.S. Commission on Civil Rights, *Police Practices and Civil Rights in New York City*, August 2000, recommendation 4.13, p. 84 (hereafter cited as USCCR, *Police Practices in New York City*); USCCR, *Los Angeles Report*, recommendation 4.7, p. 219.

⁴⁵ USCCR, *Los Angeles Report*, finding 4.7, p. 219.

⁴⁶ Leon Drouin Keith, “Report Calls for Special Prosecutor for LAPD, Change in Culture,” *The Associated Press State & Local Wire*, Sept. 12, 2000.

⁴⁷ *Ibid.*, p. 118.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Erwin Chemerinsky, “Learning the Wrong Lessons from History: Why There Must be an Independent Counsel Law,” *Widener Law Symposium Journal*, vol. 5 (2000), p. 15, n. 29.

⁵² USCCR, *Police Practices in New York City*, finding 4.13, p. 84.

⁵³ C.J. Chivers, “Approval and Wariness in Poll on Police,” *The New York Times*, Sept. 15, 2000, p. B9.

⁵⁴ Angie Brunkow, “‘Tainting’ Fear Stalls Kruse Case,” *The Omaha World-Herald*, Aug. 18, 2000, p. 19.

⁵⁵ James Zambroski, “The Firing of Louisville’s Police Chief; Community Groups, Activists Decry Police Department Actions,” *The Courier-Journal* (Louisville, KY), Mar. 3, 2000, p. A13.

police abuse cases from the confines of local county or district attorneys' offices could increase the number of investigations and convictions in misconduct cases, and concomitantly, increase public confidence in the disciplinary process.

The appointment of a special prosecutor, however, does not guarantee that police officers accused of wrongdoing will be prosecuted and ultimately punished. In many cases, the special prosecutor is another county or district attorney selected from a neighboring jurisdiction that may be subject to the same biases and partiality as the original prosecutor. In Denver, for example, public uproar over a police officer pistol-whipping a suspect during his arrest caused Denver District Attorney Bill Ritter to request a special prosecutor to look into charges of police brutality.⁵⁶ The special prosecutor, Arapahoe County District Attorney Jim Peters, ruled that no excessive force was used and that police followed accepted methods of subduing culprits.⁵⁷ A week later, however, Denver Mayor Wellington Webb said he was not satisfied with the special prosecutor's findings and ordered further review of the case.⁵⁸ Thus, the conflict of interest that can arise due to the close relationship that prosecutors generally share with police officers is not necessarily alleviated by the substitution of another prosecutor. It can be argued that the most effective special prosecutor in police abuse cases would come from outside the ranks of the law enforcement community.

Federal Government Oversight

Federal oversight of state prosecutions in police brutality cases may afford an even greater level of accountability. As discussed in *Guardians*, effective prosecution of police misconduct cases should involve the collective efforts of local officials and the federal government, through the U.S. Department of Justice, which is responsible for enforcing the nation's civil rights laws.⁵⁹

⁵⁶ Mike McPhee, "Suit Promised in Police Chase Suspect's Civil Rights Violated," *The Denver Post*, Feb. 17, 2000, p. B5.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ USSCR, *Guardians*, p. 115. The Department of Justice prosecutes police misconduct under several civil rights statutes, including 18 U.S.C. § 241 (1994 & Supp. IV 1998), which makes it unlawful for two or more persons to agree

A 1993 Commission report on police practices in the Mount Pleasant area of Washington, D.C., emphasized the need for federal intervention, stating, "The Federal Government can contribute significantly to remedying the problems of police abuse by the identification and prosecution of abuse cases."⁶⁰ But in South Dakota, for instance, one resident explained, "[We] are regulated by city, county, tribes, State, Federal, BIA [Bureau of Indian Affairs]. All these agencies, but no one can protect us, but yet they regulate us and they prosecute us when there is a crime against a non-Indian."⁶¹ Several community leaders and residents of Los Angeles also maintained that the federal government's posture had been one of "inaction and neglect."⁶² These sentiments reflect a widespread frustration with the failure of government entities to remedy police misconduct.

Nevertheless, federal prosecutors or other independent federal agency representatives may be able to monitor police abuse cases in a manner that local prosecutors cannot, and without the accompanying conflicts of interest that inhibit local prosecutions. Federal monitors have been called to oversee increasing numbers of police departments across the nation, particularly in cities where there have been one or more high-profile brutality cases. For example, New York City has had an ongoing battle between the city's administration and federal prosecutors, who plan to file a lawsuit seeking an independent monitor of the police department.⁶³ Follow-

together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise of his or her civil rights, and 18 U.S.C. § 242 (1994 & Supp. IV 1998), which makes it a crime for a person acting under color of any law to willfully deprive a person of his or her civil rights. Further, under the 1994 Crime Bill, 42 U.S.C. § 14141(a) (1994), the Justice Department has the authority to file civil suits against law enforcement agencies that engage in a pattern of misconduct. These statutes and their related cases will be discussed more extensively in chapter 5.

⁶⁰ U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report*, January 1993, p. 38 (hereafter cited as USSCR, *Mount Pleasant Report*).

⁶¹ South Dakota Advisory Committee, *Native Americans in South Dakota*, p. 35.

⁶² USSCR, *Los Angeles Report*, p. 203.

⁶³ Mike Claffey and John Marzulli, "Deal Near on Cop Probe," *The Daily News* (New York), July 6, 2000, p. 5.

ing an extensive probe that was sparked in 1997 by the Abner Louima sodomy-torture incident,⁶⁴ the U.S. attorney's office in Brooklyn concluded that there was a pattern of brutality in the New York City Police Department and that only the full force of the federal government could bring about systemic changes in the police culture.⁶⁵ The federal government proposed a consent decree that would be enforced by a federal judge. Under such an agreement, the federal government would monitor how the NYPD investigates complaints of police brutality, and the city would face costly lawsuits if it failed to comply with the terms of the consent decree.⁶⁶ Despite negotiations with the Justice Department, New York City Mayor Rudolph Giuliani reportedly refused to sign the consent decree and prefers a "less-formal" agreement.⁶⁷ Federal prosecutors are considering a lawsuit against the city, since it appears there is little chance of reaching a settlement.⁶⁸

The Justice Department also concluded a four-year investigation into allegations that the Los Angeles Police Department has routinely employed excessive force and violated the rights of minorities.⁶⁹ At the time of this report, federal officials were negotiating with the Los Angeles city government in the hopes of reaching an agreement on the 80-plus recommendations proposed by the Justice Department to reform the police department.⁷⁰ In addition, the Justice Department has investigated police misconduct issues in other municipalities around the nation, including New Jersey; Steubenville and Columbus, Ohio; Pittsburgh, Pennsylvania; Montgom-

ery County, Maryland; Orange County, Florida; and Eastpoint, Michigan, a suburb of Detroit.⁷¹

According to John Ginger, a federal monitor assigned to Pittsburgh, the federal government does not purport to substitute the judgment of its monitors for that of local police administrators, but rather "the government is simply asking for 'good management.'"⁷² But many officers have expressed strong opposition to federal intervention of any kind. Michele Papakie, a police spokeswoman in Pittsburgh, explained that some officers had not accepted changes required under the consent decree the city signed in 1998.⁷³ She also said the federal monitor's presence makes officers uncomfortable.⁷⁴ This "uncomfortable" relationship between federal officials and local law enforcement, however, may produce the necessary changes that will eliminate, or at the very least, decrease the frequency of police misconduct and brutality cases. Regardless of one's view on the issue of federal oversight of police misconduct cases, the reforms that have resulted from investigations and other actions pursued by the Justice Department have had a considerable impact on police practices around the country.

CIVILIAN REVIEW BOARDS

As a result of the perception that city, state, and federal agencies have failed to address police misconduct adequately, many communities are turning to independent civilian review boards to investigate allegations of police abuse. The civilian (or citizen) complaint process is a method of reviewing, processing, and investigating citizens' complaints of alleged police misconduct. Most major cities have some measure of civilian oversight in place, but in many areas no such external civilian control exists. It is apparent, however, that civilian review boards are

⁶⁴ Abner Louima is a Haitian immigrant who was sodomized by a New York City police officer with a toilet plunger inside of a Brooklyn precinct house. All four officers charged with participating in the attack have since been convicted and imprisoned for their acts. See USCCR, *Police Practices in New York City*, pp. 6-7.

⁶⁵ Claffey and Marzulli, "Deal Near on Cop Probe."

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Goldiner, "Rev. Al Presses Reno," p. 8. At the time of this writing, negotiations were ongoing between New York City and the Justice Department. Ibid.

⁶⁹ Leon Drouin Keith, "Report Calls for Special Prosecutor for LAPD, Change in Culture," *The Associated Press State & Local Wire*, Sept. 12, 2000.

⁷⁰ Ibid.

⁷¹ Bill Lann Lee, Acting Assistant Attorney General of the Civil Rights Division, U.S. Department of Justice, testimony before the U.S. House Subcommittee on the Constitution, Oversight Hearing on the Civil Rights Division, Washington, D.C., *Federal News Service*, July 12, 2000.

⁷² Mark Schaver, "Investigations Show What Louisville Can Expect; Police under eye of Justice; U.S. seeking similar actions from cities," *The Courier-Journal* (Louisville, KY), July 2, 2000, p. A1.

⁷³ Ibid.

⁷⁴ Ibid.

critical to the success of external controls over police misconduct. Civilian review boards provide a means of maintaining internal regulation of police practices and evaluating a police officer's performance.⁷⁵ Regardless of whether a civilian's complaint is valid, a system of review for allegations of misconduct can affect the public's perception of a police department's efficiency and its reputation.⁷⁶

Previous Reform Efforts

Various factors caused an increased level of review of police departments' activities throughout the nation. In the 1960s, the outcry for civilian oversight of police departments was often amplified as the result of increased tensions between minority communities and the police, civil unrest, alleged and actual incidents of police misconduct, and political intervention.⁷⁷ For example, after the civil unrest of August 1965 in the Watts and South Central Los Angeles communities of California, the McCone Commission issued several findings and recommendations relating to the causes of the riot to then-California Governor Edmund G. (Pat) Brown. The McCone Commission determined that "the civilian oversight body of the LAPD existed as a mere figurehead, controlled by [LAPD] Chief Parker . . . [and] that the citizens' complaint procedure did not satisfy public needs. . . ."⁷⁸

A year after the Watts riots in California, New York City Mayor John V. Lindsay appointed a seven-member Civilian Complaint Review Board (CCRB) in July of 1966. Three of the civilian review board members were high-ranking police officers.⁷⁹ However, the Patrol-

men's Benevolent Association, which is the rank-and-file police union, maintained that the members of the review board were too liberal and would consequently not be supportive of police officers' experiences and perspectives.⁸⁰ The association and other authorities then launched an advertising campaign that urged New Yorkers to vote to abolish the civilian review board on an upcoming referendum.⁸¹ As a result, civilian review boards were rejected in the boroughs of Queens, Staten Island, and Brooklyn. Manhattan voters, who were primarily liberal whites and minorities, sustained the establishment of a civilian review board for their borough.⁸²

Alderman Carl O. Snowden recalled growing local support in the late 1970s for a civilian review board in Annapolis, Maryland, when two black men were fatally shot and community residents voiced their objections.⁸³ Although the review board was not established, primarily due to resistance from law enforcement authorities—the Annapolis City Council created the Annapolis Human Relations Commission. The commission was empowered to investigate allegations of discrimination from city employees and entities, but not complaints of police misconduct.⁸⁴

Culture Society and a board member of the American Civil Liberties Union. . . . [F]our civilians were recommended by an eleven-member panel chaired by a former Republican Attorney General, Herbert Brownell, Jr. All three police representatives had law degrees, and one had been a special agent of the FBI for 25 years. Minority group members included two blacks, one of them a Deputy Commissioner of Police. One member was a Puerto Rican." Ibid., p. 221. See Donna De La Cruz, "Report: CCRB Ineffective in Monitoring Police Misconduct," *The Associated Press, State & Local Wire*, Dec. 30, 1999, Thursday p.m. cycle (hereafter cited as De La Cruz, "CCRB Ineffective"). In 1953, the original civilian oversight board comprised entirely high-ranking police officials.

⁸⁰ Ibid., p. 221; see Tara L. Senkel, "Civilians Often Need Protection from the Police: Let's Handcuff Police Brutality," *New York Law School Journal of Human Rights*, vol. 15 (1999), p. 416.

⁸¹ Skolnick and Fyfe, *Above the Law*, p. 221. "The most widely posted, most effective, and most alarming placard showed a young girl fearfully leaving a subway exit onto a darkened street. Its text: 'The Civilian Review Board must be stopped? Her life, your life, may depend on it.'" Ibid.

⁸² Ibid., pp. 221–22.

⁸³ Amy Argetsinger, "Bid Stalls for Police Oversight: Call for Civilian Panel Gets a Tepid Reception," *The Washington Post*, Jan. 30, 1997, p. M1.

⁸⁴ Ibid.

⁷⁵ USCCR, *Guardians*, p. 50.

⁷⁶ Ibid., p. 50; see Brett Martel, "Lawmakers Hope Police will Back Creating Citizen Review Boards," *The Charleston Gazette*, Feb. 13, 1999, p. A2.

