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CRITICAL ISSUES IN POLICING SERIES

# Civil Rights Investigations of Local Police: Lessons Learned



POLICE EXECUTIVE  
RESEARCH FORUM

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# Civil Rights Investigations of Local Police: Lessons Learned

July 2013



POLICE EXECUTIVE  
RESEARCH FORUM

This publication was supported by the Motorola Solutions Foundation. The points of view expressed herein are the authors' and do not necessarily represent the opinions of the Motorola Solutions Foundation or individual Police Executive Research Forum members.

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# Acknowledgments

FOR NEARLY 20 YEARS, THE U.S. JUSTICE DEPARTMENT has had special authority to investigate local police agencies if there is reason to believe they have policies or practices that violate the Constitution. At various PERF meetings and conferences, we have heard police executives offer mixed views about these DOJ investigations. Some have said that DOJ investigations helped them to achieve reforms in their departments, because the existence of a federal investigation tends to focus the attention of local elected officials. Others have expressed negative views, saying the process is costly and can take too many years to reach a conclusion.

So PERF has been aware for some time that DOJ's role in monitoring local police is a complex, controversial issue. Last year, we decided to give this issue a comprehensive review, and the Motorola Solutions Foundation agreed to support this project as part of the Critical Issues in Policing series.

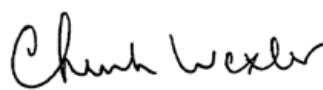
PERF is grateful to the Motorola Solutions team for their steadfast support on all of the Critical Issues projects we have undertaken. PERF's association with Motorola Solutions is one of the best partnerships we have ever had with any organization, and we are very grateful for it. Special thanks go to Greg Brown, Chairman and CEO of Motorola Solutions; Mark Moon, Executive Vice President and President, Sales and Product Operations; Karen Tandy, Senior Vice President, International Government Affairs; Jim Welch, Senior Vice President, Americas Region; and Matt Blakely, Director of the Motorola Solutions Foundation. I'd also like to thank recently retired Motorola Solutions Vice President Rick Neal for his close work with PERF and his good friendship for many years. Rick's inspiration resulted in the identification of some of the most cutting-edge issues in the Critical Issues in Policing series.

And I'd like to thank all of the PERF members and other leaders in policing who participated in our Summit at the Newseum in Washington, DC on October 25, 2012. (See the appendix to this report for a complete list of participants.) Most of what

you will read in this report consists of direct quotations from the experts who joined us to share their experiences regarding DOJ investigations and consent decrees. In particular, I'd like to acknowledge the important role of the team from the DOJ Civil Rights Division who provided us with information and participated in the Summit, especially Jonathan Smith, Chief of the Special Litigation Section (which is the DOJ unit in charge of police investigations), and Deputy Chief Christy Lopez. The Summit was far more informative and interesting because Jonathan and Christy provided us with their candid and well-informed views.

Finally, I'd like to acknowledge the PERF staff members who worked on this project. Our Director of Program Development, Sheryl Goldstein, did much of the groundwork to prepare for the Summit, gathering detailed information about the DOJ investigations of state and local police departments to date. Sheryl also performed a key analysis of the types of issues that most often crop up in these investigations. My Chief of Staff, Andrea Luna, and Deputy Chief of Staff Shannon Branly also were indispensable in getting this project off the ground and arranging one of the most interesting Summits we have had. Sunny Schnitzer, Rachel Freeland, James McGinty, Steve Yanda, and Jacob Berman provided additional support, and Communications Director Craig Fischer once again worked tirelessly to pull this report together and make sense of what is a complicated subject. Finally, our graphic designer, Dave Williams, produced another sharp-looking Critical Issues document.

I hope you will find this report provocative and informative.



Executive Director  
Police Executive Research Forum  
Washington, D.C.





LEFT: Motorola Solutions Vice President Rick Neal and Milwaukee Police Chief Ed Flynn



RIGHT: Prof. Samuel Walker and Commissioner Chuck Ramsey

# Summary

## U.S. Justice Department Oversight of Local Police

ON JULY 24, 2012, U.S. ATTORNEY GENERAL Eric Holder announced a plan to overhaul the New Orleans Police Department that was broader in scope and more detailed than any other consent decree the DOJ had issued since it was given the authority 18 years earlier to investigate local police departments.

The 2012 New Orleans consent decree is expected to last at least five years and cost more than \$11 million, though the agreement likely will take longer and cost more to carry out, if recent patterns of DOJ involvement with local law enforcement agencies are any indication.

The shape and substance of recently issued consent decrees, in Seattle as well as New Orleans, share little resemblance to the first one the DOJ obtained involving a major metropolitan police force.

These consent decrees were made possible by the 1994 Violent Crime Control and Law Enforcement Act, which gives DOJ's Civil Rights Division authority to investigate state and local law enforcement agencies that it believes have unconstitutional policies or engage in unconstitutional patterns or practices of conduct.

The law is intended to address systemic issues, rather than individual complaints. The alleged misconduct cannot be an isolated incident. And there is no private right of action under the 1994 law; only the Justice Department is given authority to launch investigations and litigation under this statute. The law arms DOJ with the authority to file civil lawsuits against local governments in order to force them to adopt reforms. However, cities typically settle these

cases before they go to trial or before a lawsuit is filed.

More than 25 police departments have experienced some form of DOJ involvement in the past two decades.

When Pittsburgh—the first major case—came under a consent decree in 1997, the mandate focused on two particular areas of policing, produced generalized requirements, and lasted a relatively tidy five years. Some later investigations and reform processes have taken 10 years or more.

But one constant in the DOJ's oversight of police departments accused of discriminatory and unconstitutional activity is the primary types of wrongdoing that have triggered federal involvement: improper use of force by police, unlawful stops and searches, and biased policing.

That's what recently brought DOJ attention to police departments in New Orleans and Seattle. That's what initiated DOJ involvement in Washington, D.C., Los Angeles, Detroit and Cincinnati in the early 2000s. And that's what brought Pittsburgh under DOJ's watch in 1997.

### **The Early Investigations**

Two years after the 1994 law was enacted giving DOJ authority to investigate local police departments, the Civil Rights Division was building its first major case, in Pittsburgh. The Pittsburgh chapters of the ACLU and the NAACP had invited the DOJ to examine the class-action lawsuit they had filed on behalf of 66 people who claimed that Pittsburgh police officers had violated their civil rights.

A year-long investigation by the DOJ Civil Rights Division's Special Litigation Section, which conducts the federal probes of law enforcement agencies, concluded with allegations that the Pittsburgh Bureau of Police was inundated with excessive uses of force, false arrests, improper searches and seizures, failures to discipline officers sufficiently, and failure to supervise officers. Then-Police Chief Bob McNeilly saw the DOJ investigation as a way of forcing reforms that he supported and that otherwise could be stymied by the police labor union. The city elected to settle the matter, entering into a consent decree in April 1997.

The first five consent decree objectives that Pittsburgh had to meet revolved around implementing a system that would identify officers with potentially problematic behavior, while creating a pathway for correction. The decree established 14 categories in which Pittsburgh's new system would be required to collect data on officers' behavior, although it did not specify what degree of unacceptable behavior would trigger supervisor involvement or what the department's response would be.

Pittsburgh created the Performance Assessment Review System (PARS), and it became known as a model early intervention system throughout the country. PARS compares officers' behavior to a peer group within their unit and shift, and it identifies positive behaviors as well as negative behaviors. The system became fully operational in 1999.

### **Los Angeles: A 12-Year Process**

That same year, the Los Angeles Police Department was in the midst of uncovering the depth of the Rampart scandal, which involved more than 70 officers associated with the department's anti-gang unit. Those officers were found guilty of an array of crimes that included unprovoked shootings and beatings, planting false evidence, framing suspects, stealing and dealing in narcotics, and bank robbery. It cost the city of Los Angeles roughly \$125 million to settle more than 140 civil lawsuits filed in light of the scandal.

The DOJ commenced its own investigation of the LAPD's procedures and practices soon thereafter

and entered into a consent decree with Los Angeles in 2001. This marked the beginning of a new era in consent decrees, in which the duration expanded far beyond what initially was planned. The Los Angeles consent decree originally was planned to last five years, but in 2006, displeased with the department's lack of efficient progress in making reforms, a federal judge extended the decree an additional five years.

It wasn't until May 2013 that the judge completely released the LAPD from federal oversight.

The police department in Washington, D.C. also had an extensive experience with the DOJ. Charles Ramsey, newly sworn in as chief in Washington's Metropolitan Police Department after a 30-year career in the Chicago Police Department, asked the Justice Department to intervene after a series of articles in the *Washington Post* alleged that MPD officers shot and killed more people per capita in the 1990s than any other large U.S. city police force. The resulting memorandum of agreement—a term used interchangeably with “consent decree”—took effect in 2001 and took seven years to reach a conclusion.

Detroit and Oakland entered into consent decrees in 2003, and both remain ongoing. (The Oakland case was not brought by the Justice Department, but rather by a group of more than 100 plaintiffs who said their rights had been violated by the police.)

### **The Key Role of the Monitor**

There are many reasons that a consent decree may linger—insufficient resources, unclear or unfocused mandates, or police resistance to federal oversight. Some even say there is an inherent conflict of interest on the part of the monitors who are designated in each case to oversee the reforms, because they believe the monitors have a financial interest in keeping the cases going. Others say that monitors are people of integrity who do not delay completion of consent decrees for personal gain.

But leaving aside the question of whether there is such a conflict of interest, a number of police chiefs, speaking at PERF's October 2012 Summit

on DOJ Investigations, said that a city's relationship with the monitor is a critical factor in how swiftly reforms can be made and a consent decree ended.

In Cincinnati, riots were sparked in 2001 by the police killing of Timothy Thomas, a 19-year-old African American with 14 open warrants for minor, mostly traffic-related violations. The shooting came on the heels of a lawsuit claiming decades of racial discrimination by the police. A memorandum of agreement with the DOJ was signed.

A federal judge appointed Saul Green, a Detroit lawyer and former U.S. Attorney in Michigan, to serve as Cincinnati's monitor, and the initial relationship between Green and the Police Department was rocky. Green complained that the police were often uncooperative; the police retorted that Green and his team were unrealistic and overly intrusive. At several points the judge had to intercede to try to keep the process moving forward. Serious delays in reforming the department ensued. The memorandum of agreement was signed in 2002 and lasted seven years, at the end of which Green hailed Cincinnati's makeover in his final report as "one of the most successful police reform efforts ever undertaken in this country."

In other cities, police chiefs have said that they had reasonable, productive relationships with monitors that led to a more efficient and timely process of implementing reforms.