⁷⁷ See Lorraine Ahear, "Police at Odds Over Debate of Review Board," *News & Record* (Greensboro, NC), June 26, 1994, p. A1. "The boards, usually created as the result of a racial incident or police scandal, can recommend disciplinary action to a police chief but cannot impose discipline themselves." Ibid.

⁷⁸ Gerald Woods, *The Police in Los Angeles: Reform and Professionalization* (New York: Garland Publishing, 1993), p. 238.

⁷⁹ Jerome H. Skolnick and James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* (New York: The Free Press, 1993), pp. 220–21. "[The] seven-member board was headed by Algernon D. Black, who is a leader of the Ethical

Some local government entities eventually began to be more supportive of the public's demand for civilian oversight of police departments in subsequent decades. In St. Paul, Minnesota, although approximately six city task forces supported civilian review of the police since the 1960s, the mayoral administrations and police chiefs did not support the concept.⁸⁵ In 1993, the Police Civilian Internal Affairs Review Commission was finally approved by St. Paul's City Council and the Police Federation.⁸⁶

Similarly, in Louisville, Kentucky, coalitions of community residents have advocated for the creation of a civilian review board since the late 1960s and early 1970s. Because of lack of support from the entire membership of the Louisville Board of Aldermen, these efforts were not successful.⁸⁷ Recently, there have been renewed grassroots efforts to establish a civilian review board in Louisville:

Now, for the first time in 30 years . . . there is a real possibility that civilian oversight can become a reality. The change has come because lots of citizens have worked hard—talking to aldermen and organizations. . . . [B]ecause we now have four very strong African American aldermen who are determined on this issue—and, unlike the situation in the early '70s, they have two staunch white allies on the Board of Aldermen. Right now, we need an aroused citizenry to convince Mayor Armstrong not to veto the legislation and thus go against the 73 percent of public opinion (according to *The Courier-Journal* Bluegrass State Poll) that favors independent investigation. . . .⁸⁸

In the 1980s, New York City Mayor Ed Koch created a civilian review board that included the same number of police and civilian members.

⁸⁵ Conrad deFiebre, "Board Members Picked to Review Internal Probes of St. Paul Police," *The Star Tribune* (Minneapolis, MN), Sept. 17, 1993, p. B5.

⁸⁶ Ibid. "The board will direct and review investigations of officers by the Police Department's internal affairs unit, make findings of fact, and recommendations of discipline to the police chief." Ibid.

⁸⁷ Anne Braden, "Civilian Review—An Overdue Step," *The Courier-Journal* (Louisville, KY), May 7, 2000, p. D3. Anne Braden is a civil rights leader in Louisville, Kentucky. She is a member of the board of the Kentucky Alliance Against Racist and Political Repression. See *ibid.* During this time, the city ordinance that would have created a civilian review board had the sole support of the only African American member of the Board of Aldermen.

⁸⁸ Ibid.

The New York City Police Department did not oppose the establishment of a civilian review board until 1992, when Mayor Koch's successor was in office.⁸⁹ During this time, Mayor David Dinkins transformed New York City's civilian review board into an independent entity, separate from the police department. In response to this proposal, New York's police officers staged a demonstration to show their lack of support for the mayor's initiative.⁹⁰ The board was composed entirely of civilian mayoral staff. The CCRB is now composed of 13 mayoral-appointed members.⁹¹

Current Approaches and Policies

In communities across the country, the public has complained about a lack of credibility among internal investigations of police misconduct and the need for external oversight by local citizens.⁹² Police abuse expert Lynne Wilson stated, "Police misconduct is a matter of strong public interest . . . citizens, not police department officials, are the ultimate arbiters of what police behavior is acceptable in a democratic society."⁹³ Professor David Harris of the University of Toledo Law School echoed this sentiment, stating,

whether we're talking about police agencies or government institutions of another kind, accountability is a uniquely American idea . . . The Declaration of Independence should be seen as a proclamation that the principle of accountability will stand in this country and nobody will stand for government without it.

⁸⁹ Skolnick and Fyfe, *Above the Law*, p. 223.

⁹⁰ Ibid. "The reactions included a demonstration by 10,000 off-duty police officers, many of whom engaged in rowdy and threatening behavior, blocking the Brooklyn Bridge, roughing up reporters and cameramen, and demeaning the mayor and passers-by in the ugliest racist terms. Ironically, the early public reactions tallied in the unscientific man-in-the-street polls of radio and television news shows suggest that the vile police conduct at this demonstration has convinced even the formerly most staunch supporters of the police that Dinkins is correct in his argument that the police should not be permitted to review their own conduct." Ibid.

⁹¹ Senkel, "Civilians Often Need Protection from the Police," p. 416. "The Mayor selected five members, the City Council recommended five members, one from each borough, and the Police Commissioner selected three members." Ibid.

⁹² See USCCR, *Los Angeles Report*, p. 120; Nevada Advisory Committee, *Police-Community Relations in Reno*, p. 24; USCCR, *Chicago Report*, pp. 108–09.

⁹³ Lynne Wilson, "The public's right of access to police misconduct files," *Police Misconduct and Civil Rights Law Report*, vol. 4, no. 7 (January–February 1994).

And the Constitution enshrined the idea of accountability as a cornerstone of our government . . . [it is] everything to every democratic country.⁹⁴

There are numerous forms of civilian oversight. One of the most common classifications is defined by a four-tiered system:⁹⁵

- **Class One.** Review agencies have the greatest discretion. Nonsworn staff members perform tasks such as receiving complaints, preliminary fact-finding, reviewing investigative reports, and recommending disciplinary procedures. This is the most common type of civilian review in the 50 largest cities in the country.⁹⁶
- **Class Two.** Class Two civilian review boards are less autonomous than Class One structures. Police officers are responsible for investigating civilian complaints. Civilians, or a committee that contains some percentage of civilians, review the police officers' reports and then provide a recommended outcome to a law enforcement authority.⁹⁷
- **Class Three.** Police department personnel investigate and review civilian complaints. The department's internal affairs division then advises a police department official of its recommended course of action for the complaint. Civilians may be included as members of an appellate board, which reviews appeals of the internal affairs division's decisions. The appellate board can then provide alternate recommendations to the departmental official.⁹⁸
- **Class Four.** Third-party auditors are responsible for analyzing police departments'

complaint review policies and providing suggested changes to these procedures.⁹⁹

Other definitions of civilian oversight exist. In the "Civilian Review" (or Berkeley, California) model, an entity that is independent from the police department investigates and reviews civilian complaints and then recommends appropriate disciplinary action to the chief of police.¹⁰⁰ The "Civilian Input" approach authorizes civilian staff of the police department to investigate excessive force complaints, while the chief of police is responsible for issuing disciplinary action.¹⁰¹ Lastly, the "Civilian Monitor" system grants a separate agency the duty to mediate and examine civilian complaints from those individuals who were not satisfied with the police department's investigation and disposition of misconduct allegations.¹⁰²

Several participants of the Commission's briefing on national police practices commented on the effectiveness of civilian complaint review boards and new efforts being made toward their improvement. For example, James Fyfe, a professor of criminal justice at Temple University, explained that in 1981, there were no successful civilian complaint review boards.¹⁰³ By the early 1990s, however, more than 30 of the 50 largest police departments had established some form of civilian review.¹⁰⁴ Robert Loudon described the importance of establishing a continuing dialogue between police departments and their communities in order to improve relationships and prevent crime.¹⁰⁵ He applauded experimental programs that tried innovative approaches, such as the regional policing institutes, which are

⁹⁴ Professor David Harris, remarks given at the Congressional Black Caucus' Discussion on Law Enforcement Accountability: Safe Streets & Sacrificing Civil Liberties, Washington, D.C., Sept. 15, 2000 <http://www.cspan.org/social_policy> (Sept. 26, 2000).

⁹⁵ Sean Hecker, "Race and Pretextual Traffic Stops: An Expanding Role for Civilian Review," *Columbia Human Rights Law Review*, vol. 28 (Spring 1997), p. 595 (citing Samuel Walker and Vic W. Bumphus, *Civilian Review of the Police: A National Survey of the 50 Largest Cities*, 1991).

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, p. 596. Among all cities, this is the most common form of civilian review board.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*; see Jason Spencer, "Police Plan is Result of Trade-Offs," *Austin American-Statesman*, May 30, 2000, p. B1. The civilian oversight board in Richmond, California, employs a full-time autonomous investigator to examine almost all the complaints against police officers. *Ibid.*

¹⁰⁰ Skolnick and Fyfe, *Above the Law*, p. 223. Internal affairs and independent investigators each conduct their own inquiry into the validity of a complaint. *Ibid.*

¹⁰¹ *Ibid.*, pp. 223–24.

¹⁰² *Ibid.*, p. 224. The authors note that some cities have variations of these forms of civilian oversight. *Ibid.*

¹⁰³ James Fyfe, Police Practices Briefing Transcript, pp. 26–27.

¹⁰⁴ *Ibid.*

¹⁰⁵ Loudon, Police Practices Briefing Transcript, pp. 36–37.

funded by the COPS program of the Justice Department.¹⁰⁶ This program creates a partnership between the local police department, a college or university, and a citizens' group. The project seeks to create a dialogue among the participants in hopes of resolving policing issues and working together for solutions.¹⁰⁷

Dr. Loudon also encouraged continued funding of community policing programs.¹⁰⁸ In New York, he helped create the Streetwise program, which addresses "cultural issues, language issues and people issues."¹⁰⁹ The curriculum, designed by teams of police trainers, academics, foreign language professors, anthropologists, and others, eliminates the use of stereotypes in police training and incorporates more realistic portraits of community members.¹¹⁰ In addition, Dr. Loudon mentioned that several international law enforcement academies had been or would be opened in four countries: Hungary, Panama, Thailand, and South Africa.¹¹¹

Finally, Hubert Williams informed the Commission that there is a need for accountability of the police, who are charged with fairly upholding laws.¹¹² He discussed the role of the police in

America's "war on drugs," which has disproportionately affected minorities in urban areas.¹¹³ As a result, relationships between people of color and the police have eroded, and minorities have lost faith in the criminal justice system. But police officers still see the benefit of strong relationships with neighborhood residents: "a recent Police Foundation survey found that over 95 percent of the rank-and-file police officers believe that the most effective way to control crime is by working with citizens and communities."¹¹⁴ Thus, in the future, cities across the nation may develop innovative approaches to civilian oversight of police misconduct, in a continuing effort to increase public confidence in the integrity of law enforcement.

Civilian review of police misconduct cases is intended to be an effective, unbiased method of controlling police abuse, and it exists in the majority of the nation's largest cities.¹¹⁵ Citizens of municipalities that lack any form of civilian oversight are rallying with increasing urgency for the creation of such review boards, especially in the wake of repeated police abuse incidents. According to news reports, Peoria, Illinois; Norfolk, Virginia; the town of Brunswick, in Jacksonville, Florida; and Huntington, West Virginia; are just a few of the cities that have suffered from the effects of police brutality, which usually lead to strained relationships between the police and the communities they serve.¹¹⁶ Despite these concerns, many city leaders remain resistant to the idea of civilian "interference" with law enforcement. As discussed earlier, Representative Michael McAlevey of Bangor, Maine, explained that he did not oppose civilian review of the findings of an investigation into police misconduct, but that trained law enforcement professionals should conduct the actual investigation.¹¹⁷ In

¹⁰⁶ Ibid., p. 37.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., pp. 37–38.

¹¹⁰ Ibid., pp. 37–39.

¹¹¹ Ibid., pp. 37–38. See also *ibid.*, pp. 38–41. They seek to bring American police practices to emerging democracies. One outcome from these academies is the Human Dignity and Police Program, which facilitates a discussion on human dignity among the police and community members. The program examines human rights, police abuses, and solutions to developing better relations. Dr. Loudon hoped this program would be marketed throughout the world, particularly in the United States. He also mentioned his involvement with the creation of a new police force and police system in Northern Ireland. An intensive study was done of this divided society with its divided policing. Although very different from the United States, certain issues are shared between the two countries: diversity with regard to gender, religious diversity (analogous to the racial diversity in the United States), and civilian overview of police forces. Dr. Loudon noted: "Sometimes we have to kind of look back at somebody else to see what we have got going here." Ibid. To that end, he believed a comprehensive study of police practices should be done in the United States. It should involve a collaboration among social scientists, behavioral scientists, and the police. Ibid.

¹¹² Hubert Williams, Police Practices Briefing Transcript, p. 51.

¹¹³ Ibid.

¹¹⁴ Ibid., p. 52.

¹¹⁵ USCCR, *Chicago Report*, p. 108.

¹¹⁶ Pam Adams, "Peoria Police Need Outside Oversight," *Copley News Service*, Sept. 20, 2000; Meredith Kruse, "Mediator Seeks To Bridge Gap In Police Relations," *The Virginian-Pilot*, Sept. 8, 2000, p. B1; Terry Dickson, "Recall Bid on Mayor of Brunswick," *The Florida-Times Union*, Aug. 3, 2000, p. A1; Editorial, "Unfair 'Profiling' Young Blacks," *The Charleston Gazette*, Aug. 30, 2000, p. 4A.

¹¹⁷ Emmet Meara, "Legislative Panel Nixes Civilian Review Board," *The Bangor Daily News*, Jan. 11, 2000.

Charleston, West Virginia, State Police Superintendent Gary Edgell expressed the view that the police review board was sufficient to oversee complaints of police misconduct.¹¹⁸ The Fraternal Order of Police in Louisville, Kentucky, sought an injunction against the city's civilian review ordinance, in an effort to "nip it in the bud." One member said, "We would rather try to get it declared illegal now before it gets started."¹¹⁹

Skeptics of these civilian complaint boards contend that while they provide residents with a means of expressing their views of the local police department, the civilian complaint process rarely results in any modifications in police practices.¹²⁰ For example, residents of Portland, Connecticut, protested a proposal to amend the town's charter in order to create a police commission. The proposed police commission would be charged with reviewing civilian complaints and police officer grievances, hiring and firing officers, and negotiating union agreements.¹²¹ Although there is no formal system in Portland for addressing citizen complaints of alleged police misconduct, one community member inquired, "Where's the benefits? . . . I don't see why this is being offered at this time."¹²²

Some authorities also observe that when members of the public request civilian oversight of police activities, the underlying reason stems from their mistrust of the police to fairly exam-

ine and correct their own activities.¹²³ For example, the 1998 fatal shooting of Shirley Ansley, a 56-year-old unarmed mentally ill woman, by an officer of the Jacksonville (Florida) Sheriff's Office prompted local residents to renew their requests for a civilian review board.¹²⁴ Further-

¹¹⁸ Geov Parrish, "Calling for a Crackdown," *The Seattle Weekly*, June 29, 2000, p. 26; Skolnick and Fyfe, *Above the Law*, p. 224; Edward Fitzpatrick, "Complaints About Cops Rise," *The Times Union* (Albany, NY), Feb. 8, 1998, p. A1. Alice P. Green, executive director of the Center for Law and Justice, indicated that many residents will not file a complaint against a police officer due to their fear of reprisal or their lack of information about the complaint system. See Edward J. Littlejohn, "The Civilian Police Commission: A Deterrent of Police Misconduct," *University of Detroit Journal of Urban Law*, vol. 59 (1981), pp. 5, 8; Steven Gray, "Demand for Oversight—Citizen Groups Want Role in Probes of Police," *The Washington Post*, Dec. 16, 1999, p. M1. "Many Montgomery [County, Maryland] residents want . . . a fully-empowered independent board charged with investigating complaints against police officers. The demand made by the NAACP [National Association for the Advancement of Colored People], the American Civil Liberties Union and 10 other organizations persists despite the partial results of a three-year U.S. Justice Department investigation publicized earlier this month. So far, the review of 300 citizen complaints found that Montgomery police did not use excessive force in several cases involving minorities. It did conclude that African Americans receive 21 percent of traffic tickets, although they make up fewer than 15 percent of the county's population." Gray, "Demand for Oversight."

See also Jack Money and Steve Lackmeyer, "Citizen Review Board Not A Magic Bullet," *The Daily Oklahoman*, Oct. 25, 1999, city edition. According to Deborah Wilson, chairwoman of the Louisville Police Administration Advisory Committee, this committee was created because minority residents wanted to ensure police treat their complaints as seriously as white residents' concerns.

¹²⁴ Sean Gardiner, "Shooting Brings Calls for Public Review: Citizens Board Would Police the Police," *The Florida Times-Union* (Jacksonville, FL), Feb. 23, 1998, p. A1. "The Jacksonville branch of the NAACP supports the creation of a civilian review board to improve the public's confidence in the sheriff's office. In addition, according to Sam Walker, a criminology professor at the University of Nebraska, Jacksonville is one of the few big cities left [in the United States] that does not have a civilian oversight system." Ibid. But see *ibid.* "Jacksonville Sheriff Nat Glover and other police union officials view civilian review boards as unnecessary. 'To bring someone in and have them review what law enforcement does without training is ludicrous. We're totally against it,' said David Stevens, president of Jacksonville's Fraternal Order of Police Lodge 5-30. Glover said he sees no need for another layer of review because the current system of checks and balances works. . . . [C]itizens' complaints about less serious police misconduct are sent to the supervisor of the officer in question. More serious allegations are investigated by the department's Internal Affairs unit. [In 1997] Internal Affairs received 523 citizens' complaints." Ibid.

¹¹⁸ Randy Coleman, "State Police Fighting for Overtime Money, Against Review Board," *The Associated Press State & Local Wire*, Feb. 7, 2000.

¹¹⁹ James Zambroski, "City Fights FOP Challenge of Civilian Review Plan," *The Courier-Journal* (Louisville, KY), July 26, 2000, p. B3.

¹²⁰ Lyda Longa, "Review Board to Get Alleged Bearing Case," *The Atlanta Journal and Constitution*, Jan. 13, 2000, p. C1. See James Zambroski, "Civilian Review Board for Police Debated at Louisville Forum," *The Courier-Journal* (Louisville, KY), Apr. 13, 2000, p. B3 (hereafter cited as Zambroski, "Civilian Review"). Mark Miller, Esq., Fraternal Order of Police, commented on a proposed ordinance to allow a third party to conduct independent investigations of alleged police misconduct. He maintained that civilian review currently exists through the civil service board, a coroner's inquest, and a grand jury. Ibid.

¹²¹ Dwight F. Blint, "Police Board Proposal Opposed," *The Hartford Courant*, June 1, 2000, p. B1.

¹²² Ibid.

more, supporters of civilian oversight maintain that this process creates avenues for improvement in internal regulation of police departments. As demonstrated in San Francisco, the Office of Citizen Complaints derives proposed policy changes from civilian complaints and forwards civilians' recommendations to the police department.¹²⁵ Similarly, an independent auditor reviewed the San Jose (California) Police Department's civilian complaint procedure and suggested 24 recommendations for improvement.¹²⁶ According to Samuel Walker, a professor of criminal justice at the University of Nebraska at Omaha, who commented on the Los Angeles Police Department,

oversight helps to transform the organizational culture of a police department in three important ways. First, independent external scrutiny helps identify the erosion of standards that the LAPD now concedes it failed to identify on its own. Second, periodic public reports provide a window into a police department that informs citizens and responsible elected officials about problems that need attention. Third, the experience of being routinely subject to external scrutiny eventually breaks down the sort of insular, hostile attitude that's at the heart of the LAPD's organizational culture. Police departments in other cities have come to accept the value of this independent perspective.¹²⁷

Chattanooga's (Tennessee) Citizens Review Committee of the Chattanooga Police Department is composed of nine members and three alternates, who are appointed by the Chattanooga City Council.¹²⁸ Police Chief Jimmie Dotson maintained that the Citizens Review Committee was created to increase community

support of the police department, as well as to retain local trust in the investigative process of police misconduct allegations.¹²⁹ Although the review committee is empowered with the ability to request a more expansive inquiry into investigations that may require additional information, the police chief has the ultimate review of the cases.¹³⁰

For the most part, civilian review boards do not possess the authority to do anything more than review internal investigations by the police. Thus, the civilian review boards that the Commission reviewed in *Guardians* often failed in their efforts to address police misconduct because "they were advisory only, having no power to decide cases or impose punishment, and . . . they lacked sufficient staffs and resources."¹³¹ Because these boards lack any enforcement powers and do not possess the authority to carry out the discipline of abusive officers, many citizens have lost faith in their effectiveness.¹³²

Barriers to Effective Civilian Oversight

The effectiveness of any civilian oversight process can be hampered by an inappropriate administrative structure, inadequate funding and staffing, limited or ambiguous authority, or an uncooperative police department.¹³³ For example, in Dallas, Texas, the City Council limited the Dallas Citizens Police Review Board's authority six months after its creation in 1988.¹³⁴

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ USSCR, *Guardians*, finding 4.6, p. 163.

¹³² USSCR, *New York Report*, pp. 14–15.

¹³³ See Skolnick and Fyfe, *Above the Law*, pp. 227–29. Cf. James Zambroski, "Police Union Files Grievance on Civilian Review," *The Courier-Journal* (Louisville, KY), June 24, 2000, p. B6. The Louisville Fraternal Order of Police (FOP) filed a grievance alleging that a city ordinance violates its union labor agreement. The ordinance provides the civilian review board with subpoena power to obtain testimony from witnesses of alleged police misconduct incidents. The FOP maintained that according to a provision in its union contract, only the police department's internal affairs division is authorized to investigate complaints of alleged police misconduct. Ibid.

¹³⁴ Dave Michaels, "Police Review Board Calls for More Power," *The Dallas Morning News*, Apr. 17, 1999, p. A1 (hereafter cited as Michaels, "Police Review"); see also Lee Hammel, "Officials Oppose Police Review Board," *The Telegram & Gazette*, Mar. 14, 2000, p. A1. Similarly, despite public testimony supporting the creation of a civilian review

¹²⁵ Samuel Walker, "How to Make Cops Accountable," *The Los Angeles Times*, Mar. 6, 2000, p. B5. See Mike Martin-dale, "Police Review Board Sought—Royal Oak Group Calls for Changes, Updates in Department," *The Detroit News*, Mar. 22, 2000, p. 4; Zambroski, "Civilian Review"; Keith Hunter, Esq., stated, "I believe [Louisville, KY, police department's internal affairs division] . . . do a good job, that they take their job seriously and they are very good at what they do. . . . Civilian Review is needed, however, because some complaints 'fall through the cracks' and are not properly investigated." Zambroski, "Civilian Review."

¹²⁶ Walker, "How to Make Cops Accountable."

¹²⁷ Ibid.

¹²⁸ Dick Cook, "Citizens Police Review Panel Begins Active Work This Week," *The Chattanooga Times—Chattanooga Free Press*, July 11, 1999, p. B3.

The board also experienced a referendum defeat in 1989, which would have granted it subpoena power and the ability to discipline police officers. Furthermore, in 1999, only eight of the 15 review board positions were filled, due to members who had forfeited their positions because of poor attendance and the failure of some City Council members to appoint review board members.¹³⁵ Review board chairman, Paul Lietz, stated, "As it is, it is a horrible deception of the public when they come to us thinking they can get relief . . . We can concur [with the police findings], disagree or make recommendations. What happens when we make recommendations? Nothing, for the most part."¹³⁶

Most civilian review boards do not have the power to impose penalties on police officers and they simply recommend disciplinary actions to police officials.¹³⁷ Indeed, of the nation's 12 largest police departments, only four are empowered to investigate complaints on their own.¹³⁸ Police Lieutenant Eric Adams, president of 100 Blacks in Law Enforcement, explained that the efficiency of civilian review boards is undermined because they must rely, in part, on the cooperation of police departments they have been sent to investigate.¹³⁹ Thus, without subpoena power, external review boards cannot access records or compel testimony that would further their investigations. Many police officers are reluctant or simply refuse to cooperate or offer any assistance to investigations that would incriminate their fellow officers. Despite this clear impediment,

many police unions and city officials continue to oppose granting subpoena power to civilian review boards.¹⁴⁰ Even boards with subpoena power sometimes face intense resistance from police officers and other officials who refuse to testify or turn over documents and other evidence.¹⁴¹ Therefore, the efforts of many well-meaning civilian review boards may be thwarted due to their own inadequacies and lack of authority.

Review boards typically suffer from this lack of authority and subpoena power, which prevents them from carrying out their mandates. The Chicago Police Department's Office of Professional Standards is composed of civilian investigators who register and investigate all complaints of police misconduct.¹⁴² Critics of the office note, however, that it does not have subpoena power, unlike other civilian review boards, and reports directly to police department officials who may reject its findings.¹⁴³ Similarly, in Detroit, Michigan, if the civilian review board determines that a complaint against an officer is serious, it will refer the complaint to the internal affairs division of the police department, which has the responsibility to carry out the investigation and discipline.¹⁴⁴ Charleston (West Virginia) Mayor Jay Goldman disbanded the city's five-member civilian board in August 2000. Former board member Marvin Frame maintained, "We were largely a listening, advisory group to the chief [of police] and internal affairs."¹⁴⁵ The board's functions were then transferred to the Charleston City Council's Public Safety Committee, which has additional authority, such as subpoena power.¹⁴⁶ The Human Rights Watch noted

board, Worcester, Massachusetts, city administration officials opposed the proposal. Instead, the Human Rights Commission recommended that it should monitor the civilian oversight process and forward complaints to the internal affairs division of the police department. *Ibid.*

¹³⁵ Michaels, "Police Review." "Council member Larry Duncan has not appointed a review board member since 1995, records show. Council member Steve Salazar's position is also vacant. 'It's a real tough position to fill,' Mr. Duncan said. 'We need someone who is going to be sensitive to the citizens' concerns and somebody who understands the police officer.'" *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ USCCR, *Chicago Report*, p. 108, n. 28.

¹³⁸ Michelle Boorstein, "Weak Power, Resources Make It Tough Going for Police Watchdogs," *The Chicago Tribune*, Apr. 27, 1998, p. 2.

¹³⁹ Michael Kramer, "A Black Cop on a Mission," *The Daily News* (New York), Sept. 5, 1999, p. 55.

¹⁴⁰ James Zambrowski, "City fights FOP challenge of civilian review plan," *The Courier-Journal* (Louisville, KY), July 26, 2000, p. B3.

¹⁴¹ Indrani Sen, "Review Panel Under Attack," *The Boston Globe*, Oct. 23, 1999, p. B1.

¹⁴² USCCR, *Chicago Report*, p. 108.

¹⁴³ *Ibid.*

¹⁴⁴ Human Rights Watch, "Shielded from Justice," Detroit: Civilian Review Board.