### **Wider-Ranging Decrees, and More of Them**

The volume of DOJ involvement in local police departments appears to have increased in recent years. During the first decade in which the DOJ possessed legal authority to monitor local police departments, 15 city governments entered into consent decrees or memorandums of agreement to address systemic policing issues. Since 2010, the DOJ has opened investigations into more than 15 police departments.

Today's agreements also are more exhaustive in nature than earlier agreements. Cincinnati's agreement was one of the first to address a wider range of issues, including mandating training of officers

to recognize and interact properly with suspects with mental health issues. In recent years, the DOJ has further expanded the areas of biased policing governed by consent decrees to include gender bias as it pertains to the manner in which sexual assault complaints are handled.

New Orleans' new consent decree is a 122-page document that mandates hundreds of police department policy changes dealing with use of force, searches and seizures, arrests, interrogations, performance evaluations, misconduct complaints, off-duty work assignments, and more.

These issues are far more wide-ranging than the ones dealt with by the consent decrees in Pittsburgh and other early consent decree sites. The New Orleans agreement includes specific requirements no previous department under a consent decree had to apply, such as respecting that bystanders to public-police interaction have a Constitutional right to observe and record officer conduct, and creating a policy to guide officers' interactions with gay, lesbian, bisexual and transgender citizens.

Seattle, which entered into a consent decree in July 2012, is now under an agreement that also includes detailed requirements on use of force, crisis intervention, policies and training about stops and detentions, supervision of officers, and bias-free policing.

### **The COPS Office Offers An Alternative Approach**

In November 2012, a different branch of the DOJ, the Office of Community Oriented Policing Services (COPS Office), concluded an investigation into the Las Vegas Metropolitan Police Department with a collaborative agreement with the city to work toward systemic reform on the police use of deadly force and related issues. The investigative process took only 10 months, beginning with a January 2012 phone call from COPS Office Director Bernard Melekian to Las Vegas Sheriff Doug Gillespie, offering the assistance of his office.

Six months after the Las Vegas study was completed, in May 2013, Philadelphia Police

Commissioner Charles Ramsey asked the COPS Office to review and analyze his department’s use of force in light of a spike in police shootings. Newspaper articles noted that for Ramsey, “there was a bit of déjà vu in his request for help,” as the Philadelphia *Inquirer* put it, noting that in 1999 as Chief of Police in Washington, D.C. he had invited the Civil Rights Division to investigate police use of force in that city. However, in Philadelphia in 2013, Ramsey asked the COPS Office to take on that role, citing the successful investigation in Las Vegas.<sup>1</sup>

Because the COPS Office—unlike the DOJ’s Civil Rights Division—has no authority to file civil lawsuits if its recommendations are not implemented, its role depends more on a collaborative relationship between the DOJ and local police departments.

It should be noted that the relationship between the DOJ Civil Rights Division and local police

departments is not always antagonistic. Police agencies in Austin and Portland cooperated with DOJ investigations from the outset and immediately began instituting suggested departmental changes. Portland’s eventual settlement with the DOJ in October 2012 was extremely limited in reach. And no formal agreement was needed in Austin by the time DOJ investigators wrapped up their work there in May 2011.

### Lessons Learned from Civil Rights Division Investigations

At PERF’s Summit, DOJ Civil Rights Division Chief Jonathan Smith said that for local police chiefs, the appropriate question is *not* “How do you keep the Civil Rights Division from investigating my police department?” That question is inappropriate because local police chiefs are every bit as interested

### DOJ Consent Decree and MOA Start Dates

| 1994  | 1995 | 1996 | 1997  | 1998 | 1999                    | 2000   | 2001   | 2002   | 2003   |
|---|------|------|---|------|-------------------------|--|--|--|--|
| Violent Crime Control and Law Enforcement Act of 1994 |      |      | Pittsburgh Police Dept.<br>Steubenville OH Police Dept. |      | New Jersey State Police | Montgomery County MD Police Dept.<br>Highland Park IL Police Dept. | Los Angeles Police Dept.<br>Metropolitan Police Dept. (D.C.) | Detroit Police Dept.<br>Cincinnati Police Dept.<br>Buffalo NY Police Dept. | Mt. Prospect IL Police Dept.<br>Villa Rica GA Police Dept. |

| 2004                                   | 2005 | 2006 | 2007 | 2008 | 2009                             | 2010  | 2011 | 2012   | 2013   |
|--|------|------|------|------|----------------------------------|---|------|--|--|
| Prince George’s County MD Police Dept. |      |      |      |      | U.S. Virgin Islands Police Dept. | Beacon NY Police Dept.<br>Orange County FL Sheriff’s Office |      | New Orleans Police Dept.<br>Warren OH Police Dept.<br>Seattle Police Dept.<br>East Haven CT Police Dept.<br>Puerto Rico Police Dept. | Univ. Of Montana Office of Public Safety and Missoula Police Dept. |

1. “Added scrutiny as Philadelphia police shootings mount.” June 2, 2013. Philadelphia *Inquirer*. [http://www.philly.com/philly/news/20130602\\_Added\\_scrutiny\\_as\\_Philadelphia\\_police\\_shootings\\_mount.html](http://www.philly.com/philly/news/20130602_Added_scrutiny_as_Philadelphia_police_shootings_mount.html)

as DOJ officials in providing policing that meets the standards of the Constitution, Mr. Smith said.

“I think everyone in this room can agree that the proper question really is, ‘How do we deliver police services in an effective manner that complies with the Constitution and builds public confidence?’” Smith added.

Furthermore, Professor Sam Walker of the University of Nebraska noted that the DOJ has a nearly 20-year track record of investigating local police, and each case has produced publicly available information, in the form of consent decrees, investigative findings letters, and other documents that spell out the reforms that were undertaken.

Thus, “No police department should be in a position where it can be sued by the Justice Department, because the past cases make clear what is expected of them,” Professor Walker said.

*PERF’s goal in this project has been to document these lessons that can be learned from past DOJ investigations. Following are some of the key points about DOJ civil rights investigations and the types of reforms that have been mandated since the DOJ was given legal standing to investigate police agencies in 1994. These points summarize what the experts at PERF’s Summit said were the most important issues to keep in mind:*

- **DOJ’s role is limited:** The Special Litigation Section does not investigate individual incidents. Its mission is to investigate police agency policies that violate the Constitution, or multiple incidents that amount to a “pattern or practice” of conduct that deprives people of their Constitutional rights.

### Duration of the Process

| Agency with Consent Decree                | 1997                  | 1999            | 2000       | 2001                  | 2002      | 2004                          | 2005       | 2008                          | 2009                       | 2012      |
|---|-----------------------|-----------------|------------|-----------------------|-----------|-------------------------------|------------|-------------------------------|----------------------------|-----------|
| <b>Pittsburgh</b><br>5 years              | Consent Decree Opened |                 |            | Consent Decree Closed |           |                               |            |                               |                            |           |
| <b>Cincinnati</b><br>9 years              |                       | Complaint filed |            |                       | MOA       |                               |            | Final monitor report Dec '08  |                            |           |
| <b>Los Angeles</b><br>9 years             |                       |                 | TA letter  | Settlement            |           |                               |            |                               | Transition order agreement |           |
| <b>Metropolitan DC PD</b><br>7 years      |                       |                 |            | MOA Signed            |           |                               |            | MOA Closed                    |                            |           |
| <b>Montgomery County</b><br>5 years       |                       |                 | Signed MOA |                       |           |                               | MOA Closed |                               |                            |           |
| <b>Prince George’s County</b><br>10 years |                       | Investigation   |            |                       |           | Consent Decree and MOA opened |            | Consent Decree closed in 2007 | MOA closed                 |           |
| <b>Detroit</b><br>10+ years               |                       |                 |            |                       | TA Letter |                               |            |                               |                            | Ongoing → |
| <b>Oakland*</b><br>9+ years               |                       |                 |            |                       |           | Opened in 2003                |            |                               |                            | Ongoing → |

\*The Oakland litigation was not brought or handled by the Justice Department but rather by a group of plaintiffs.

- **Key Issues:** Many of the DOJ investigations to date have focused on certain key issues, including: police use of force; Early Intervention Systems; management and supervision of officers; unlawful stops and searches; and racial or ethnic bias in policing. In recent years, DOJ also has focused on gender bias in the investigation of sexual assaults, and on police interactions with persons with mental illness.
- **Use of force:** A review of consent decree documents shows that DOJ typically requires use-of-force policies to include certain elements, including the following:
  - Clearly identified types and levels of force;
  - Clearly described consequences for unreasonable uses of force;
  - Policies, procedures, and training specific to certain weapons or types of force, such as firearms, Electronic Control Weapons, and vehicle pursuits;
  - Requirements for certification of officers in use of certain types of force; de-escalation techniques; reporting, documentation, and investigation of force incidents; supervisor response; and auditing and review of incidents.
- **Early Intervention Systems (EIS):** Consent decrees in Los Angeles, Cincinnati, Pittsburgh, Washington, D.C. and other cities have required police to implement Early Intervention Systems, which automatically flag officers who may be engaging in inappropriate behavior, or may be at risk of engaging in such behavior. An EIS can be expensive to implement, especially if a department does not have computerized record-keeping systems for the data points that go into the EIS.
- **Management and supervision of officers:** Consent decrees typically include requirements designed to ensure that officers receive adequate supervision by their superior officers. Often the ratio of the number of officers per supervisor is an issue, but there is no simple formula for setting that ratio. In a number of cities, consent decrees have specified certain conditions in which supervisors should take actions, such as responding to and investigating use-of-force incidents, and reviewing arrest reports and misconduct complaints.
- **Preventing biased policing:** Racial or ethnic bias has long been a focus of the Civil Rights Division. Recent consent decrees require departments to have policies and training to prevent biased policing. For example, the Seattle decree calls for policies stating that officers may not use race, ethnicity, or national origin in determining reasonable suspicion or probable cause, unless race, ethnicity, or national origin is used as part of a suspect's description. In addition, these policies must require officers to report incidents in which they observe other officers who have engaged in biased policing.
 

In recent years, DOJ has expanded this focus area to include discussion of “implicit” or “unconscious” bias, by officers who are not aware of biases in their actions. For example, the Seattle findings letter states that “biased policing is not primarily about the ill-intentioned officer, but rather the officer who engages in discriminatory practices subconsciously.”<sup>2</sup>
- **Gender bias in the handling of sexual assaults:** In recent years there has been increasing attention to complaints of sexual bias in the police response to sexual assault victims and the handling of sex crime investigations—for example, high rates at which cases are “unfounded” (an indication that the police do not believe that a crime occurred). The recent consent decree in New Orleans requires clear and detailed policies for each stage in the response to a sex offense call; protocols for forensic examinations of victims

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2. “Investigation of the Seattle Police Department,” December 16, 2011, (Findings Letter), page 34. [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf)

and suspects; specialized training for detectives; and development of a system for external review of cases.