¹⁴⁵ Rusty Marks, "Dissolving Police Board Not A Bad Idea, Five Members Say," *The Charleston Gazette*, Aug. 10, 2000, p. 1C. Mr. Frame added that the board had no power to enforce their recommendations. *Ibid.*

¹⁴⁶ *Ibid.* "Police Chief Jerry Riffe said the public safety committee has little more authority than the board did. 'They can't order me to suspend anybody,' he said. 'They can't order me to fire anybody.' But he said the committee does

that the former mayor of Atlanta, Georgia, called for the creation of a civilian review board "apparently without realizing one already existed (thus proving how marginal the pre-existing board had become)."¹⁴⁷

In New York City, residents and city officials have varying perceptions of the effectiveness of civilian oversight. Norman Siegel, executive director of the New York Civil Liberties Union, indicated that local government entities do not give civilian complaints of police misconduct priority consideration. As a result, New York City residents perceive the CCRB as ineffective, and police officers are not intimidated by civilian oversight authority.¹⁴⁸ According to Mr. Siegel, New York's police commissioner only disciplined about 25 percent of the police officers involved in 1,543 cases that were referred to him for review from 1996 through June of 1999.¹⁴⁹ In contrast, Police Commissioner Howard Safir remarked, "If Mr. Siegel looked, he would find that we discipline officers in the highest percentage of cases ever in the [police] department, and we continue to do that, and we [take it] very seriously."¹⁵⁰ Statistics reveal, however, that few police abuse complaints are substantiated following civilian review. In New York City, only one out of every 20 complaints filed with the Civilian Complaint Review Board is substantiated.¹⁵¹

The relatively low rate of complaints that are sustained by review boards may illustrate a deeper problem rooted in many forms of civilian review: the tendency of civilians to support the police. The Human Rights Watch discussed this concern in relation to jury acquittals of police officers who have been accused of wrongdoing: "[e]ven with apparently foolproof cases against police officers, juries have often been reluctant to find officers guilty of criminal conduct, particularly where the incident occurred while they were

on duty."¹⁵² This same bias may also influence the civilian review process. If a civilian who is sitting as a juror is reluctant to convict an accused officer, a civilian who is part of a police review board may be prone to the same tendencies when faced with a complaint against an officer.¹⁵³

Inadequate funding is a major impediment to the effectiveness of many civilian review boards. Without sufficient funding by local governments, civilian review boards lack the staffing and other resources necessary to investigate citizen complaints properly. According to James Fyfe, civilian review boards are often so severely underfunded that they appear to be "designed to fail."¹⁵⁴ Charlie Kluge, director of the Police Advisory Commission in Philadelphia, echoed Dr. Fyfe's assessment of the budgetary problems plaguing civilian review boards. "I can tell you most civilian review boards are funded to fail. You don't get attaboys from the politicians because for the most part, they'd love to avoid the issue of civilian review," he said.¹⁵⁵ Ronald Hampton, director of the National Black Police Association, explained, "When someone from a minority community goes to a commission and it's not properly funded, your complaint doesn't seem to be taken seriously, and you lose faith in that process too."¹⁵⁶

Financial neglect and wavering support from government agencies can lead to the demise of any civilian review board. After several years of unresolved citizen complaints and a mounting backlog of 900 cases, Washington, D.C.'s review board was shut down in 1994.¹⁵⁷ And despite \$1.2 million in federal funds being subsequently allocated to revamp the review board, several council members in Washington, D.C., complained that the city's police department was simply wasting those funds, which remained unspent long after they had been secured.¹⁵⁸ New

have more influence over the police chief, because he is required to attend their meetings." Ibid.

¹⁴⁷ Human Rights Watch, "Shielded from Justice," Atlanta: Civilian Review Board.

¹⁴⁸ De La Cruz, "CCRB Ineffective."

¹⁴⁹ Ibid. There were 15,000 complaints filed against police officers during that time.

¹⁵⁰ Ibid.

¹⁵¹ Juan Gonzalez, "Abusive Cops Roam Free," *The Daily News* (New York), Feb. 26, 1999, p. 20.

¹⁵² Human Rights Watch, "Shielded from Justice," Local Criminal Prosecutions.

¹⁵³ See *ibid.*

¹⁵⁴ Fyfe, Police Practices Briefing Transcript, p. 27.

¹⁵⁵ Michelle Boorstein, "Weak Power, Resources Make It Tough Going for Police Watchdogs," *The Chicago Tribune*, Apr. 27, 1998, p. 2.

¹⁵⁶ David Rohde, "Civilian Boards Strain for Funds to Watch Cops," *Christian Science Monitor*, Aug. 29, 1994, p. 1.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

York City's civilian review board faces a similar fate with a backlog of approximately 2,000 cases and repeated complaints from City Council members that the board is being purposely neglected by city officials who oppose it. According to Fernando Ferrer, Bronx Borough president, the city's budget "rolls over CCRB funds that it needed to spend this fiscal year and adds other funds but still leaves it short of funding to act as a true police monitor."¹⁵⁹ If residents are left to conclude that their complaints are unimportant by virtue of an ineffective civilian review process, frustration and tension between members of the public and the police will undoubtedly continue. It remains to be seen whether a truly independent civilian review board can be developed that will be effective in combating police brutality.

Civilian review boards provide important protection against police abuses, and they afford members of the public the opportunity to have a voice in police practices and procedures. Without some form of external review, investigation and discipline of police officers will be left up to the discretion of other officers or police officials who may be sympathetic to or biased in favor of the accused officers. In the end, the empowerment of civilian review boards may prove to be the most effective weapon in the battle to end police brutality.

CONCLUSION

Since 1981, when the Commission published *Guardians*, few changes have been implemented to improve the effectiveness of external controls of police misconduct. City government officials continue to be perceived as being tough on crime but soft on police brutality. Police misconduct remains largely unchecked because most officers and police officials view any form of outside "interference" as unnecessary and intrusive. Civilian review boards across the country still lack adequate funding, resources, and support to properly address the thousands of complaints they receive each year. When external measures are employed to curb misconduct, investigations are usually hindered due to resistance from uncooperative police officers and their representa-

tives. Some of the more novel approaches to external review, however, are gaining acceptance and may prove to be more successful in combating police misconduct. The newer methods, such as the use of solicitors general, independent auditors, and federal oversight, present viable alternatives to the failed attempts of the past to control police abuse. Creative efforts must be explored to address this persistent problem, or police misconduct may continue to plague America's cities for generations to come.

CHAPTER 4: FINDINGS AND RECOMMENDATIONS

The Commission reiterates its findings and recommendations set forth in *Guardians*, many of which have not yet been realized.

City Government

Finding 4.1: As the Commission found in *Guardians* and other reports, city officials continue to hold the most influence over how external review procedures are conducted. They guide the overall attitude of their police officers regarding misconduct issues. Mayors, police commissioners, and police chiefs who demonstrate a "zero tolerance" for police misconduct are more likely to reduce tensions between the police and the public. On the other hand, officials perceived to be tough on crime but soft on police brutality will likely face diminished support from their constituents and continued tensions between the police and the public.

Recommendation 4.1: Officials at every level of city government must make a concerted effort to eliminate all forms of police misconduct. There should be complete cooperation among the various government entities and police representatives, to ensure the success of any policy or program designed to address police misconduct. Government officials should encourage the creation and development of all forms of external oversight, including civilian review boards and independent auditors or solicitors general. A comprehensive method of controlling police misconduct should be based on a tripartite system that balances oversight powers between the police and the communities they serve. Such a model would include (1) internal police department review and disciplinary recommendations, (2) external review of the department's findings by a solicitor general, and (3) civilian review by an

¹⁵⁹ "Ferrer: Mayor's Budget Flubs On Key Investment," *Ethnic NewsWatch*, vol. 42, no. 5 (May 10, 2000), p. 10.

independent board with full subpoena power and final discretion regarding disciplinary measures.

State Prosecutions and Federal Oversight

Finding 4.2: State prosecution of police misconduct cases remains an ineffective means of correcting the problem. Most district or county attorneys rely heavily on the support and cooperation of the police departments in their jurisdictions, and as such, they are reluctant to pursue criminal charges against them.

Recommendation 4.2: The appointment of an independent, or special prosecutor, assigned solely to police misconduct cases would increase the frequency and quality of investigations and prosecutions of police abuse incidents. Although local prosecutors are often responsible for requesting that a special prosecutor be appointed when a conflict of interest arises, an independent auditor or solicitor general overseeing police misconduct cases should also be allowed to make the request.

Finding 4.3: The use of federal monitors to analyze issues surrounding police misconduct in individual jurisdictions adds another useful measure of external oversight. Through such monitoring, the federal government may find circumstances that warrant further action, such as the enforcement of one of the civil rights statutes designed to combat police brutality and misconduct.

Recommendation 4.3: The appointment of federal monitors should be viewed as necessary assistance and not an unwelcome intrusion by police agencies and administrators. Police officers and their supervisors should be encouraged to cooperate with their efforts.

Civilian Review Boards

Finding 4.4: The Commission explained in its reports on police brutality in New Jersey, southern West Virginia, and in Tampa, Florida, that civilian review boards can be especially useful in eliminating police brutality. Despite decades of reforms in police practices, many municipalities around the country are still without any form of civilian review. As the Commission found in its reports on police practices in Chicago and New York, most civilian boards that do exist are severely underfunded, understaffed, and lack any enforcement power.

Recommendation 4.4: Civilian review boards should be implemented in every municipality. The funding and support for these entities should remain a high priority for all elected officials, regardless of their political perspectives. All civilian review boards should have subpoena power and disciplinary authority over police misconduct investigations, in conjunction with, but not subordinate to, police internal affairs divisions.

Remedies and Legal Developments

In *Who Is Guarding the Guardians?* the U.S. Commission on Civil Rights detailed the remedies available for victims of police misconduct. Since *Guardians'* publication, only minor changes have occurred in the use of civil lawsuits by individuals against police officers at the state or federal level. Twenty years ago, case law provided that the government did not have authority to seek injunctive relief for police misconduct.¹ In *Guardians*, the Commission recommended that Congress enact legislation that would give the Attorney General the authority denied to the government by controlling case law, namely, the authority to enjoin proven patterns or practices of misconduct in a given law enforcement department. In 1994, such legislation was finally passed, adding an additional federal civil remedy.²

This chapter reviews the pattern or practice authority as well as other remedies and legal developments over the past 20 years. Additionally, it highlights state legislation and proposed federal bills that mandate collection of statistics relating to race, age, and gender of those who come into contact with law enforcement officers.

CIVIL ACTIONS BY VICTIMS OF POLICE MISCONDUCT

The Commission has concluded in various reports that civil lawsuits against individual police officers may help deter police misconduct.³ While there are several avenues one may pursue when

using civil lawsuits as a remedy, state and federal law limit the effectiveness of this remedy.⁴

Civil Remedies under State Law

The most common avenue of redress available to victims of police abuse is initiating a civil action for damages under state law.⁵ Police misconduct may constitute a tort for which a victim may sue for damages. In general, these lawsuits involve allegations of false arrest, false imprisonment, malicious prosecution, assault, battery, or wrongful death.⁶ As pointed out in *Guardians*, there are advantages and disadvantages to the victim when filing a state civil lawsuit. Advantages include a lower burden of proof than required in a criminal case, the fact that the victim may personally initiate the action, and the possibility of direct compensation to the victim.⁷ Disadvantages include costly and time-consuming litigation and the fact that police officers ultimately may be judgment-proof and protected by sovereign immunity.⁸ Even in cases where the victims of police misconduct are successful in their lawsuits, they rarely work to hold police departments or individual officers accountable for their actions.⁹

⁴ Marshall Miller, "Police Brutality," *Yale Law & Policy Review*, vol. 17 (1999), p. 152 (stating that traditional legal remedies are ineffective in deterring police misconduct).

⁵ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* October 1981, p. 129 (hereafter cited as USCCR, *Guardians*).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Amnesty International, "A Briefing for the UN Committee Against Torture," p. 13, <<http://www.amnesty.it/ailib/apu/2000/AMR/2515600.htm>> (Oct. 20, 2000) (hereafter cited as Amnesty International, "A Briefing").

¹ *United States v. City of Philadelphia*, 644 F.2d 187 (3d Cir. 1981).

² 42 U.S.C. § 14141 (1994).

³ See appendix A.

Civil Remedies under Federal Law

Most civil actions against police officers for misconduct are filed under 42 U.S.C. § 1983.¹⁰ However, it is difficult to succeed in § 1983 claims against police officers, and the successes in § 1983 claims do not necessarily result in changes in police practices.¹¹ Further, judicially imposed barriers limit the value of remedies under § 1983. One barrier is the doctrine of immunity that protects individual police officers from lawsuits.¹² As Robert Loudon and Hubert Williams discussed at the Commission's June 2000 briefing on national police practices and civil rights, defendant officers are usually indemnified by the municipalities or unions if an alleged misconduct is within the line of duty.¹³ Therefore, there is no real incentive for police officers to change their practices to ensure that individual rights are protected. In *Guardians*, the Commission argued that § 1983 claims have not been effective in deterring police misconduct¹⁴ and without much change in police practices, § 1983 continues to be ineffective in deterring police misconduct.

One measure for deterrence of police misconduct is the implementation of overall changes in departmental and agency policy. And one way to bring changes in policy is to impose liability on the department or the agency itself for misconduct of its officers. *Monell v. Department of Social Services of the City of New York*¹⁵ made it possible for victims of police misconduct to sue police departments and impose liability on the municipalities themselves for the actions of their employees.¹⁶ The *Monell* Court held that civil rights violations committed by public employees might impose liability on the government if it is

shown the violation is the result of poor training or poor supervision.¹⁷ James Fyfe believes that the legal standard first articulated in *Monell* was a catalyst in changing policing by encouraging police administrations to develop a police standard of care in dealing with the public.¹⁸ He opined that suits against municipalities have resulted in policy changes that have made a great difference in deterring police misconduct.¹⁹ Dr. Fyfe, however, cited two problems with municipal liability. First, many police chiefs see liability as a cost of doing business and the effect of losing a \$10- or \$12-million lawsuit does not have an impact on police operations.²⁰ Second, no one in the police department is made aware of the results of the lawsuit, and none of the policy implications of the lawsuits are acted upon.²¹

As articulated by the *Monell* Court, "municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."²² The presiding judge, therefore, can only impose liability if the municipality *caused* the injury.²³ The question of a direct causal link between a municipal policy or custom and the alleged misconduct is a difficult inquiry, leaving the U.S. Supreme Court deeply divided.²⁴ Further, the Court and Congress have not clearly defined what constitutes municipal policy, and this adds to the difficulty in winning claims under § 1983.²⁵

¹⁷ *Id.*

¹⁸ James Fyfe, Police Practices Briefing Transcript, p. 25.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Collins v. City of Harker Heights*, 503 U.S. 115, 121 (1992) (quoting *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978)) (emphasis in original). Under a theory of *respondeat superior*, an employer can be held liable for the acts of his employees committed in the course and scope of their employment.

²³ *Id.* (emphasis added).

²⁴ See, e.g., *City of Canton v. Harris*, 489 U.S. 378, 385–86 (1989) (citing *City of St. Louis v. Prapronik*, 485 U.S. 112 (1988)); *City of Springfield v. Kibbe*, 480 U.S. 257 (1987); *City of Los Angeles v. Heller*, 475 U.S. 796 (1986); *City of Oklahoma v. Tuttle*, 471 U.S. 808 (1985).

²⁵ Adam S. Lurie, "Ganging up on Police Brutality: Municipal Liability For the Unconstitutional Actions of Multiple Police Officers Under 42 U.S.C. § 1983," *Cardozo Law Review*, vol. 21 (May 2000), pp. 2087, 2089.

¹⁰ 42 U.S.C. § 1983 (1994).

¹¹ Miller, "Police Brutality," p. 155.

¹² U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume III: The Chicago Report*, September 1995, p. 139 (hereafter cited as USCCR, *Chicago Report*).

¹³ Robert Loudon, statement before the U.S. Commission on Civil Rights, National Police Practices and Civil Rights Briefing, June 16, 2000, transcript, p. 16 (hereafter cited as Police Practices Briefing Transcript).

¹⁴ See USCCR, *Guardians*, p. 130.

¹⁵ *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658 (1978).

¹⁶ See *id.* at 690.

Since *Monell*, the Supreme Court has re-examined the issue of municipal liability in various cases.²⁶ In each case, the Court distinguished the municipal liability from *respondeat superior* liability.²⁷ The Court ensured that municipal liability is based on municipal policy and custom.²⁸ Further in *City of Oklahoma* and *City of Canton*, the Court refused to apply municipal policy doctrine in a single incident of wrongdoing.²⁹ The Court in *City of Oklahoma* rejected that one incident of misconduct can amount to inadequate training or supervision amounting to "deliberate indifference."³⁰ In *City of Canton*, the Court limited the definition of "deliberate indifference."³¹ For liability to attach to a municipality, a victim/plaintiff must show that the particular policy or custom of the municipality that caused the injury is so inadequate that it amounts to "deliberate indifference to the rights of persons with whom the police come in contact."³² A plaintiff must prove that the municipality made a deliberate or conscious choice not to implement an adequate training program.³³ The Supreme Court has consistently reaffirmed the deliberate indifference standard and stated when a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into *respondeat superior* liability: "As we recognized in *Monell* and [its progeny], Congress did not intend municipalities to be held liable unless *deliberate* action attribut-

able to the municipality directly caused a deprivation of federal rights."³⁴

The deliberate indifference standard was further defined and narrowed in *Brown*.³⁵ In *Brown*, the plaintiff, Mrs. Brown, sued a Bryan County police officer and the county for alleged use of excessive force and unlawful arrest.³⁶ Mrs. Brown brought a claim under § 1983 alleging that Bryan County should be held liable for inadequately hiring an officer, Burns, with criminal misdemeanor records and for inadequately training the officer.³⁷ The Court vacated and remanded the case, stating that the plaintiff failed to show that Bryan County's decision to hire Burns "reflected a conscious disregard for a high risk that Burns would use excessive force in violation of Brown's federally protected right."³⁸ The Court, relying on *City of Canton*, ruled that in order for the municipality to be held liable, it must have acted with deliberate indifference to "known or obvious consequences."³⁹

This standard of deliberate indifference defined by the majority in *Brown*, as the dissenting opinion points out, raises the "plainly obvious" dictum in *City of Canton* to a new standard.⁴⁰ This new standard appears to be higher than criminal recklessness.⁴¹ In *Brown*, Burns' records of criminal charges relating to assault and battery, resisting arrest, and public drunkenness, among other charges, were insufficient to prove that Bryan County fully disregarded the substantial risk that Burns would use excessive force when it hired him.⁴² Before a municipality can be liable, a plaintiff in a § 1983 claim now must prove that an officer committed a felony or show evidence that the officer had a history of continual use of excessive force.⁴³

²⁶ See generally, *Bd. of the County Comm'rs of Bryan County v. Brown*, 520 U.S. 397 (1997); *City of Canton*, 489 U.S. 378; *City of St. Louis*, 485 U.S. 112; *Pembaur*, 475 U.S. 469; *City of Oklahoma*, 471 U.S. 808; *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981); and *Owen v. City of Independence*, 445 U.S. 622 (1980).

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *City of Oklahoma*, 471 U.S. 821; *City of Canton*, 489 U.S. 391.

³⁰ *City of Oklahoma*, 471 U.S. 821.

³¹ See generally *City of Canton*, 489 U.S. 378.

³² *Id.* at 388.

³³ Kevin R. Vodak, "A Plainly Obvious Need for New-Fashioned Municipality Liability: The Deliberate Indifference Standard and Board of County Commissioners of Bryan County v. Brown," *DePaul Law Review*, vol. 48 (1999), p. 814 (hereafter cited as Vodak, "Need for New-Fashioned Municipality Liability").

³⁴ *Brown*, 520 U.S. 415.

³⁵ See *id.*

³⁶ *Id.* at 402.

³⁷ *Id.* at 415-16.

³⁸ *Id.* at 412-13.

³⁹ *Id.*

⁴⁰ See *id.*

⁴¹ Vodak, "Need for New-Fashioned Municipality Liability," p. 814.

⁴² See *Brown*, 520 U.S. 397.

⁴³ Vodak, "Need for New-Fashioned Municipality Liability," p. 814.

Problems remain with using municipal liability as a remedy for police misconduct. The burdensome standards imposed by the courts severely limiting the liability of municipalities for the unlawful conduct of their police officers often leave victims with no real remedy.⁴⁴ As the Commission in 1995 pointed out in *Racial and Ethnic Tensions in American Communities: The Chicago Report*, "the need remains to establish a more effective means [for victims] to redress violations of civil rights and a more effective tool in deterring police misconduct."⁴⁵

CRIMINAL PROSECUTION OF POLICE MISCONDUCT

Criminal prosecution of police officers accused of misconduct continues to be rare. On the federal level, §§ 241 and 242 of Title 18 remain the principal tools that the U.S. Department of Justice uses to prosecute police officers who abuse their authority.⁴⁶ There continues to be criticism that very few, usually only high-profile cases, are prosecuted.⁴⁷ Both in state and federal prosecution, the "code of silence," where police officers either refuse to testify or cover up evidence, makes the investigation and prosecution of cases difficult. While 18 U.S.C. § 242 allows for federal prosecution of local, state, or federal officials alleged to have violated the rights of others under the "color of law," very few cases have resulted in investigation and prosecution.⁴⁸ This is partly due to lack of resources and the evidentiary requirement where the accused officer's specific intent to violate a federally protected right must be proven beyond a reasonable doubt.⁴⁹

⁴⁴ USCCR, *Chicago Report*, p. 140.

⁴⁵ *Ibid.*

⁴⁶ Under § 241, it is unlawful for "two or more persons to conspire to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same." 18 U.S.C. § 241 (1994). Under § 242, it is unlawful for a person acting "under color of any law, statute, ordinance, regulation, or custom, [to] willfully subject any inhabitant of any State, Territory, Commonwealth, possession or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States." 18 U.S.C. § 242 (1994).

⁴⁷ Amnesty International, "A Briefing," p. 12.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

In the most recent police corruption scandal against the Los Angeles Police Department, LAPD officers were investigated for "allegedly orchestrating a widespread, violent conspiracy: shooting unarmed suspects, framing others by planting weapons or drugs on them, falsifying police reports and lying under oath in court."⁵⁰ The corruption resulted in a case brought by the Justice Department against the LAPD, and in this case a U.S. district court judge held that this pattern of extreme misconduct by the LAPD can be considered to be an act by a "criminal enterprise."⁵¹ Accordingly, the court found that the LAPD is subject to lawsuits under federal racketeering laws, an unprecedented development.⁵² This lawsuit against the LAPD under federal racketeering laws may lead to other police departments being found criminally liable for gross police misconduct. While it is still too early to tell whether this district court ruling will have a great impact on how police misconduct cases will be handled in federal court, it is an unprecedented ruling where gross police misconduct of a law enforcement agency has led to the agency being considered a "criminal enterprise." This ruling has opened another way to impose liability on police departments for a pattern of police misconduct.

FEDERAL CIVIL RIGHTS ENFORCEMENT

Pattern or Practice Lawsuits against Recalcitrant Police Departments

Prior to 1994, the federal government and private citizens did not have standing to sue for declaratory and equitable relief for alleged unconstitutional actions of police officers.⁵³ After the beating of Rodney King by LAPD officers was captured on videotape and televised, and the subsequent finding by the Christopher Commission that "the problem of excessive force [was] aggravated by racism and bias within the

⁵⁰ Renee Sanchez, "L.A. Police Misconduct Likened to Racketeering; Judge's Order Could Widen City's Liability," *The Washington Post*, Aug. 31, 2000, p. A4.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *City of Philadelphia*, 644 F.2d 187 (holding that the federal government does not have the authority to bring a lawsuit for injunctive relief); *City of Los Angeles*, 461 U.S. 95 (holding that private citizens do not have the authority to bring a lawsuit for injunctive relief).

LAPD,"⁵⁴ the House Judiciary Committee considered the Police Accountability Act of 1991.⁵⁵ While Congress never enacted the bill into law, the first two sections of the bill became a part of the Violent Crime Control and Law Enforcement Act (VCCLEA).⁵⁶ The only part of the Police Accountability Act that was deleted from the VCCLEA is the private citizen's right to pursue injunctive relief for police misconduct.⁵⁷

Congress passed and enacted the VCCLEA into law in 1994. Title XXI of the legislation, 42 U.S.C. § 14141, made it unlawful for state and local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States.⁵⁸ This legislation responded to a judicially imposed bar on individual victims' standing to sue for equitable relief.⁵⁹ Title XXI authorizes the Attorney General to bring civil action against police departments engaged in a pattern or practice of discrimination.⁶⁰ Given the severe limitations on private parties' ability to seek relief prior to 1994, the VCCLEA significantly expanded the available legal remedies to address systemic police misconduct.⁶¹

Before the VCCLEA, many experts criticized the Justice Department for playing no real role in holding local police departments accountable for misconduct.⁶² The VCCLEA enhanced the Justice Department's enforcement authority. One section of the act gives statutory authority to the Attorney General to bring a civil action, seeking equitable and declaratory relief to re-

dress a pattern or practice of misconduct by law enforcement agencies.⁶³ It allows the Justice Department to seek injunctive relief by mandating law enforcement agencies to make necessary changes to end abusive actions.⁶⁴ In the fall of 1995, the Civil Rights Division of the Justice Department established the Special Litigation Section to enforce the police misconduct provision of the VCCLEA.⁶⁵

The remedies under this law do not provide for monetary relief for victims of the misconduct; rather, they allow the Justice Department to petition in federal court for orders to end the misconduct and change law enforcement agencies' policies and procedures that contributed to the misconduct.⁶⁶ The Special Litigation Section investigates "systemic problems in law enforcement agencies, including excessive force; false arrest; discriminatory harassment, stops or arrests; coercive sexual conduct; and retaliation against person alleging misconduct."⁶⁷

Since the enactment of the VCCLEA, the Justice Department has filed four pattern or practice lawsuits against the following entities: city of Pittsburgh, city of Steubenville, the state of New Jersey, and the city of Columbus, Ohio.⁶⁸ The Justice Department obtained consent decrees from the city of Pittsburgh, city of Steubenville, and the state of New Jersey.⁶⁹ Montgomery County, Maryland, also signed a memorandum of agreement.⁷⁰ The Justice Department's lawsuit against Columbus, Ohio, is pending at this time with no consent decree.⁷¹ The

⁵⁴ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department*, 1991, p. 32; U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report*, May 1999, p. 24 (hereafter cited as USCCR, *Los Angeles Report*).