- **Police interactions with persons with mental illness:** Consent decrees in Seattle, New Orleans, Cincinnati, Los Angeles, and, most recently, Portland, OR include provisions on the police response to persons with mental illness. These provisions are designed to prevent unnecessary use of force against these persons.
- **Accepting the DOJ role may speed the process:** When DOJ completes an investigation and finds Constitutional violations, it typically enters into negotiations with the jurisdiction to discuss strategies for achieving reforms. Agencies that have been through this process say that embracing the need for reforms from the start can help speed the process.
- **Be careful to define the terms clearly:** Police chiefs also emphasize that defining the terms of any agreement with DOJ is extremely important, because a lack of specificity, or agreeing to an impractical reform plan, may result in years of delay in achieving compliance.
- **Hire someone with experience in such investigations:** A city entering into negotiations with DOJ may wish to bring in an official who has been through the entire process of writing and implementing a consent decree in another city.
- **The choice of a monitor is extremely important:** The choice of a court-appointed monitor is very important. Some departments have had good experiences with monitors, and others have not. A good monitor has the substantive knowledge of these issues and is also an effective mediator and problem-solver. These officials do more than simply “monitor” the progress being made; they work to achieve practical and effective outcomes expeditiously.
- **Choose experts carefully:** DOJ subject matter experts have sometimes been criticized for lacking experience in running police agencies of the

type or size that they are advising, or for not keeping up with current police policies and research.

- **Defining “compliance” is difficult:** DOJ consent decrees are not terminated until the agency achieves compliance with the terms of the agreement. Defining “compliance” has proved difficult, in part because certain issues, such as investigations of police use of force, do not lend themselves to evaluation on a numerical scale. However, a number of consent decrees have defined substantial compliance as showing that a given requirement is met 95 percent of the time over a period of two years.  
Definitions of compliance in DOJ consent decrees are evolving, according to DOJ officials.
- **The costs of a consent decree are often high—but failing to implement reforms can also be expensive:** The costs of achieving compliance, and the legal costs paid to monitors, are sometimes contentious. Some police chiefs believe that consent decrees that continue for many years have been too costly, and that rules about achieving 95-percent compliance for a two-year period are overly strict. On the other hand, several chiefs said that the costs, while high, are worth it, in terms of improving police departments as well as reducing lawsuits that can also be costly.
- **Some chiefs say that a DOJ investigation can help to overcome political opposition to reforms:** Some police chiefs have welcomed or requested DOJ investigations, because a federal investigation can force otherwise-reluctant local elected officials to provide funding that is needed to implement reforms. In addition, requirements of a court-approved consent decree can overrule labor union opposition to certain changes in policies or practices.
- **The 3 Key Reforms: Policies, Training, and a System for Detecting Problems:** DOJ officials say that the keys to avoiding a federal investigation and consent decree include the following: (1) Adopting strong policies on key issues such as use of force; (2) Ensuring that officers are trained



and managed so the policies will be followed; and (3) Developing strong management and supervision measures, such as an Early Intervention System, to help ensure that police managers are aware of and can quickly respond to problems as they develop.

*The following sections of this report provide more detailed discussion of these issues, in the words of the police chiefs, Justice Department officials, and other leaders who participated in PERF's Summit on Civil Rights Investigations of Local Police.*

# DOJ's Role in Ensuring Constitutional Policing

**Sam Walker, Professor Emeritus of  
Criminal Justice, University of Nebraska:**

## *Police Chiefs and Communities Want the Same Things*

Law enforcement and community expectations should be the exactly the same. Communities want effective, professional, respectful, accountable, bias-free policing. Law enforcement executives want the same things.

Law enforcement agencies can achieve these goals without a consent decree, because the Justice Department has conducted enough of these investigations to demonstrate what they are about. By now, every police chief should know what these DOJ goals are and how to achieve them. **No police department should be in a position where it can be sued by the Justice Department, because the past cases make clear what is expected of them to**

**achieve professional, bias-free and accountable policing.**

For example, every department should have state of the art use-of-force policies, an early intervention system, and an open and accessible citizen complaint process.

**Elizabeth Township Police Chief Bob McNeilly:**

## *We Have to Fix Things Ourselves, Or Someone Will Come Fix Them for Us*

I have been a police supervisor since 1984. Once I became a supervisor, a lot of officers came to me to tell me things that other officers were doing that were not right. They came to me because they had faith that I would do something about it.

I tell officers that we have to fix things ourselves, and if we don't, somebody else like the Justice Department is going to come along and fix them for

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RIGHT:  
Prof. Samuel Walker

FAR RIGHT: Elizabeth  
Township, PA Chief  
Robert McNeilly



DOJ Special Litigation Section Chief  
Jonathan Smith

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us. I had just been named as the chief in Pittsburgh in 1996 when a DOJ investigation began. The DOJ consent decree was filed in 1997 and it set a pattern for future cases.

**Jonathan Smith, Chief, DOJ Civil Rights Division, Special Litigation Section:**

*This Is the Process DOJ Uses To Investigate Complaints*

As Professor Walker said, our goals are the same as those of police chiefs across the country: to protect the civil rights of all people, while ensuring that communities have confidence in their police departments.

In other words, the question is not, “How do you keep the Civil Rights Division from investigating my police department?” I think everyone in this room can agree that the proper question really is, “How do we deliver police services in an effective manner that complies with the Constitution and builds public confidence?”

There is no matrix that will tell you whether or not the Department of Justice is going to investigate a particular jurisdiction. There is no checklist that says, “If I do these things, I am going to fall into the investigation bucket, and if I do these other things, I am going to fall outside the investigation bucket.”

We receive hundreds of complaints every year from people across the nation. They come from advocacy groups, community members, and city councils. Sometimes mayors and police chiefs ask us to conduct investigations. We have limited resources, and so we engage in an assessment to determine where we can make the most impact.

The work that we do falls into three categories. First, there are departments where there are significant, widespread problems that reach deep into every corner of the department. Second, there are departments that have a solid structure in place, but have a particular area of concern that has a

Constitutional dimension, like use-of-force cases. The third area is a set of emerging issues, including gender discrimination, the failure to investigate sex crimes, and the interaction between police officers and persons in mental health crisis.

The first step in the process is to open a preliminary investigation, which means nothing more than an entry in a computer. This is how we keep track of the various jurisdictions that come to our attention. This information is not made public. When we open a preliminary investigation, we assign an attorney or an investigator to collect information. In a small subset of these cases, there will be indicators that there is something very serious going on, and we may engage the local U.S. Attorney’s Office to obtain input. Federal prosecutors are a very important resource for us.

If we believe that a formal investigation is warranted based on the preliminary investigation, we request approval from the Assistant Attorney General for Civil Rights to move forward. He signs off on all decisions to open formal investigations.

Once we open a formal investigation, we provide a small amount of advance notice to the jurisdiction and then make a public announcement of the investigation. We then conduct a thorough investigation that is based both on document review and on information gained through interviews. We may interview people throughout the police chain of command, community members, people who assert that their rights have been violated, political leaders, and others.



Prince George's County, MD Deputy Chief  
Hank Stawinski

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**Prince George's County, MD  
Deputy Chief Hank Stawinski:**

*The Key Is to Negotiate an Outcome  
That Will Work in Your Department*

Our Department was placed under a memorandum of understanding and consent decree in 2004, and after coming out on the other end, it was a very positive experience for us. I think the key is understanding, going into the process, that there are no cut-and-dried answers. As we negotiated with the Justice Department, DOJ didn't say, "You have to do A, B, and C." Rather, they said, "You have to live up to certain Constitutional standards," and we had to find a way to tailor those standards to policing in Prince George's County while remaining effective.

So that's how we approached it. Every policy was custom-made and then approved by the independent monitors. The outcome was a greater degree of policy and practice clarity for our personnel, which we think is contributing to crime reduction. We fundamentally explain to our officers where the boundaries are on a variety of issues so they are able to aggressively fight crime while policing Constitutionally.

We encourage departments to work with us during the investigative process. In Austin and Portland, OR, the departments immediately began taking steps during the investigation to address issues that we raised. This resulted in a dramatically different result than waiting for the investigation to conclude.

We have also been working very hard to shorten the duration from the announcement of an investigation to reaching a conclusion. In Seattle, we were able to complete the process in less than a year. In New Orleans we were able to complete the process in about fourteen months.

At the conclusion of our investigations, we make a public announcement of our findings. If we conclude that there is a pattern or practice of violating the Constitution, we attempt to negotiate a resolution, such as an injunction or a consent decree.

**Our memorandums of understanding and settlement agreements are very useful tools for people in other jurisdictions to review, because everyone can see the kinds of practices and mechanisms for good police services that have been agreed to between a jurisdiction and the Department of Justice.** They are a helpful guide, but not a cookbook for what every department needs to do. There are unique circumstances facing each jurisdiction, and the delivery of police services is not the same everywhere.

# The Issues that Most Often Result in Justice Department Investigations

MANY DOJ CIVIL RIGHTS DIVISION INVESTIGATIONS have focused on certain key issues, including the following:

- Police use of force,
- Early Intervention Systems (EIS) that are designed to automatically detect potential problems or issues involving certain police employees or units,
- Management and supervision of officers, and
- Bias in policing, including “implicit” bias, and unlawful stops, searches, and arrests.

In recent years, DOJ also has been investigating two other issues in a number of cases:

- Gender bias, especially in connection with the investigation of sexual assaults, and
- Police interactions with persons with mental illness.

Each of these issues is discussed below:

## POLICE USE OF FORCE

Police use of force is one of the primary issues that the Civil Rights Division investigates. Use of force has been a component in almost all of DOJ’s civil rights investigations to date, including consent decrees/settlement agreements in Los Angeles;

Washington, DC; Pittsburgh; New Orleans; Seattle; and East Haven, CT.

There are three main areas of DOJ review:

- Substantive policy on when officers may or may not use force;
- Requirements detailing when and how officers must report use-of-force incidents to their superiors; and
- Procedures for police departments’ investigations of use-of-force incidents.

### Philadelphia Commissioner Charles Ramsey:

#### *When I Was Chief in Washington, I Realized the Department Needed Outside Help*

In 1998, the *Washington Post* ran a weeklong series of articles about use of force by the Metropolitan Police Department in D.C. The department was labeled the deadliest police force in the nation. We started to implement reforms, and during the process had a police-involved shooting that, while justified, generated a tremendous amount of outrage in the community. That told me that the department lacked credibility in the community. So it didn’t matter what we might do on our own to implement reforms; the community did not have confidence that we could fix the problems on our own.