⁵⁵ H.R. 1914, 102d Cong. (2d Sess. 1991).

⁵⁶ H.R. 4092, 103d Cong. (2d Sess. 1994); 42 U.S.C. § 14141 (1994); Debra Livingston, "Special Issue: Police Reform and the Department of Justice: an Essay on Accountability," *Buffalo Criminal Law Review*, vol. 2 (1999), p. 815.

⁵⁷ H.R. 4092, 103d Cong. (2d Sess. 1994).

⁵⁸ 42 U.S.C. § 14141.

⁵⁹ Miller, "Police Brutality," p. 170.

⁶⁰ 42 U.S.C. § 14141.

⁶¹ *Id.*

⁶² See, e.g., Livingston, "Special Issue: Police Reform and the Department of Justice," p. 815.

⁶³ 42 U.S.C. § 1414(b) (1994); see also U.S. Department of Justice, "Special Litigation Section" <<http://www.usdoj.gov/crt/activity.html>> (May 30, 2000).

⁶⁴ 42 U.S.C. § 14141(a) (1994).

⁶⁵ USCCR, *Los Angeles Report*, p. 204.

⁶⁶ U.S. Department of Justice, "Federal Civil Enforcement," <<http://www.usdoj.gov/crt/split/documents/polmis.htm>> (May 30, 2000).

⁶⁷ See U.S. Department of Justice, "Complaints Filed in the U.S. District Courts," <<http://www.usdoj.gov/crt/split/findsettle.htm#>>, Law Enforcement Misconduct Findings Letters (Oct. 31, 2000).

⁶⁸ *Ibid.*

⁶⁹ See U.S. Department of Justice, "Conduct of Law Enforcement Agencies Settlements and Court Decisions," <<http://www.usdoj.gov/crt/split/findsettle.htm#>>, Law Enforcement Misconduct Findings Letters (Oct. 31, 2000).

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

Justice Department has authorized litigation against the Los Angeles Police Department and also has begun investigations in New York, Washington, D.C., and other cities around the country.⁷² The VCCLEA gives the Justice Department the authority to negotiate and to push local police departments to institute best practices that would lead to increased police accountability without relinquishing the benefits of local knowledge.⁷³

However, the process of obtaining court-approved consent decrees has been lengthy and costly.⁷⁴ While pattern or practice lawsuits are effective in remedying police misconduct and have led to significant program changes in several police departments, they are not without problems. Amnesty International and other human rights groups have called on Congress to provide greater funding to the Justice Department so it can investigate pattern or practice cases effectively.⁷⁵ The Commission also recommended in its *Racial and Ethnic Tensions in American Communities: The Los Angeles Report* that Congress approve the allocation of specific resources to fund investigations into systemic police misconduct under 42 U.S.C. § 14141(a).⁷⁶ It has further recommended that Congress approve the hiring of additional personnel.⁷⁷

As one commentator pointed out, while criminal prosecution of police misconduct cases plays a role in changes in police department policies, the real changes or reforms resulted from the enforcement of the VCCLEA.⁷⁸ Section 14141 litigation holds local police departments accountable by comparing their existing practices with reforms and policies outlined in the consent decree and forces local police depart-

ments to implement those changes.⁷⁹ Indeed, § 14141 has the potential for bringing about real and substantial reforms to police practices by holding police departments liable for implementing policy changes. However, that only four § 14141 lawsuits have been filed since the VCCLEA has been enacted indicates that the process of reforms in police practices has been a slow one.

When discussing the Justice Department's effectiveness in enforcing pattern or practice legislation, Dr. Fyfe concluded that it has done an "excellent job."⁸⁰ He said the Justice Department's pattern or practice enforcement endeavors have "made a major difference."⁸¹ Mr. Williams asserted that pattern or practice lawsuits have created fear in local police departments that the Justice Department can and will investigate their departments for possible violations.⁸² The Justice Department's authority to enforce pattern or practice legislation will work to transform police behavior, he contended.⁸³ Dr. Loudon noted, however, that the "time lag from event to finality" is a problem.⁸⁴

CRIME CONTROL AND SAFE STREETS ACT

Another law that allows the government to initiate litigation to remedy a pattern or practice of discrimination is the Omnibus Crime Control and Safe Streets Act of 1968.⁸⁵ The act, along with Title VI of the Civil Rights Act of 1964, prohibits discrimination based on race, color, sex, or national origin by police departments receiving federal funds.⁸⁶ The act states the Attorney General may initiate civil litigation to remedy a pattern or practice of discrimination based on race, color, national origin, gender, or religion involving services by law enforcement agencies receiving financial assistance from the Justice Department's Office of Justice Programs and the Office of Community Oriented Policing Services.⁸⁷ The Special Litigation Section of the

⁷² Bill Lann Lee, "Testimony of Bill Lann Lee, Acting Assistant Attorney General, Before the House Subcommittee on the Constitution, Oversight Hearing on the Civil Rights Division" (testimony given before the House Judiciary Subcommittee on the Constitution, July 12, 2000), p. 3 (hereafter cited as Lee Testimony).

⁷³ Ibid.

⁷⁴ Amnesty International, "A Briefing," p. 13.

⁷⁵ Ibid.

⁷⁶ USSCR, *Los Angeles Report*, p. 230.

⁷⁷ Ibid.

⁷⁸ Livingston, "Special Issue: Police Reform and the Department of Justice," pp. 841-43.

⁷⁹ Ibid., p. 844.

⁸⁰ Fyfe, Police Practices Briefing Transcript, p. 103.

⁸¹ Ibid.

⁸² Williams, Police Practices Briefing Transcript, p. 103.

⁸³ Ibid.

⁸⁴ Loudon, Police Practices Briefing Transcript, p. 102.

⁸⁵ 42 U.S.C. § 3789d(c) (1994).

⁸⁶ 42 U.S.C. § 3789d(c).

⁸⁷ *Id.*

Civil Rights Division of the Justice Department enforces this provision of the law.

Currently, a bill is being considered by Congress to amend the Omnibus Crime Control and Safe Streets Act of 1968.⁸⁸ This new bill, the Law Enforcement Trust and Integrity Act of 1999, addresses issues within law enforcement at all levels. This bill calls for establishing national minimum standards for accrediting law enforcement agencies and establishing civilian complaint review boards. It also "defines excessive use of force, requires states to follow guidelines established by the Attorney General for reporting deaths in custody and offers incentives for local police departments to adopt performance based standards to minimize incidents of misconduct."⁸⁹

Withholding Federal Funding from Agencies That Engage in Discriminatory Practices

Since many law enforcement agencies receive federal funding, Congress has enacted legislation to deter police misconduct. These laws, Title VI of the Civil Rights Act of 1964⁹⁰ and the Office of Justice Programs (OJP) Program Statute, prohibit both individual instances and pattern or practices of discriminatory misconduct by state and local law enforcement agencies that receive financial assistance from the federal government.⁹¹ Both statutes provide for the suspension of federal funds if a law enforcement agency engages in discriminatory conduct.⁹² The discriminatory conduct covered by these laws includes unjustified arrests, discriminatory traffic stops, use of excessive force, use of racial slurs, or refusal by the agency to respond to complaints alleging discriminatory treatment by its officers.⁹³

The remedies under Title VI and the OJP Program Statute differ from those provided in the VCCLEA because not only may the Justice Department seek to change police policies and

procedures, but individuals also have a private right of action under both laws.⁹⁴ For an individual to file in federal court under the OJP Program Statute, however, he or she must first exhaust the administrative remedies outlined in the statute.⁹⁵

Collection of National Statistics on Police Misconduct

Experts cite the lack of reliable national statistics on police brutality as a problem when developing policies to prevent police misconduct.⁹⁶ Many think the federal government is best suited to collect and publish needed statistics. In 1993's *Racial and Ethnic Tensions in American Communities: The Mount Pleasant Report*, the Commission emphasized the need to maintain national statistics on police discipline to formulate an effective national response to police abuse.⁹⁷ Accordingly, the Commission recommended that "the Federal Bureau of Investigation be directed to collect, classify and publish nationwide statistics on police abuse incidents and discipline of officers for use in law enforcement administration and management and to facilitate more accurate assessment of the extent of police abuse in the United States."⁹⁸

Since then, Congress passed the VCCLEA, which contains a section that directs the Justice Department to collect data on the use of excessive force by police officers.⁹⁹ While Congress passed this legislation to collect data, it failed to provide necessary funding to carry out this process.¹⁰⁰ Furthermore, the data collection process lacks involvement from the Justice Department's Civil Rights Division, which has the authority to enforce federal civil rights laws, because the statute mandates that the data not be used for enforcement purposes.¹⁰¹ This further creates problems in collecting and using data relating to police practices.

⁸⁸ H.R. 2656, 106th Cong. (1st Sess. 1999).

⁸⁹ Amy Worden, "Crime Bills Pushed in Last Month of Congress," APBnews.com, <<http://www.apbnews.com/newscenter/breakingnews/2000/09/08/legislation0908-01.html>> (Oct. 26, 2000).

⁹⁰ 42 U.S.C. § 2000d (1994).

⁹¹ 42 U.S.C. § 3789d(c).

⁹² 42 U.S.C. § 2000d; 42 U.S.C. § 3789d(c).

⁹³ 42 U.S.C. § 2000d; 42 U.S.C. § 3789d(c).

⁹⁴ *Id.*

⁹⁵ 42 U.S.C. § 3789d(c).

⁹⁶ Amnesty International, "A Briefing," p. 13.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ 42 U.S.C. § 14141.

¹⁰⁰ Amnesty International, "A Briefing," p. 13.

¹⁰¹ USCCR, *Los Angeles Report*, p. 208.

The need for data on police misconduct is long recognized as an important step toward ending this problem. At the briefing, Mr. Williams pointed to a report published in 1977 by the Police Foundation and a 1998 report by the Human Rights Watch, both of which stressed this need.¹⁰² He also discussed a Police Foundation mechanism—Quality of Service Indicator—that collects and analyzes traffic stop data.¹⁰³

Prior to June 1999, only a few police departments around the country collected data on traffic stops by race or ethnicity.¹⁰⁴ Since then, more than 100 jurisdictions have begun to collect data on traffic stops.¹⁰⁵ Data collection assesses whether police officers are engaged in racial profiling,¹⁰⁶ and therefore it is crucial to the goal of deterring police misconduct. It is important for those in authority to have precise statistical information on the use of excessive force and police misconduct in implementing and changing policies as well as making the police publicly accountable where there is a proven pattern of such misconduct.¹⁰⁷

LEGISLATIVE DEVELOPMENTS ON RACIAL PROFILING

Federal Legislative Developments

In recent years, instances of racial profiling, or “driving while black or brown,” have raised concerns among many civil rights groups. However, there is no federal legislative ban on racial profiling. In June 1999, President Clinton signed an executive order calling for the Justice Department to collect traffic stop data.¹⁰⁸ President Clinton stated:

No person should be subject to excessive force, and no person should be targeted by law enforcement because of the color of his or her skin. Stopping or searching individuals on the basis of race is not effective law enforcement policy, and is not consistent with

our democratic ideals, especially our commitment to equal protection under the law for all persons.¹⁰⁹

To address the problem of racial profiling, the President said federal agencies should collect data at all levels of law enforcement.¹¹⁰ Accordingly, he directed the Secretary of the Treasury, the Attorney General, and the Secretary of the Interior to develop a proposal for a data collection system and an implementation plan.¹¹¹ The President also directed that a report on training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement activities, along with recommendations for improving those programs, policies, and practices, be submitted to him within 120 days of the directive.¹¹²

In the 1998 legislative term, Congress introduced a bill entitled the Traffic Stops Statistics Act,¹¹³ which allowed the collection of data on traffic stops. It was approved by the Judiciary Committee on a bipartisan basis and passed the House voice vote.¹¹⁴ However, Congress did not enact this bill into law because the Senate adjourned before considering the bill.¹¹⁵ The bill was reintroduced in a later legislative term.¹¹⁶ This new bill entitled Traffic Stops Statistics Study Act of 1999, otherwise known as the “driving while black” bill, has been introduced in both the Senate and House.¹¹⁷ The bill mandates the Justice Department to conduct a study on racial profiling by collecting traffic stop data. The full House Judiciary Committee approved the bill on March 1, 2000, and it must be considered before adjournment to become law.¹¹⁸

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ H.R. 118, 105th Cong. (1st Sess. 1998).

¹¹⁴ People for the American Way, “On Capitol Hill Civil Rights: Racial Profiling,” <<http://www.pfaw.org/caphill/civilrights.html>> (Sept. 13, 2000).

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ H.R. 1443, 106th Cong. (1st Sess. 1999).

¹¹⁸ People for the American Way, “On Capitol Hill Civil Rights: Racial Profiling,” <<http://www.pfaw.org/caphill/civilrights.html>> (Sept. 13, 2000).

¹⁰² Williams, Police Practices Briefing Transcript, pp. 52–53.

¹⁰³ Ibid., p. 55.

¹⁰⁴ Lee Testimony, p. 3.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Executive Order, “Fairness in Law Enforcement: Collection of Data,” <<http://www.pub.whitehouse.gov/ury-res/I2R?urn:pdi://oma.eop.gov.us/1999/6/10/5.test.1>> (Sept. 13, 2000).

State Legislative Developments

Seven states have passed legislation to combat racial profiling: California, Connecticut, Kansas, Missouri, North Carolina, Rhode Island, and Washington. The statutes vary from state to state and all but California require police agencies to record the age, sex, and race of motorists who are stopped. The new statutes in California, Connecticut, and Missouri make it a state crime for law enforcement officers to engage in racial profiling. Connecticut and Missouri also allow state funds to be withheld from law enforcement agencies that do not comply with all provisions of the racial profiling law.

CONCLUSION

Since the publication of *Guardians*, the Commission's recommendation to enact legislation giving the Attorney General authority to bring civil actions against police departments engaging in patterns of misconduct has resulted in significant legislation. In its various reports, the Commission repeatedly stressed the lack of adequate state and federal remedies to deter police misconduct. While the Commission's recommendation to enact legislation to allow the federal government to seek equitable and declaratory relief has been realized, the Commission's recommendation to also give individual victims of police misconduct a private right of action has not been implemented. Victims of police misconduct continue to face many barriers that prevent them from obtaining adequate relief and remedy. Prosecution of police misconduct cases similarly continues to be hampered by many judicially imposed barriers as well as by the "code of silence."

The Commission further raised issues regarding the lack of national statistics that could be used to analyze police misconduct. In recent years, racial profiling has become a serious issue for many communities of color, yet there is no federal mandate to fight this problem. While many states are considering enacting a ban on racial profiling and mandating the collection of traffic stop data, there is no uniform collection of information on traffic stops. A strong need exists to continue the effort to change patterns of police misconduct and provide significant remedies for victims of police abuse. While legal developments have occurred to deter police misconduct, more

can be and must be done to ensure that there is no room for misconduct by the very people who have been entrusted to provide protection.

CHAPTER 5: FINDINGS AND RECOMMENDATIONS

While some of the Commission's recommendations set forth in *Guardians* have resulted in policies and legislation, many remain unimplemented and, therefore, the Commission reiterates them.

Pattern or Practice of Misconduct

Finding 5.1: In *Guardians*, the Commission recommended that Congress enact legislation authorizing civil actions by the Attorney General of the United States against appropriate government and police department officials to enjoin proven patterns or practices of misconduct in a given department. Since the publication of *Guardians*, Congress enacted the Violent Crime Control and Law Enforcement Act (VCCLEA), authorizing the Attorney General to bring civil actions against state and local law enforcement agencies for engaging in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. While the U.S. Department of Justice has brought four lawsuits and obtained consent decrees from three police departments, much of its effort has been hampered by lack of resources.

Recommendation 5.1: Congress should approve allocation of resources to fund investigations into systemic police misconduct under the VCCLEA.

Finding 5.2: The Commission in *Racial and Ethnic Tensions in American Communities: The Chicago Report* recommended that Congress enact legislation authorizing private litigants as well as the Attorney General to bring civil actions for equitable relief. The Attorney General now has authority under the VCCLEA to bring civil actions for equitable and injunctive relief. While Congress has considered a bill to include private citizens' standing to sue for equitable and injunctive relief, it was not enacted. Currently, private litigants do not have the right to seek such relief from a court.

Recommendation 5.2: Congress should amend the VCCLEA to allow individual litigants to sue for equitable and injunctive relief against

police departments engaging in a pattern or practice of misconduct.

Criminal Remedies for Police Misconduct

Finding 5.3: Since the publication of *Guardians*, the Commission has found that civil lawsuits brought by individual victims of police misconduct have not deterred police misconduct or held police officers and their police departments accountable for their misconduct. The Commission in *Guardians* recommended that Congress enact legislation holding governmental subdivisions liable under 42 U.S.C. § 1983 for the actions of police officers who deprive persons of rights protected by that section. Since then, the Supreme Court has applied the deliberate indifference standard in deciding municipal liability cases. In a § 1983 lawsuit, for liability to attach to a municipality, a plaintiff must show that the particular policy or custom of the municipality that caused the injury is so inadequate that it amounts to deliberate indifference. This deliberate indifference standard is a high standard of proof causing the plaintiff difficulty in succeeding in a § 1983 lawsuit.

Recommendation 5.3: Congress should enact legislation amending 42 U.S.C. § 1983 to remove the higher burden of proof presented by the judicially imposed “deliberate indifference” standard in municipality liability claims.

Finding 5.4: The Commission in the *Mount Pleasant Report* found that the federal government, through vigorous prosecution of police abuse cases, can be effective in remedying police misconduct. However, the Justice Department’s prosecution of police misconduct cases has been impeded by the “specific intent” requirement of 18 U.S.C. § 242.

Recommendation 5.4: The Commission reiterates its recommendation of the *Mount Pleasant Report* that Congress should amend § 242 to remove the judicially imposed specific intent requirement.

Finding 5.5: In a case involving police corruption and misconduct of the Los Angeles Police Department, a U.S. district court judge ruled that LAPD officers can be sued under federal racketeering laws. This illustrates that existing laws can help remedy gross police misconduct.

Recommendation 5.5: The U.S. Department of Justice should continue its effort in using existing laws to find law enforcement agencies liable for their officers who engage in misconduct.

Data Collection

Finding 5.6: The Commission in its reports has emphasized the importance of collecting national data on use of excessive force by police. The Commission has recommended that the Federal Bureau of Investigation and other federal agencies collect and analyze statistics on use of excessive force and other forms of police misconduct. The VCCLEA has a provision requiring the Attorney General to collect and publish data on the use of excessive force by law enforcement officers. However, as found in the *Los Angeles Report*, the information on use of force is not maintained consistently among law enforcement agencies.

Recommendation 5.6: As recommended in the *Los Angeles Report*, Congress should allocate resources to adequately fund the Justice Department’s mandate to collect and publish statistics and information on use of excessive force by law enforcement officers.

Racial Profiling

Finding 5.7: In 1999, President Clinton signed an executive order calling for the U.S. Department of Justice to collect traffic stop data. Many states have enacted legislation mandating collection of traffic stop data. Some states prohibit racial profiling by making it a state crime, and others have included legislation to withhold state funds for not complying with the provisions of racial profiling laws. In the 1999 legislative term, Congress introduced a bill entitled Traffic Stops Statistics Study Act of 1999, which would mandate collection of traffic stop data.

Recommendation 5.7: Congress should pass the Traffic Stops Statistics Study Act of 1999 to allow for collection of data on traffic stops by police. Congress should also enact legislation banning racial profiling that would include a provision allowing for withholding of federal funds for noncompliance.

Statement of Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Christopher F. Edley, Jr., Yvonne Y. Lee, Elsie M. Meeks, and Victoria Wilson

This Commission report, *Revisiting Who Is Guarding the Guardians? A Report on Police Practices and Civil Rights in America*, serves as a companion publication to the substantial array of police reports the Commission has issued over 20 years, including its landmark publication, *Who Is Guarding the Guardians?* In the nearly 20 years since the publication of that report, new civil rights issues have emerged in the context of police practices. The topic of "racial profiling" by police officers is one example of these emerging issues. The report relies on facts and data presented in those reports in addition to the analyses and recommendations from leading experts in the field of police practices and civil rights, along with data from primary sources.

Much obviously needs to be done to improve police-community relations and to reduce incidents of police misconduct, including brutality and unjustified race-based stop-and-frisk practices. We salute the police departments that have employed successful approaches to decrease crime and police killings in their jurisdictions. Despite these accomplishments, even these departments will fail to gain the full confidence of the communities they serve until and unless there is an increased focus on police professionalism and civil rights protections. The report confirms that in the absence of police professionalism and proper training, an "us against them" culture is created on the force that does not discourage officers to use excessive force in communities of color.

We hope that elected and appointed officials will examine this report, heed the call to action, and work diligently to achieve the goals presented. We hope especially that prosecutors, who often face the brunt of pointed criticisms in police brutality investigations and prosecutions, will respond positively to the findings and recommendations. The report does not indict state prosecutors; rather it points out that there are ways to avoid "hopeless conflicts of interest" in handling these complaints through independent mechanisms assigned exclusively to police misconduct cases.

The Commission agreed to produce this report in the wake of a disturbing number of allegations reported to the Commission on police misconduct occurring throughout the nation, and particularly from New York City residents. In response, the Commission held a hearing in New York City to obtain facts regarding the increasing number of police misconduct accounts from residents following several well-publicized incidents, specifically the tragedies involving Abner Louima and Amadou Diallo. The Commission obtained information detailing the problems existing between the police department and city residents. As discussed in the published report following the hearing, *Police Practices and Civil Rights in New York City*, the Commission found that the country could benefit from an honest dialogue about police practices and civil rights. To that end, the Commission endeavored to update its leading publication on police practices, *Who Is Guarding the Guardians?*

In order to supplement *Who Is Guarding the Guardians?* the Commission invited several prominent experts to present information to the Commission and answer questions about the extent of the police misconduct problem, what law enforcement agencies have done to improve police services and reduce crime, and the changes required to reduce and eliminate police misconduct while protecting the communities they serve.

The expert information provided at the briefing, the dozens of other Commission reports on police practices, and research using primary sources all provided the basis for this report. Indeed, it compiles much information from other Commission reports that have already been approved and deemed sufficiently reliable to be released to the public.

Before the Commission approved this report, it received extensive internal and external scrutiny during several levels of review. Following the standard operating procedures of the Commission, the staff made necessary corrections, where appropriate, and added substantive new information to the initial drafts after conducting

legal sufficiency reviews and receiving comments from Commissioners.

We believe this report will contribute to the protection of civil rights and the improvement of police-community relations.

Dissenting Statement of Commissioner Russell G. Redenbaugh

The Commission's report on *Police Practices and Civil Rights in America*, which purports to update the 1981 *Who Is Guarding the Guardians?*, raises many of the same concerns that emerged from the Commission's recent report on police practices in New York City: It lacks sound methodology and research; it tends to "profile" the police; and it proposes a series of flawed prescriptions for reform. In its Executive Summary, the report speaks of "the need for a reasoned, systematic approach to honestly and sufficiently address the problem of police misconduct"; yet, in this regard, the Commission sadly misses the mark.

Some specific concerns include the following:

- Calling for "aggressive affirmative action," the report criticizes the lack of employment of minorities and women as police officers, while ignoring the significant gains that have been made since the 1980s.
- Lacking hard evidence, and relying on "perceptions" and anecdotal information from newspaper accounts, the report portrays the police as part of a "culture" that systematically engages in and tolerates abuse of the citizens they are sworn to protect.
- Dismissing the importance of using background checks and psychological tests in the selection of police recruits, the report implies that agencies that implement these measures are engaging in racism.
- Contradicting the goal of promoting reform in a way that enhances (rather than undermines) public trust in the police, the report proposes a number of heavy-handed recommendations for federal monitors, special prosecutors, and civilian review boards with subpoena power and the final say over local investigations of police misconduct cases.

Little Meaningful Change?

The report fails to give a clear picture of police reforms over the last two decades. On the one hand, it concludes that there has been "very little meaningful change" since the initial release of *Who Is Guarding the Guardians?* At the same time, the Chairperson of the Commission

has also admitted, in recent press statements, that there has been "a lot of progress" since the 1981 report.

Certainly, there are many signs of meaningful change. In major cities like New York, for example, significant reductions in violent crime have been accompanied by a dramatic decline in police use of force. Additional meaningful changes have resulted from the proliferation of community policing programs and civilian review panels, the development of training strategies to improve law enforcement response and to reduce risk and liability, and the implementation of computer technology to enhance early warning capabilities. But the present report tends to downplay these signs of progress, concluding that better policing often has come "at a terrible price" for minority communities, "which seem to bear the brunt" of police misconduct. With this kind of sweeping indictment, the report demonstrates that it is not really interested in the data it purports to gather.

The discussion of police recruitment, selection, and training is a case in point. In its 1981 report, the Commission called for the increased hiring of minorities. Without attempting to verify the extent to which law enforcement agencies have followed this recommendation, the Commission asserts that its 1981 observation—that "serious under-utilization of minorities and women in local law enforcement agencies continues to hamper the ability of police departments to function effectively"—stands true today. However, a look at the available data reveals that minorities have made substantial gains as police officers.

For example, according to U.S. Department of Justice statistics, blacks composed 11.7 percent of the population in 1987, but only 9.3 percent of total police officers—a difference of 2.4 percent.¹ By 1997, the gap virtually closed, with blacks being 12.1 percent of the population and 11.7 percent of police officers—a difference of 0.4 per-

¹ Analysis based on data from the U.S. Department of Justice, Bureau of Justice Statistics, Law Enforcement Management and Administration Statistics (LEMAS) survey, and the U.S. Census Bureau.

cent.² Women have also made dramatic gains in law enforcement, as Professor James J. Fyfe testified at the Commission's recent briefing. For example, in the Philadelphia Police Department in 1997, women held 22 percent of the sworn positions, almost a 1400 percent increase since 1979.³

Certainly, much more remains to be done in regard to recruiting and retaining qualified police officers across the board. With the challenge of a tight labor market, police departments across the country have been struggling with an overall shrinking of the applicant pool. But the Commission's call for "aggressive affirmative action" is not an effective response to the problems of low pay and low morale which, according to many experts and police officers themselves, pose the greatest barriers to recruitment and retention of qualified officers.