My thinking was that the Justice Department had an obligation not just to come and tell us what was wrong, but also to help fix it. So I requested a

review of the Metropolitan Police Department, and they agreed to come take a look. Ultimately we entered into a Memorandum of Agreement.

One of the things we did, and [then-MPD Captain] Josh Ederheimer had a big part in this, was create a Force Investigation Team, comprised of people who were specially trained to investigate uses of force. It takes a certain level of expertise in this area to make a good judgment regarding whether a use of force was appropriate and in compliance with policy. You cannot rely on just any investigator or detective, or even on Internal Affairs, and expect to get consistent, high-quality reports.

In addition to rendering a decision on the case at hand, the team also has to identify training issues and look for trends.

One important element of training is to teach



Philadelphia Police Commissioner and PERF President Charles Ramsey

## What Consent Decrees Typically Require In Police Use-of-Force Policies

*A review of consent decree documents in several large cases shows that the Justice Department typically requires the following elements to be included in local police agencies' use-of-force policies:*

- Clearly identified categorical types and levels of force.
- Clearly described consequences for unreasonable use of force.
- Policies, procedures, and training that are specific to certain weapons or types of force (such as firearms, Electronic Control Weapons, OC spray, canine use, and vehicle pursuits).
- Requirements for:
  - **Certification:** Officers should be certified before they are allowed to use each type of weapon or force.
  - **De-Escalation:** Officers should use de-escalation techniques when feasible and should de-escalate their use of force as resistance decreases.
  - **Reporting, documentation and investigation:** The types of incidents that must be reported, and how these incidents should be documented and investigated, should be specified.
- **Supervisor response:** Investigation and reporting on the use of force incident.
- **Auditing and review** of use of force incidents.
- Force generally should not be used against restrained persons or individuals who are using only verbal resistance against an officer.
- Officers must immediately report force incidents to direct supervisors.
- Supervisors must respond to the scene when serious force is used.
- Departments must have a uniform reporting system for use-of-force incidents.
- Use-of-force data must be analyzed and audited regularly.
- Departments must have some type of force review board.
- Annual training on use of force should be required.



TOP: COPS Office Principal Deputy Director  
Joshua Ederheimer

BOTTOM: Chief Terry Gainer, U.S. Senate Sergeant  
at Arms

your officers that just because you can legally use deadly force in a certain situation, that doesn't necessarily mean you should use it.

Another idea you need to get across is that incidents take place over a span of time, and the conditions often change in that time. There may be a two-second window when use of deadly force might be the appropriate reaction, but that does not mean that deadly force remains appropriate throughout the entire encounter. The whole situation can change, and we have to train and help officers better understand when deadly force is appropriate and when it is not.

**Principal Deputy Director  
Joshua Ederheimer, COPS Office:**

*Use-of-Force Policy Is Key,  
And It Must Fit the Particular Agency*

I would emphasize that the written policies are central to everything; they're the seminal point of reform. I'll never forget the day when Chief Ramsey designated me to implement the reforms in Washington. He called me into his office, and he had all of the general orders on use of force in front of him. He literally pushed them aside, and said, "Everything is off the table. Start fresh." And so we built the main use-of-force policy from scratch. And everything else came out of that policy. Firearms, less-lethal weapons, canine deployment, and so on—they all were built from the main policy.

Another thing that Chief Ramsey told me was, "Don't pick what seems like a good policy from somewhere else, and just cookie-cutter it and put it in MPD." He wanted something that would actually work within the culture of the agency. So we did a lot of research and looked at everything that DOJ had done, and all of that influenced what we built, which was unique to our agency.

**Chief Terrance Gainer, Senate Sergeant at Arms:**

*De-Escalation Is a Central Issue  
In Use of Force*

De-escalation needs to be a central issue. In my 44 years of service in four different departments, I have seen that there are still a lot of people who think there must be an arrest at any cost and that it is cowardly to retreat and to de-escalate.

Sometimes the bad guys get away, and under some circumstances retreating is the right thing to do. That is part of de-escalation.

**Houston Chief Charles McClelland:**

*A Chief's Response to an Incident  
Can Send a Message  
To Officers and the Public*

About nine days after I was sworn in as chief, we had an egregious use-of-force incident that was

captured on video. I viewed this as an opportunity to send a message to the entire organization that this type of conduct will not be tolerated. I was proactive and took immediate action. I relieved the officers of duty, advocated for criminal charges to be filed against them, and was open in discussing the incident publicly.

We also held a series of community meetings to listen and learn about community expectations and concerns regarding the police department. The community wanted a transparent complaint process, one in which they did not have to confront police personnel. And they wanted more accountability.

**Prof. Geoff Alpert, University of South Carolina:**

***Use of Force Reports  
Should Not Consist of Boilerplate Language***

One issue I want to raise has to do with the forms that officers must complete following a use of force incident. Often we find that the officer's statement uses boilerplate language that just reiterates the department's policy or training. And this language in the reports, which sheds little light on the reality of the particular incident, gets rubber-stamped all the way up to the chiefs. So when researchers or DOJ investigators come in and analyze the reports and try to figure out what's going on in a department, it doesn't help to see the same language over and over again. I think this is a function of making sure that the supervisors do their job and require the reports to provide accurate information about what happened and the justification for the level of force based on what the suspect did—not the policy.

**Los Angeles Police Commander Scott Kroeber:**

***A Viable Complaint Process Is Imperative***

It's impossible to overstate the importance of a viable complaint process and interactive participation with the community. There are nine general areas of emphasis in Los Angeles' civil rights consent decrees, but two of the most important are use of force and the complaint process.



TOP: Houston Chief Charles McClelland

MIDDLE: University of South Carolina Prof. Geoff Alpert

BOTTOM: Los Angeles Police Commander Scott Kroeber



## EARLY INTERVENTION SYSTEMS

Research has long suggested that a small percent of police officers account for a high percentage of use-of-force incidents.<sup>3</sup> There are a number of possible explanations for this, some of them benign. For example, officers in high-activity assignments may be exposed to considerably more high-risk encounters. However, frequent uses of force may also be an indication that an officer needs additional monitoring, supervision, training, or discipline.

Many police departments have developed Early Intervention Systems (EIS) to flag officers for closer review.<sup>4</sup> These systems collect a variety of data and analyze patterns of activity to identify at-risk officers or groups of officers. The goal is to identify opportunities to reduce risky behaviors, department liability, and citizen complaints.

An EIS can serve one or more functions, including reducing inappropriate conduct by officers; improving officers' performance levels; and flagging possible personal or professional problems that may impede an officer from performing well. Some departments have limited systems that focus on certain performance problems. Other departments have broader systems designed to improve officers' performance overall, not merely to flag officers who may be causing significant problems. Some systems gather positive information, such as commendations, as well as negative information.

Thus, depending on the purposes of an EIS, the system may gather information on as few as a half-dozen indicators, or on more than 20 data points. The data elements may include: the number and type of uses of force by the officer; the number and types of complaints against an officer from the community; any lawsuits in which the officer is named; the number and nature of arrests and citations made by an officer; the officer's performance evaluations; management and supervisory actions

involving the officer; the officer's use of sick leave; and other factors.

Early Intervention Systems have been required by consent decrees in the following departments: Los Angeles Police Department (where the system was named Training, Evaluation and Management System II); Cincinnati Police Department (Records Management System); Pittsburgh Police Department (Performance Assessment and Review System); Washington, D.C. Metropolitan Police Department (Police Performance Management System); the New Jersey State Police (Management Awareness Program); and the New Orleans Police Department.<sup>5</sup>

PERF's analysis of settlement agreements in a number of cities indicates that the following components of Early Intervention Systems are becoming standard features:

- *The system must be maintained and used by supervisors and managers.*
- An EIS should have *policies and protocols* for data collection, inputting of historical and current data, maintenance, retrieval, analysis, data security, and access.
- Personnel establishing or using the system must receive *proper training*.
- *Threshold criteria* for flagging risk patterns must be developed.
- *Follow-up actions for supervisors* using EIS data analysis must be specified.
- *Interventions* by supervisors must be *implemented in a timely manner*.
- *Implementation* of interventions must be *tracked*.
- *Intervention progress* must be reviewed by a supervisor.

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3. See, for example, *Use of Force by Police: Overview of National and Local Data*, NIJ and BJS, 1999, p. 8. <http://www.nij.gov/pubs-sum/176330.htm>

4. For additional information, see PERF's 70-page report, *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. <http://www.policeforum.org/library/early-intervention-systems/Chief%27s%20Guide%20EIS.pdf>

5. The New Orleans consent decree is a recent agreement with provisions on an Early Intervention System. It is available at [http://www.justice.gov/crt/about/spl/documents/nopd\\_agreement\\_1-11-13.pdf](http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf), pp. 80–83.



DOJ Special Litigation Section Deputy Chief  
Christy Lopez

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**Deputy Chief Christy Lopez,  
DOJ Special Litigation Section:**

*Some Departments Collect EIS Data  
But Never Look at It*

There are many different types of warning signs in EIS systems. Some departments collect EIS data but never look at it. If an officer repeatedly gets transferred from one sergeant to another and no one looks at the EIS data, the supervisors may be unaware of the warning signs or performance issues.

Some departments look at the data but provide a one-size-fits-all response to officers displaying warning signs. Interventions should be tailored to the specific issues. There should be a team that assesses these officers, identifies particular issues, and develops a supervision plan for each officer. The supervisor should be a part of the feedback loop and should participate in deciding how the department is going to help the officer to succeed.

**Elizabeth Township, PA Chief Bob McNeilly:**

*Pittsburgh's EIS Actually Identified  
Our Star Performers*

When I was chief in Pittsburgh, it took two and half years to develop a computer system that was able to track all of the information required for our EIS. We

went through several different companies and spent a half-million dollars.

I learned early on that it is a mistake to call the system an “early warning system,” because police officers think they are being accused of wrongdoing, and newspapers think they have a right to know the names of the “troubled” officers in the department. The system was designed to identify officers who had high *activity* levels, which does not necessarily mean they are wrongdoers. In fact, most of the time, it identified our star performers. So we decided to call it the Performance Assessment and Review System, because that is what it did. It helped us assess the performance of our officers.

**John Farmer, Executive VP and General Counsel,  
Rutgers University:**

*EIS Was Expensive to Develop, But Worth It*

When I was Attorney General in New Jersey and the State Police were under a consent decree, the EIS was the most difficult part of the reform to accomplish. The consent decree required us to develop an EIS that provided real-time auditing of trooper performance by supervisors. Due to the complexity of developing the EIS, which we called the Management Awareness Program, it took almost 10 years



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Rutgers Law School Dean  
John Farmer



Los Angeles County Sheriff's Cmdr.  
Todd Rogers

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before the consent decree was resolved.

The Management Awareness Program has really increased accountability within the organization. It was very expensive and difficult to develop, but it was the critical component.

**Los Angeles Police Commander Scott Kroeber:**

*EIS Development  
Must Be Carefully Managed*

It was very expensive and time-consuming for the Los Angeles Police Department to build an Early Intervention System. And just because you go through an RFP process and build an EIS, don't assume that it will meet the quality standards of the monitor, the court, or DOJ. Someone within the agency really has to closely manage these projects.

**Los Angeles County Sheriff's Commander  
Todd Rogers:**

*Automatic Triggers Alert Supervisors  
To Performance Issues*

Our EIS is called the Personnel Performance Index. We have operated it since 1997 and are hoping to upgrade it once funding becomes available. We use automatic triggers that prompt us to conduct an administrative review of personnel who have high levels of activity that may qualify them for what is called a Performance Mentoring program.

**MANAGEMENT AND SUPERVISION  
OF OFFICERS**

Inadequate management and supervision of officers have been issues in a number of consent decrees. Some consent decrees have included language requiring police departments to bolster the level of front-line supervision of officers and to investigate uses of force promptly. The ratio of the number of officers to the number of supervisors is often an issue.

For example, the Seattle and New Orleans consent decrees state that there must be an adequate number of first line supervisors deployed to provide close and effective supervision.<sup>6</sup> A DOJ "technical assistance letter" in the Austin, TX case states that "sergeants need to go to the field to: (1) supervise first hand; and (2) investigate uses of force on their own... [F]ront-line supervisors must take ownership of their supervisory role, and this ownership should likewise flow up the chain of command."

Following is a summary of recommendations based on DOJ investigations and agreements in East Haven, New Orleans, Seattle, Cincinnati, and Los Angeles:

Supervisors should:

- Respond to the scene of use-of-force incidents when directed by policy,
- Investigate and document use-of-force incidents,

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6. New Orleans Consent Decree, p. 77: [http://www.justice.gov/crt/about/spl/documents/nopd\\_agreement\\_1-11-13.pdf](http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf).  
Seattle Settlement Agreement, p. 44: [http://www.justice.gov/crt/about/spl/documents/spd\\_consentdecree\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf)

- Provide direction as needed to officers,
- Review arrest reports and officer activity reports,
- Respond to misconduct complaints,
- Provide counseling and support to officers,
- Help to increase public trust/safety,
- Be assigned the same shifts as the officers they are supervising,
- Be provided with specialized supervisory training prior to taking the position, and
- Participate in ongoing annual supervisor training.

**Jonathan Smith, Chief,  
Special Litigation Section:**

*There Is No Simple Formula to Determine  
A Proper Number of Officers per Supervisor*

There is no magic formula for span of control and number of supervisors to officers. It will depend quite a bit on what you are trying to address. We try to calibrate when we look at the question of supervision. We look at the needs related to the specific function that is being performed. Some departments may need a greater span of control for a period of time in order to change the culture and to implement new policies, practices and procedures.

One interesting challenge that Seattle presented was that the supervisors' shifts did not align with

the officers they were supervising, so some officers might not see their supervisors on a regular basis.

**Carl Marquardt, City Attorney,  
Seattle Mayor's Office:**

*Setting the Number of Officers  
Per Supervisor Can Be a Difficult Issue*

Frontline supervision was certainly an issue we recognized and accepted. Our current ratio is about eight officers to one supervisor, and it varies across different functions. The Department of Justice wanted a six-to-one ratio within one year, but that was simply not achievable under our existing service rules. It's also not desirable, because in order to increase our number of supervisors that much and so quickly, we would have to lower our promotional standards.

**Atlanta Chief George Turner:**

*We Shifted Supervisors to Officers  
Who Were Out Working the Streets*

Over the last 18 months, we adjusted our staffing and supervisors. We need to have an appropriate number of supervisors engaged and on the streets. We added 12 additional beats to the City of Atlanta and needed additional supervisors.

Fortunately, we were able to move some supervisors from investigative units to perform this function, so we did not need to promote additional



FAR LEFT: Carl Marquardt, Counsel to Seattle Mayor  
LEFT: Atlanta Chief George Turner

sergeants. By increasing the ratio of officers to supervisors in some units that were not on the street, we were able to decrease the ratio of officers to supervisors who were on the street.

**Philadelphia Commissioner Charles Ramsey:**

*Don't Burden Sergeants with Excess Paperwork if You Want Them To Supervise Officers on the Streets*

If you want sergeants to spend time out on the street supervising officers, you cannot overly burden them with a lot of other tasks. As a police executive, you have to constantly assess how much paperwork and other responsibilities you are assigning these supervisors, because you may find that they need to spend half a tour trying to keep pace with some of these responsibilities that we are giving them.

We have to constantly prioritize and re-prioritize. The discussion should not be focused on whether 8:1 or 6:1 is the “right” ratio. Chiefs have to look carefully at workloads, and it can vary district by district, and unit by unit.

**Detroit Commander James White:**

*Detroit Has Ten Officers to One Supervisor*

Our consent judgment requires that we have an adequate number of supervisors for officers deployed to the field, and what works for us is a 10-to-1 ratio. We have a primary and secondary span of control supervisor, so every day an officer has a supervisor



Detroit Commander  
James White

to report to, even if his primary supervisor is not on duty that day.

**Christy Lopez, Deputy Chief,  
Special Litigation Section:**

*New Orleans Agreement Requires Supervisors to Respond to Certain Arrest Scenes*

The New Orleans agreement requires supervisors to respond to certain types of arrests and to approve the arrest, particularly the ones where de-escalation is so important. The agreement also requires supervisors to respond to the scene when consent searches are being performed, in order to prevent misuse.

**Houston Chief Charles McClelland:**

*Supervisors Must Go to the Scene For a Charge of “Interfering with an Officer”*

In Texas there is a criminal code section for the offense of “interfering with a police officer.” The community was concerned that an officer could file charges against a person under this law without some higher level of scrutiny. In response, I mandated that a supervisor come to the scene and approve that type of arrest prior to the officer seeking charges from the District Attorney.

**BIASED POLICING AND UNLAWFUL STOPS, SEARCHES AND ARRESTS**

Racial or ethnic bias in state and local police departments has long been an important focus of the Justice Department’s Civil Rights Division. “Communities across the country are concerned about bias in policing with respect to race, gender, sexual orientation and other issues,” Special Litigation Section Chief Jonathan Smith said at PERF’s Executive

Session. “Certain communities feel that police services are not delivered in a fair and equitable fashion, and there is a lot of evidence that suggests that this may well be true in many communities.”

As a result, many DOJ consent decrees include language requiring police agencies to develop policies to prevent biased policing. The Seattle and New Orleans consent decrees state that police services should be delivered in ways that are “equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence.” The Seattle decree adds that “officers should treat all members of the ... community with courtesy, professionalism, and respect, and should not use harassing, intimidating, or derogatory language.”

More specifically, the Seattle decree calls for *policies* with the following elements:

- Officers may not use race, ethnicity, or national origin in determining reasonable suspicion or probable cause, unless race, ethnicity, or national origin is used as part of a suspect’s description.
- Officers will not engage in, ignore, or condone biased policing; officers are responsible for knowing and complying with the policy; and officers shall report incidents where they observe or are aware of other officers who have engaged in biased policing.
- The policy against biased policing in making law enforcement decisions should extend to all protected classes under state, federal, and local laws, including race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability.<sup>7</sup>

And the Seattle and New Orleans decrees call for *training* on bias-free policing that includes the following topics:

- Constitutional and other legal requirements related to equal protection and unlawful discrimination;

- The protection of civil rights as a central part of the police mission and as essential to effective policing;
- Cultural competency training regarding the histories and cultures of local immigrant and ethnic communities;
- What constitutes discriminatory policing under state, federal, and constitutional law;
- How to identify discriminatory practices when reviewing investigatory stop data, arrest data, and use of force data;
- How to evaluate complaints of improper pedestrian stops for potential discriminatory police practices; and
- Engaging the community and developing positive relationships with diverse community groups.<sup>8</sup>

Recently, the Department of Justice has added a new focus on “implicit” or “unconscious” bias. The New Orleans Consent Decree, Seattle Consent Decree, and East Haven Agreement indicate that training for bias-free policing will include coverage of implicit bias. The Seattle findings letter states the issue as follows:

*“[The Seattle Police Department’s] current training fails to adequately address some of the underlying causes of racially biased policing, namely, that biased policing is not primarily about the ill-intentioned officer, but rather the officer who engages in discriminatory practices subconsciously.*

*“A well-meaning officer can violate the Equal Protection Clause of the United States Constitution by engaging in racially biased policing based on implicit biases that impact that officer’s behavior or perceptions. Gonzalez-Rivera, 22 F.3d at 1450. Understanding this phenomenon is the first step toward safe and effective policing.”<sup>9</sup>*

7. See Seattle Settlement Agreement: [http://www.justice.gov/crt/about/spl/documents/spd\\_consentdecreed\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_consentdecreed_7-27-12.pdf)

8. New Orleans Consent Decree: [http://www.justice.gov/crt/about/spl/documents/nopd\\_agreement\\_1-11-13.pdf](http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf) and Seattle Settlement Agreement: [http://www.justice.gov/crt/about/spl/documents/spd\\_consentdecreed\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_consentdecreed_7-27-12.pdf)

9. See p. 34 of Findings Letter, available at [http://www.justice.gov/crt/about/spl/documents/spd\\_findletter\\_12-16-11.pdf](http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf).



**Special Litigation Section Chief Jonathan Smith:**

*Implicit Bias Can Be  
A Violation of the Constitution*

We all have biases. There are a lot of people who have done very good work to train people to behave fairly and equitably *despite* their biases. This is critical for everyone, but especially for the delivery of police services. If a department fails to recognize implicit bias as an issue, and yet it manifests itself in disparate treatment of different communities, it may rise to the level of a Constitutional violation.

**Fayetteville Police Attorney Patricia Bradley:**

*We Had an Unfortunate Experience  
Despite Our Efforts  
To Ensure Constitutional Policing*

In October of 2010, there were allegations made that the Fayetteville Police Department had engaged in biased policing with regards to consent searches. I advised the department and the city manager to contact the Civil Rights Division and seek a review of policies and practices to ensure that we were engaging in Constitutional policing. While we waited for Civil Rights to respond, we changed our policies and implemented training. About a year later, we received a response letter from the Civil Rights Division that confirmed that our department was performing in line with the Constitution.