Maintaining High Standards

The report dismisses the importance of using background checks and psychological testing which assist in the selection of qualified police recruits. Without any in-depth discussion or evidence to back up its charge, the report finds that "biases" and "problems inherent in these examinations" may result in the elimination of minority candidates during the application process. Although the report stops short of calling for an end to these safety measures, it implies that agencies that implement them are engaging in racism. If use of these important tools is denied, the Commission's call for a hiring process that develops "officers who possess sound judgment, good reasoning abilities, knowledge of the law and maturity" will be hindered.

Failure to hire qualified officers can have tragic consequences. Consider Washington, D.C., where the Metropolitan Police Department has a history of conducting inadequate background and psychological checks.⁴ In 1999, several officers either pleaded guilty or were found guilty of the follow crimes: sexual abuse, extortion, aggravated assault, theft, kidnapping, stalking, bribery, obstruction of justice, fraud, tampering

with evidence, making false statements, and filing false reports.⁵

The case for maintaining high standards for new recruits is bolstered by the recent corruption scandal within the Los Angeles Police Department in which rogue officers were found to have planted evidence, beaten handcuffed citizens, committed perjury, and shot unarmed suspects.⁶ For years the LAPD has abandoned the use of polygraph tests and failed to perform meticulous background checks on its recruits.⁷ As a result of the LAPD's failure to require high standards for its recruits, the civil rights of citizens were violated.

Law enforcement can be a matter of life and death—for both police and civilians. Given the complex and demanding job that communities require of police officers, we must insist on maintaining selection standards to ensure that candidates have the high moral character and ability necessary to perform that job. Lowering selection standards will not increase the ability of the police to protect civil rights and target crime.

Police Use of Force

In order to protect citizens, police officers are entrusted with the enormous responsibility of having the authority to use force, including deadly force, under certain circumstances. Decisions on use of force are affected by several factors, including the degree of threatening behavior displayed by the suspect, state laws, police department policy, and training. What we do know, from experts and police officers alike, is that the media portrayal of police brutality is often significantly different from reality. Although the cases of police shootings mentioned in recent headlines are dreadful, there is no empirical evidence that police brutality is rampant in the nation, as suggested by this report.

The report also errs in choosing to look at these problems mainly through the prism of race. For example, on the basis of anecdotes and "perceptions," the report reaches the conclusion "that law enforcement officers disproportionately target [minority] communities because of mis-

² Ibid.

³ Professor James J. Fyfe, statement before the U.S. Commission on Civil Rights, Washington, D.C., June 16, 2000, p. 2.

⁴ Cheryl W. Thompson, "Convictions Rise Among D.C. Officers," *The Washington Post*, Jan. 12, 2000, p. A1.

⁵ Ibid.

⁶ William Booth, "LAPD Admits Poor Management, Lax Supervision; Culture of Mediocrity Blamed for Police Corruption," *The Washington Post*, Mar. 2, 2000, p. A3.

⁷ Ibid.

perceptions based on their racial and ethnic backgrounds, rather than crime patterns or citizen complaints." The report implies that police shootings are primarily a racial problem, one that could be resolved by "diversity" or "cultural training" initiatives.

This appears to be an over-simplification of the issue. It is instructive to look at recent studies which indicate that incidents of police use of force (meaning both lawful and unlawful actions where an officer employs physical coercion) tend to be intraracial, meaning that the officers and citizens involved are more likely to be of the same race and ethnicity. In 1997, the fatal shooting of suspected black felons by black officers was almost four times higher than the fatal shooting rate of suspected black felons by white officers.⁸ The black police officer shooting rate of suspected black felons was 5.47 per 10,000 black officers, while the fatal shooting rate of suspected black felons by white officers was 1.41 per 10,000 white officers.⁹

Flawed Prescriptions for Reform

Stressing "Culture" over "Competence"

In its tendency to point to selected, high-profile cases as examples of "incessant" police misconduct and endemic police racism, the report stresses "the importance of diversity" and the need to make law enforcement agencies more "culturally competent." In a recent article on "How to Train Cops," published by the Manhattan Institute, Heather MacDonald explains the dangers of the "cultural sensitivity" approach. From direct observation of a "cultural competence" course at New York's Police Academy, Ms. MacDonald contends that these sessions are "wildly irrelevant to the real problems of policing."¹⁰ Mandating such courses also represents "a huge opportunity cost" in terms of time that could be spent on instruction—particularly, communication skills—to improve police response to the situations confronting them every day, sometimes fatally. As Ms. Mac-

Donald concludes: "Reality, not racism, is the biggest challenge for the police."¹¹

By emphasizing *culture over competence*, the report misses the opportunity to provide any in-depth discussion of police training methods that have proven effective in enhancing the ability of police to deal with real-life situations without having to resort to the use of force. The NYPD's "In-Service Tactical Training" and its "verbal judo" courses are just two examples of this kind of training. Effective and professional policing, not an irrelevant "cultural competence" curriculum, is the key to achieving the dual goals of crime reduction and protection of citizens' civil rights.

External vs. Internal Controls

Another major problem is the report's conclusion that since the "guardians" are unable to "guard" themselves (because of a "police culture" inclined to protect wrongdoers within the ranks), what is needed is wider use of "external controls." In order to "police the police," the report proposes a number of heavy-handed recommendations for federal monitors, special prosecutors, and civilian review boards with final say over local investigations of police misconduct incidents.

This kind of adversarial approach runs counter to testimony the Commission received at our June briefing from Hubert Williams, president of the Police Foundation. As Mr. Williams affirmed in his written statement: "While both internal and external accountability of the police are required, internal accountability is more effective at deterring police misconduct."¹² Mr. Williams went on to emphasize the need for innovative technologies such as the Risk Analysis Management System and the Quality of Service Indicator, which strengthen internal accountability through the collection and analysis of key performance-related data.¹³

In its rush to release a draft version of this report just a few days before national elections, the Commission failed to seek the views of law enforcement experts in the field regarding the effectiveness of internal controls. The report elicited this reaction from Sheriff Brad Slater of

⁸ Heritage Foundation calculations based on data from the Federal Bureau of Investigation's Uniform Crime Reporting Program [United States]: Supplemental Homicide Reports, 1997 and the U.S. Department of Justice, Bureau of Justice Statistics, 1997 LEMAS Survey.

⁹ Ibid.

¹⁰ Heather MacDonald, "How to Train Cops," *City Journal*, Autumn 2000, pp. 46–60.

¹¹ Ibid.

¹² Hubert Williams, statement before the U.S. Commission on Civil Rights, June 16, 2000.

¹³ Ibid.

Weber County in Washington State: "I found that in those cases where misconduct was substantiated, we as a law enforcement agency took a much sterner approach and disciplined more heavily than those looking from the outside in."¹⁴ Sheriff Slater, who worked for many years as an internal affairs investigator, questions whether state or federal agencies would do a better job monitoring police conduct: "My power comes from the people. If I don't do [the people's] job, they have the power to remove me," he explains.¹⁵

State Prosecution as Inherently Biased

Another very troubling aspect of this report is its "profiling" of state prosecutors. Specifically, the report alleges that "local prosecutors are reluctant to prosecute the officers upon whom they must rely for the investigation and prosecution of criminal cases." In other words, the Commission in this report is making the unsubstantiated charge that states' district attorneys are generally either unwilling or unable to fulfill their sworn obligation to uphold the law. The report contends that because of the "biases" of state prosecution, "most officers who face criminal allegations will avoid any type of meaningful prosecution." The solution proposed by the report is to divest local prosecutors of their authority in police misconduct cases and hand it over to special prosecutors "from outside the ranks of the law enforcement community" or even to federal monitors.

The report offers no solid, empirical evidence for making such a sweeping recommendation or for even alleging that such a problem exists. As New York County District Attorney Robert M. Morgenthau recently wrote to the Commission, to speculate that special prosecutors are needed because local district attorneys must work with the police on a routine basis "is merely further proof that the Commission has either failed to educate itself or has purposely ignored the facts."¹⁶ Speaking for the efforts of his own office, the district attorney further explained:

¹⁴ The Associated Press, "Report Condemns Police Brutality," *The Desert News* (Salt Lake City, Utah), p. A1.

¹⁵ Ibid.

¹⁶ Letter from New York County District Attorney Robert M. Morgenthau to U.S. Commission on Civil Rights, Apr. 28, 2000.

The fact is that this Office has never hesitated from prosecuting corrupt or brutal police officers, as even a cursory examination of our record would demonstrate. Nor does our daily interaction with the vast majority of professional officers create any difficulty in our ability to uphold our responsibilities to prosecute those who use their positions for evil rather than for good. Indeed, the fact that we see the victims of police brutality and corruption underlines our commitment to prosecute those officers who betray their badges.¹⁷

Removing the "Specific Intent" Requirement

Finally, I must strongly object to the recommendation to have Congress change the law on prosecuting police in federal court so that prosecutors would no longer have to show that the accused officer acted with a "specific intent" to violate someone's civil rights. In resurrecting this recommendation from the Commission's January 1993 *Mount Pleasant Report*, the report fails to acknowledge the objections that have been voiced previously to removing the judicially imposed "specific intent" requirement. In his separate statement to the *Mount Pleasant Report*, former Commissioner Carl A. Anderson rejected this proposal, citing Justice William O. Douglas' opinion in *Screws v. United States*, 321 U.S. 91 (1945).¹⁸ As Commissioner Anderson explained,

law enforcement personnel are also citizens possessed of civil rights who are entitled, as they serve the community often in life threatening situations, to have adequate notice of the sweep of such statutes. To do any less may endanger both the lives of law enforcement personnel and the citizens they serve. Specific intent is a not uncommon requirement in statutes which carry the range of criminal penalties found in Title 18 § 242 [U.S. Code]. Given the lack of an adequate hearing record on this question, it is unwise in my opinion for the Commission to recommend a change in current law so fraught with potential legal consequences.¹⁹

Commissioner Anderson's objections remain valid today. In attempting to merely reissue such a sweeping proposal, without the benefit of any new or serious discussion, the Commission does a disservice to its fact-finding responsibilities.

¹⁷ Ibid.

¹⁸ Commissioner Carl A. Anderson, statement, *Racial and Ethnic Tensions in America: The Mount Pleasant Report*, January 1993.

¹⁹ Ibid.

Conclusion

Prejudice has no place in the enforcement of the laws of this nation. Police misconduct and racial profiling are morally reprehensible and an ineffective way to enforce the law.

While there is no question that police misconduct does occur, there is no evidence that points to an epidemic of such misconduct.

As Chairperson Berry recently affirmed, "policing and responsibility for the police is a local and state responsibility and not a federal responsibility." This is consistent with a key finding in the 1981 *Who Is Guarding the Guardians?*:

"The public must have confidence in the ability of the police to police themselves." The best way to "guard the guardians" is to enhance their ability to promote reform from within and to do so in a way that reinforces public trust in the police. Unfortunately, the recommendations in this report would undermine that goal. Instead of calling for federal monitors, special prosecutors, and more lawsuits, we should keep the emphasis on assisting police chiefs who move decisively to defuse tensions between the police and the people they serve *before* these conflicts result in costly and divisive investigations and court fights.

November 27, 2000

APPENDIX A

Commission publications concerning police practices and civil rights since *Who Is Guarding the Guardians?* (1981)

"Police-Community Relations in Washington, D.C.," District of Columbia Advisory Committee (June 1981)

"Police-Community Relations in Montgomery, Alabama," Alabama Advisory Committee (September 1986)

"Police-Community Relations in Miami," Florida Advisory Committee (November 1989)

"Police-Community Relations in Tampa—An Update," Florida Advisory Committee (September 1991)

"Police-Community Relations in Reno, Nevada," Nevada Advisory Committee (May 1992)

"Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report" (January 1993)

"Police Brutality: Law Enforcement Policies and Practices in New Jersey," New Jersey Advisory Committee (March 1993)

"Police-Community Relations in Southern West Virginia," West Virginia Advisory Committee (March 1993)

"Police Protection of the African American Community in Chicago" Illinois Advisory Committee (September 1993)

"Race Relations in Pemiscot County," Missouri Advisory Committee (October 1994)

"Police Protection of the African American Community in Milwaukee," Wisconsin Advisory Committee (November 1994)

"Rising Racial Tensions in Logan County, West Virginia," West Virginia Advisory Committee (August 1995)

"Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume III: The Chicago Report" (September 1995)

"Briefing on Racism and Sexism in Local and Law Enforcement Agencies" (October 1995)

"Race Relations in Rural Western Kansas Towns," Kansas Advisory Committee (June 1998)

"Follow-up to the Report: Police-Community Relations in Reno, Nevada," Nevada Advisory Committee (February 1999)

"Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume V: The Los Angeles Report" (May 1999)

"Police Protection of the African American Community in Chicago: An Update," Illinois Advisory Committee (June 1999)

"Race Relations in Springfield," Missouri Advisory Committee (August 1999)

"Native Americans in South Dakota: An Erosion of Confidence in the Justice System," South Dakota Advisory Committee (March 2000)

"Unequal Justice: African Americans in the Virginia Criminal Justice System," Virginia Advisory Committee (April 2000)

"Community Concerns About Law Enforcement in Sonoma County," California Advisory Committee (May 2000)

"Police Practices and Civil Rights in New York City" (August 2000)