However, the last paragraph of the letter articulated concerns that some actions of the department might be perceived as unconstitutional. Despite all of our efforts to improve our department and obtain assistance from the Department of Justice, the community interpreted this letter to mean that the department was engaging in unconstitutional policing. Almost three years later, the controversy continues.

**Jonathan Smith, Chief,  
Special Litigation Section:**

*We Can't Give a Seal of Approval*

We cannot provide a “Good Housekeeping Seal of Approval” to a police department. We can conclude whether to investigate or not to investigate. But even if we choose not to investigate, we need to be clear that that decision does not mean that we determined that there is no problem. It may simply be a resource allocation issue.

**GENDER BIAS IN THE HANDLING OF  
SEXUAL ASSAULTS**

The Civil Rights Division has investigated the manner in which sexual assault complaints are handled in New Orleans, Puerto Rico, and Missoula, Montana.

The New Orleans consent decree provides an indication of policies and practices that the Civil Rights Division believes are needed to prevent gender bias in the investigation and prosecution of these crimes. The consent decree requires the following:<sup>10</sup>

- There must be clear and detailed policies and procedures for *each response stage* (dispatch, initial officer response, on-scene investigation, and follow-up investigations);

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10. Text of the New Orleans consent decree available at [http://www.justice.gov/crt/about/spl/documents/nopd\\_agreement\\_1-11-13.pdf](http://www.justice.gov/crt/about/spl/documents/nopd_agreement_1-11-13.pdf). The Memorandum of Understanding between DOJ and the City of Missoula, which focuses exclusively on the issue of sexual assault, is available at [http://www.justice.gov/crt/about/spl/documents/missoulapdsettle\\_5-15-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulapdsettle_5-15-13.pdf).



FAR LEFT:  
Women's Law Project  
Executive Director  
Carol Tracy

LEFT:  
Missoula, MT Chief  
Mark Muir

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- Patrol officers must be required to write reports for *all sex offense calls*;
- There must be protocols for *forensic examinations* of victims and suspects;
- *Specialized training* must be provided to detectives;
- *There must be supervisory review* and approval of unfounded cases and complaints that are coded “non-criminal”;
- The department must create and participate in a *Sexual Assault Response Team (SART)*; and
- The department must develop and implement an *audit mechanism* for sex offense cases, with representation from outside agencies.

**Carol Tracy, Executive Director,  
Women's Law Center:**

*We See Implicit Bias  
In the Investigation of Sex Crimes*

There are ways of measuring subconscious bias, and it has been quite evident in investigations of sex crimes. Implicit gender bias is evident when you see a department that has a very high rate of “unfounding” cases (essentially stating that the department does not believe that a crime occurred), that is persistently disbelieving victims’ complaints, and that

is putting cases in noncriminal categories and not investigating them.

**Missoula, Montana Chief Mark Muir:**  
*DOJ Did Not Give Us Much Warning  
Of Its Investigation  
Of Our Sex Offense Response*

Missoula had significant publicity over sexual assaults and allegations that complaints were being mishandled. There were allegations that the criminal justice system was engaged in biased practices towards women and cover-up of sexual assaults by college athletes. We started taking steps to analyze our practices before DOJ announced its investigation, and we determined that our investigators were not communicating well with victims. We made some policy changes and implemented some additional training.

So it was a little alarming to me to receive word from the Department of Justice, with not much notice, telling me that they were coming out to Missoula to announce they were opening an investigation into my department and the prosecutor’s office. That can have a significant impact on an agency’s reputation and its credibility with the community, to have a federal agency come in and open an investigation. But that’s the only criticism I’ll offer, because I believe we have worked very well and collaboratively with DOJ from our end. DOJ’s investigation is focused on four distinct groups: the university, the



RIGHT:  
Former Baltimore  
Police Commissioner  
Fred Bealefeld

FAR RIGHT:  
Acting Director  
Bea Hanson, Office  
on Violence Against  
Women

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university police, the police department, and the county attorney's office.<sup>11</sup>

**Former Baltimore Commissioner  
Frederick Bealefeld:**

*We Dedicated Ourselves  
To Fixing the Problem  
Of Sexual Assaults Being "Unfounded"*

As soon as I discovered that Baltimore had a clear pattern and practice of unfounding sexual assaults, we jumped on it. We completely dedicated ourselves to fixing the problem. We instituted reforms, looked at national best practices, met with the sexual assault response team in Philadelphia, went to the Office on Violence Against Women for assistance, and brought in experts to help us address the issues.

**Carol Tracy, Executive Director,  
Women's Law Center:**

*Audits and Case Reviews  
Improve Police Accountability*

In Philadelphia, we developed a case review process in which attorneys from the Women's Law Project, staff from our rape crisis center, and two child advocacy groups conduct an audit of Philadelphia's

sex crimes cases, including all unfounded complaints and a cross-section of open cases. This has improved community participation and agency accountability.

**Bea Hanson, Acting Director,  
Office on Violence Against Women:**

*There Are Red Flags  
That Signal Problems  
With an Agency's Sex Assault Response*

Our role is to provide support to communities to address violence against women, and we have been very involved in efforts to eliminate gender bias. We recently awarded a \$300,000 grant to the University of Montana in Missoula to address gender bias. Similarly, in New Orleans we have provided \$5 million in direct support and technical assistance to address some of the specific issues in the consent decree. We were in New Orleans just last week to help develop a sexual assault response team.

One indicator that suggests gender bias is when a department's number of reported rapes is similar to the number of homicides. If it is, that is a red flag, because we know that sexual assaults are committed far more often than homicides.

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11. The City of Missoula and The University of Montana Office of Public Safety signed settlement agreements in May 2013, available at [http://www.justice.gov/crt/about/spl/documents/missoulapdsettle\\_5-15-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulapdsettle_5-15-13.pdf) and [http://www.justice.gov/crt/about/spl/documents/missoulasettle\\_5-9-13.pdf](http://www.justice.gov/crt/about/spl/documents/missoulasettle_5-9-13.pdf).

With respect to domestic violence, another warning sign is when we see high numbers of dual arrests. If officers are arresting both the offender and the victim, it is an indication that there may be issues with how officers are trained.

## POLICE INTERACTIONS WITH PERSONS WITH MENTAL ILLNESS

The police response to incidents involving persons with mental illness is an issue of growing concern, both for local police agencies and the Department of Justice.<sup>12</sup> DOJ's first investigation to focus exclusively on police treatment of persons in mental health crisis was in Portland, OR. Consent decrees in Seattle, New Orleans, Cincinnati, and Los Angeles also have addressed this issue.

Police use of force against persons with mental illness is a major element of the issue. These incidents can be very difficult for police to handle. Police have a duty to protect the public if a person with mental illness is brandishing a weapon or otherwise posing a possible threat to public safety. At the same time, police officers should be trained to recognize symptoms of mental illness, and to understand that mental illness can impair a person's ability to understand a police officer's orders. As the findings letter in DOJ's Portland investigation stated, policies should "take into account the effect the individual's mental illness may have on their ability to understand commands or the consequences of their actions."<sup>13</sup>

The Department of Justice looks for two systemic deficiencies contributing to unconstitutional uses of force against people in mental health crisis: (1) the absence of officers specially trained in and proficient at responding to persons in mental health crisis; and (2) the lack of strategic disengagement protocols involving mental health providers.

Policies should specify how to de-escalate situations involving individuals in mental health crisis.

Following are DOJ requirements included in the Seattle settlement agreement:<sup>14</sup>

- Create a multidisciplinary *Crisis Intervention Committee*.
- Develop *specialized training, policies and protocols*.
- Develop a *cadre of "crisis-intervention trained" officers*.
- Ensure that *CI-trained officers are available on all shifts*.
- *Train dispatchers* to identify calls for service that involve individuals in crisis.
- *CI-trained officers should take the lead*, when appropriate, in interacting with individuals in crisis.
- *Basic training should be provided for all officers on crisis intervention*.<sup>15</sup>

### **Missoula, Montana Chief Mark Muir:**

#### *Failing Mental Health Systems Increase Burden on Police Departments*

In the Portland findings report, the Department of Justice acknowledges that the mental health system in the state of Oregon is in shambles.<sup>16</sup> The Department of Justice seems to be taking the position that if a state's mental health system is broken, law enforcement officers are going to have to assume this burden.

Chief Michael Reese implemented a standard that every officer on the street would receive 40 hours of CIT training, which he was told at that time was the right step to take, rather than having

12. See the PERF Critical Issues in Policing report, *An Integrated Approach to De-Escalation and Minimizing Use of Force*. [http://www.policeforum.org/library/critical-issues-in-policing-series/De-Escalation\\_v6.pdf](http://www.policeforum.org/library/critical-issues-in-policing-series/De-Escalation_v6.pdf)

13. Portland Findings Letter, p. 14: [http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf)

14. The Seattle agreement and other cities' agreements containing provisions on mental health crisis are available at: <http://www.justice.gov/crt/about/spl/findsettle.php>

15. Settlement Agreement available at [http://www.justice.gov/crt/about/spl/documents/spd\\_consentdecreed\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_consentdecreed_7-27-12.pdf)

16. The DOJ "findings letter" is available at [http://www.justice.gov/crt/about/spl/documents/ppb\\_findings\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf)

a centralized unit. But then DOJ came back three and one-half years later and said, “That’s not good enough, that isn’t going to work.” And now Portland has a settlement agreement on this issue.<sup>17</sup>

**Jonathan Smith, Chief,  
DOJ Special Litigation Section:**

*Yes, Mental Health Systems Are Collapsing,  
But That’s All the More Reason Police  
Must Respond in a Constitutional Manner*

Across the country, mental health systems are failing and getting worse. The systems that keep people from going into crisis are collapsing. The burden of delivering mental health services has fallen on law enforcement. Law enforcement is held accountable to respond to people in mental health crisis in a way that is Constitutional, and that is what the Portland letter stands for. It says we know that Oregon has a broken mental health system, and as a police officer in Portland, you need to be able to deal with people in crisis.

**Carl Marquardt, Counsel, Seattle Mayor’s Office:**

*There Are Alternative Strategies  
For Responding to Mental Health Crises*

Seattle Police Chief John Diaz has made Crisis Intervention training a high priority. Our goal is to give all of our front-line officers 40 hours of CI training, so that every responding officer has the tools to deal with crisis situations. DOJ advocated moving to the Memphis Model, in which crisis intervention teams are deployed to a CI event and there are specialists within the department who have that function. We went back and forth as to whether that was really a better model, and ended up with an agreement to continue to look at that and other ways of providing these services.

**Deputy Chief Christy Lopez,  
DOJ Special Litigation Section:**

*Many Officer-Involved Shootings Involve  
Persons with Mental Illness*

This is not a new problem. It is an issue that has been with law enforcement agencies for a long time. We see this issue when we look at use of force and arrest reports. Many officer-involved shootings involve persons who are in mental health crisis.

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17. The “Statement of Intent” agreed to by Portland and DOJ is available at [http://www.justice.gov/crt/about/spl/documents/ppb\\_statementofintent\\_9-12-12.pdf](http://www.justice.gov/crt/about/spl/documents/ppb_statementofintent_9-12-12.pdf)

# The Process of Responding to a DOJ Investigation

THIS SECTION OF THE REPORT DISCUSSES what happens after DOJ completes its investigation of a local or state law enforcement agency and announces its findings. The process includes negotiations between DOJ and the police agency or local government, settling on the terms of an agreement, the use of monitors and experts, defining compliance and bringing the process to a conclusion, and assessing the costs and benefits of a consent decree.

## NEGOTIATIONS

After DOJ concludes an investigation and issues a Findings Letter, it will begin negotiations with the city and the law enforcement agency in an effort to reach a negotiated settlement and enter into a settlement agreement or consent decree.

If the parties cannot reach an agreement, DOJ may file a lawsuit and begin civil litigation against the city and the law enforcement agency for civil rights violations.

Settlement negotiations can be very complicated, even when they begin amicably. In New Orleans, newly elected Mayor Mitch Landrieu wrote

a letter to the Justice Department in 2010 asking for assistance in reforming the Police Department. Two years later, the Justice Department and the city of New Orleans jointly announced their agreement on a consent decree detailing a complicated set of reform measures. However, as of February 2013, that agreement was being disputed in court, as the city sought to disengage from the process, over the objections of DOJ.<sup>18</sup> City officials argued that they were misled about the costs of the agreement, particular with regard to reforming the city's jail. DOJ officials said that there are Constitutional violations that must be remedied. Both sides continued to move forward, however, and by May the Mayor was seeking a tax increase in order to help pay for the consent decree reform measures.<sup>19</sup>

In Seattle, DOJ announced an investigation of the Police Department in March 2011 and reached a settlement agreement regarding use of force and other issues in July 2012.<sup>20</sup> Discussions later turned contentious, but in March 2013 city officials agreed to a comprehensive plan to implement the agreement, which was approved by a federal judge.<sup>21</sup>

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18. "New Orleans-Washington Handshake Turns to Fists." *New York Times*, February 13, 2013. <http://www.nytimes.com/2013/02/14/us/new-orleans-and-washington-fight-over-police-decree.html?ref=us&pagewanted=all>

19. "Landrieu seeking property tax increase; money could be used for consent decrees." May 3, 2013. *The Lens*. <http://thelensnola.org/2013/05/03/landrieu-seeking-property-tax-increase-for-police-and-fire-uses/>

20. "Justice Department Announces Agreement with City of Seattle to Implement Reforms of Seattle Police Department." DOJ news release, July 27, 2012. <http://www.justice.gov/opa/pr/2012/July/12-crt-940.html>

21. "U.S. judge approves plan to reform the Seattle Police Department." *Seattle PI*, March 12, 2013. <http://blog.seattlepi.com/seattlepolitics/2013/03/12/u-s-judge-approves-plan-to-reform-the-seattle-police-dept/>

**Carl Marquardt, Counsel, Seattle Mayor's Office:**  
*Negotiations Should Be More Collaborative*

I think it was important to be able to negotiate certain issues, such as staffing ratios and training related to encounters with the mentally ill.

When DOJ comes and announces that a police department has a problem, it can create a very difficult environment in which to negotiate, because the involvement of DOJ and the investigation itself creates a great deal of political and media pressure. In Seattle, DOJ's initial approach to negotiations was very inflexible; it was difficult to get them to acknowledge our local concerns about costs, potential impacts on police responsiveness, and the need for community input. While we eventually reached a workable resolution, the process could be much more collaborative in jurisdictions where there is no internal resistance to adopting best practices.

**New Orleans PD Deputy Chief of Staff**  
**Daniel Cazenave:**

*Make Sure the Agreement  
Is Clearly Written,  
Because It May Endure After Your Tenure*

After the Justice Department has released the findings of its investigation and you enter into negotiations about what will be done in the police department, those negotiations are critically important. You need to understand that these things may live much longer than any mayor's administration or any police chief's tenure. People come and go, but the consent decree will live on. So you need to agree to something that is workable. And you need to write everything as clearly as you can, so that the people who come later will be able to understand the meaning of what you agreed to.

In New Orleans we had various people who wanted to be involved in the negotiations—the

police unions, some outside advocacy groups—but we felt the best way to get it done was to just bring the people to the table who were directly involved.

**Chuck Wexler:** *In those negotiations, is there one person who chairs the meeting or moderates it?*

Each side has its chairperson. We had an attorney named Ralph Capitelli representing the city and Christy Lopez handled it for DOJ. We also brought in Gerry Chaleff from the LAPD, who had handled one of these negotiations before.

**Chuck Wexler:** *Gerry Chaleff is former president of the Los Angeles Board of Police Commissioners.*

Yes, and I would recommend that anybody who goes into a negotiation with DOJ have someone who has lived through it before and has actually been through the entire process until it's been closed. Gerry was the voice of reason through a lot of our negotiations. We found it was very important that we had him.

**Christy Lopez, Deputy Chief,  
Special Litigation Section:**  
*Being Specific and Defining Terms  
Can Prevent Endless Arguments Later*

You have to get an agreement that has buy-in from the political leaders, the community, and the union, and it has to make sense. Historically, we have seen a lot of terms that are not detailed in consent decrees that get argued about endlessly afterwards. Recognizing that, we are trying to build more specificity into the agreements up front. You don't want a situation where, years later, you have people trying to



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Daniel Cazenave, New Orleans  
Police Deputy Chief of Staff



Attorney Scott Greenwood

perform an analysis of whether it will be feasible to implement the proposed reforms.

**Scott Greenwood, Attorney, ACLU, Cincinnati:**

***Community Involvement  
Is Critical to Sustaining Reform***

There has to be very strong community buy-in in the process. Reforms cannot be sustainable without community involvement.

And you need to realize at the beginning that DOJ is not going to be in the city forever. So part of the negotiations should be to have an exit strategy for the department and the monitor.

implement an agreement who had no role in negotiating it, and they're saying, "I don't know what this means; I don't know what they meant to achieve by this."

So we were really focused on trying to get it right in New Orleans. I think I agree with Danny that one of the most significant participants was Gerry Chaleff. Because the New Orleans officials brought him in, he was able to tell them things that we would have told them in any case. But they would listen to him, and that was enormously helpful to us. Gerry also told them some things that we didn't agree with, but overall he was enormously helpful because he had lived through it.

Additionally, from my perspective, it is very helpful to have the police chief at negotiations. It is not always possible for the chief to be there every minute, but the chief knows his department and it is important to have him there at critical points.

**MONITORS AND EXPERTS**

There are various ways that monitoring can be accomplished. Formal monitors may be selected through a joint process, in which the city and DOJ jointly select the monitor, or the city and DOJ may jointly issue a solicitation for bid proposals for appointment of a monitor.

If the city and DOJ are unable to agree on a monitor, the court will appoint a monitor from among the names of qualified persons submitted by both parties.

**Oakland, CA Interim Chief Sean Whent:**

***"Reality Test" Terms of Agreement***

It is important to "reality-test" the potential terms of the agreement. In Oakland, the original agreement included provisions that were very difficult, if not impossible, to implement. It is important to



Oakland, CA Deputy Chief  
Sean Whent

**Philadelphia Commissioner Charles Ramsey:**  
*A Monitor Can Serve as Referee,  
But Both Sides Must Share the Same Goals*

We had a monitor [in Washington, DC] who was tough, but fair. He saw his role as bringing the Police Department and the Justice Department together to work through issues of conflict, like a referee. He brought us together and made us work it out, no matter how long it took.

When I hear about the problems some departments have, I think that some of that can be personality-driven if you have the wrong monitor. You have to have the right mix of people with the same goals: to end up with a better department, to have professional and bias-free policing, and to build community support and confidence. It is possible to achieve these goals, but you need to have people who are willing to work together toward the goals.

**Los Angeles Police Commander Scott Kroeber:**  
*Auditing Police Operations  
Was an Important Result  
From LAPD's Consent Decree*

*Following the discovery and disclosure of the Rampart Area Corruption Incident by the Los Angeles Police Department, DOJ notified the City of Los Angeles that it intended to file a civil suit alleging that the Department was engaging in a pattern or practice of excessive force, false arrests and unreasonable searches and seizures.*

*On November 2, 2000, the City Council and the Mayor approved the consent decree negotiated between the city and DOJ. The court formally entered the consent decree into law on June 15, 2001.*

*Eight years later, the decree essentially was lifted by a federal judge who said that the LAPD had established sufficient reforms to no longer require the oversight of a court-appointed monitor. In 2012 the New*

*York Times published an article stating that the LAPD had transformed itself from a department known for "heavy-handed policing, hostile relations with minorities, and corruption" to "a model police agency for the United States."<sup>22</sup> The final vestiges of the consent decree were formally ended in May 2013.<sup>23</sup>*

*Commander Scott Kroeber, who spoke at PERF's Summit, served with LAPD's Civil Rights Integrity Division from 2000 to 2005:*

We went through three mayors and three chiefs of police over the course of the decree. So it obviously transcended political administrations and the administrations of chiefs of police. I think it's fair to say that there was a perception that Bernard Parks, who was Chief of Police when the consent decree was negotiated, was not completely behind it. And I think that played into the fact that Chief Parks' tenure was not extended by the police commission. But Chief Parks did start to move on it and take some degree of ownership of it.

Later, when Chief Bill Bratton took over in 2002, he had a much different leadership style. I think he clearly understood what had to be done; he provided a strong sense of leadership; and I think ultimately that was one of the main things that helped us move the consent decree along.

When you look at the legacies of the LAPD decree, I think one of the better ones is the audit function, which requires that random samples of warrant applications, arrest reports, use-of-force investigations, and so on be reviewed for completeness and authenticity. We now teach this to other departments across the country. Much of that was influenced by the audit specialist from the monitoring group. The monitor was very hands-on. We didn't always agree, but that is the nature of the beast. There is a certain friction involved with monitoring.

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22. "In Los Angeles, a Police Force Transformed." Nagourney, Adam. The New York Times. August 12, 2011. <http://www.nytimes.com/2011/08/13/us/13lapd.html?pagewanted=all>

23. "Federal Judge Lifts LAPD Consent Decree." Los Angeles Times, May 16, 2013. <http://www.latimes.com/news/local/la-me-lapd-consent-decree-20130517,0,1746570.story>

## THE ROLE OF SUBJECT MATTER EXPERTS

The Department of Justice relies on subject matter experts to assist the Civil Rights Division in its investigations and to work as members of monitoring teams.

**Jonathan Smith, Chief,  
Special Litigation Section:**

### *DOJ Uses Police Executives As Experts in Civil Rights Investigations*

We have used between 40 and 50 experts over the last several years who have the experience necessary to assess the operations of the departments we

are investigating. Typically, these experts are police executives or senior staff.

**Philadelphia Commissioner Charles Ramsey:**

### *DOJ Experts Should Be From Similar Sized Jurisdictions*

These so-called experts are often former chiefs from very small jurisdictions who come into very large departments and don't really understand how large departments operate, or vice versa—a police executive who comes from a very large department to investigate a small department may think the small department has resources that it simply does not have.

## Who Monitors the Monitors?

**ACLU Attorney Scott Greenwood:** In Cincinnati, the first monitor that we had billed us for every breath he drew. After a month and a half, the ACLU went to the court and requested that the monitor be removed. The court granted our request, and then we ended up with a great monitor. I do not think there is a way to design a consent decree that is monitored where there is not that inherent conflict in which the monitor has a financial interest in continuing the process. But there are checks and balances.

**PERF Executive Director Chuck Wexler:** Yes, that raises the question: Who monitors the monitor?

**DOJ Deputy Section Chief Christy Lopez:** The monitor is accountable to three parties. There is the judge, whom the monitor reports to. There is the defendant, who is paying the bills and has the responsibility to review the bills to ensure that they are proper. And there are the plaintiffs, who are responsible for making sure that the agreement is structured and that the monitor is doing what the agreement requires him to do.

Some of the monitoring bids that come across our desks seem high, but we attempt

to select monitors that have high integrity and are trying to do their job right. Also, most monitoring agreements have caps that prevent the monitor from charging more than a certain amount. The monitors are like the chiefs in this room—people who want to fix a problem and help improve the practices of officers on the street.

**Milwaukee Police Chief Ed Flynn:** But what makes a monitor worth ten times as much as the police chief whose department he or she is monitoring?

**Special Litigation Section Chief Jonathan Smith:** A monitor is not one person, it is a monitoring team. There is a lead monitor and various subject matter experts. The teams may be larger or smaller, and they may contain different people, depending on the issues.

The role of the monitor is to measure whether the purposes of the agreement are being achieved. The monitor should not define the reforms. They can provide guidance and assistance, but they should not be creating the systems and policies. They should judge whether changes are being implemented.





Austin, TX Assistant Chief  
Sean Mannix

**Austin Assistant Chief Sean Mannix:**

*Learning Curve for DOJ Experts  
Slowed Down the Process*

We worked very well with DOJ when they came to town and resolved the investigation with a technical assistance letter. But yes, one of the things that did concern us was that the subject matter experts were not from like-sized organizations, or from organizations that shared some of the same complexities that our organization did. We felt that it really slowed down the process, because we had to try to educate the experts on how to be subject matter experts in an agency our size.

## DEFINING COMPLIANCE

At some point, after implementing reforms for a period of time, a city or local police agency begins to plan for seeking an end to the involvement of the Justice Department and the courts in its operations. To obtain the court's approval, the agency must show that it has achieved compliance with the requirements of the consent decree. At this point, the key question becomes, "How do you define the necessary level of compliance?"

In most cases, the Justice Department has required that the local police agency demonstrate that it has achieved either "substantial compliance" or "full and effective compliance" for a period of two years. In Pittsburgh, the monitor interpreted "substantial compliance" to require 95 percent compliance with all terms in the consent decree. Monitors in other cities that entered consent decrees after Pittsburgh, including Los Angeles, Cincinnati, and Washington, DC, adopted the 95-percent compliance standard. Detroit adopted a 94-percent compliance standard.

## The Legal Language of Achieving Compliance

The New Orleans consent decree defines substantial compliance as *"sustained compliance with all material requirements of this Agreement or sustained and continuing improvement in constitutional policing, as demonstrated pursuant to Agreement's outcome measures."*

Agreements in Cincinnati, Pittsburgh, Detroit, Los Angeles, and Washington, D.C. all stated that *"Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to*

*maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance."*

In Seattle, "full and effective compliance" with a given requirement is defined as requiring *"that the City and [the Seattle Police Department] have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) ensured that the requirement is being carried out in practice."*

**Retired Cincinnati Chief Thomas Streicher:**

*You Can't Put a Percentage on Success*

If an agency has to be in compliance 94 percent of the time, plus or minus 5 percent, does that mean it is okay to have a bad officer-involved shooting one out of ten times?

Obviously, the answer to that has to be no. You cannot put a partial percentage on success. You have to strive for a 100-percent success rate. The key to success should be to have an effective system that has been implemented, and properly trained officers. There should be a redundant review process in place that captures and identifies mistakes.

And there should be some type of remedial process to correct errors or discipline the person who made the mistake.

**Oakland Deputy Chief Sean Whent:**

*Failing to Achieve Compliance Can Be a Matter of Missing on One Case*

One of the tasks in the Oakland consent decree requires the department to make correct findings in 90 percent of internal affairs cases. Each time the monitoring team comes out, they review 25 cases. This means that if two cases are out of compliance, the department has achieved substantial compliance; but if three cases are out of compliance, the department will be out of compliance.

For the last four consecutive quarters, the monitors have found three cases out of compliance during each review, which translates into an 88-percent compliance rate, two percentage points short of the mark.

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Former Cincinnati Chief  
Thomas Streicher

**Christy Lopez, Deputy Chief,  
Special Litigation Section:**

*95-Percent Compliance Is Not an Appropriate Measure In Every Context*

Substantial compliance requires a department to have to have a policy in place, to train people, and to make sure that the policy is implemented and practiced. A very widely accepted auditing practice to ensure that something is done is to demonstrate compliance 95 percent of the time, plus or minus 5 percent. That is how I believe the 95-percent requirement started. It is not a perfect application in every context. It works very well for some things, but not well for others.

So yes, I agree with Chief Streicher that it would not make sense to say it's good enough if 95 percent of your officer-involved shootings are properly investigated and 5 percent are not.

DOJ's more recent decrees focus on outcome measurements, rather than process measurements. And we are making efforts to be more qualitative than quantitative.

**Philadelphia Commissioner Charles Ramsey:**

*Our Challenge Was to Determine When We Could Finish One Aspect and Move on to the Next*

The biggest challenge we had in the MPD in Washington was the issue of substantial compliance and what it means, in terms of when you can move on



to a new area of the agreement. The roughest part of the process was determining when you are in substantial compliance and when you can move on.

**Detroit Commander James White:**

### *It Gets Complicated When the Agreement Has 110 Paragraphs*

Yes, we've had the same issue Commissioner Ramsey mentioned. It can be difficult to sustain substantial compliance every quarter for two years for every provision in the agreement, when the agreement contains 110 paragraphs. I suggest that once the agency has sustained compliance with certain paragraphs for two years, those paragraphs should be taken off the books, instead of continuously evaluating them every quarter until the end of the judgment.

## THE COSTS AND BENEFITS OF CONSENT DECREES

The PERF Summit included a discussion of the benefits and the costs of having a consent decree. In addition to the costs of implementing the agreed-upon reforms (such as the costs of training officers in a new policy, or purchasing new equipment), there are the legal costs incurred by the city and the fees paid by the city to the court-appointed monitor.

Most cities estimate the costs of monitoring at approximately \$1 million per year.<sup>24</sup> Detroit's monitoring costs were \$2.3 million per year for the first six years, and currently are nearly \$1.2 million per year. Oakland has a two-year contract with its monitor for \$1.68 million. Los Angeles initially entered into a five-year monitoring contract for \$11 million. Prince George's County, MD was paying between \$800,000 and \$1 million annually to be monitored. Washington, D.C.'s Metropolitan Police Department estimated its monitoring costs at \$1 million per year, but paid more during the first two years. New Orleans has estimated that it will pay approximately \$2 million per year in monitoring costs.

**Carl Marquardt, Counsel, Seattle Mayor's Office:**

### *Seattle Consent Decree Could Cost \$40 Million*

In Seattle, we calculated an overall cost of \$40 million dollars for implementation of DOJ's original proposal, and estimated between \$6 million and \$7 million to comply with DOJ's proposed sergeant-to-officer ratio.

**Los Angeles Police Commander Scott Kroeber:**

### *The LA Consent Decree Cost \$15 Million For Monitoring, But It Was Worth It*

It cost us a total of \$15 million for monitoring. It would have been only \$11 million if we had finished in five years. But I think the money was well spent in terms of preventing future litigation and gaining credibility with the community. So yes it was a lot of money, but I think we got our money's worth.

**Philadelphia Commissioner Charles Ramsey:**

### *You Can Leverage a Consent Decree To Get Resources Your Department Needs*

The process of having a consent decree can actually be a benefit to your department. You can leverage the Justice Department to get some things that you desperately need. When I was chief at the Metropolitan Police Department in Washington, we would not have been able to make the changes we made without the consent decree. We would have encountered pushback from the union, and we would not have obtained the funding needed to develop an early intervention system and underlying technology infrastructure to support it.

The end result was very positive. Shootings dropped by 80 percent and have remained low. And it gave us credibility with the public.

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24. Cost estimates provided by city officials to PERF staff members during interviews.

**Elizabeth Township Police Chief Bob McNeilly:**  
*DOJ Opened a Door for Me in Pittsburgh  
That My Labor Union Had Closed*

A couple of months after I became chief in Pittsburgh, the Department of Justice showed up and took a lot of boxes of paperwork back to Washington, D.C. When they announced their desire to enter into a consent decree, it seemed intimidating at first. But I could see that they opened a door for me that my labor union had closed. And the door they opened included funding and political support for all my initiatives for the department.

**Retired Cincinnati Chief Thomas Streicher:**  
*The Consent Decree Saved Us  
Millions in the Long Run*

Prior to the consent decree in Cincinnati, we paid out \$10 to \$11 million to settle a number of lawsuits. But since the consent decree, the ACLU has not sued the Police Department. That is a tremendous savings.

**John Farmer, Executive VP and General Counsel,  
Rutgers University:**

*Our Consent Decree  
Gave the Reform Process Momentum*

Without the force of a court order behind us, I doubt we would have obtained the funding that we needed from the state, over a sustained period of time, to develop the systems that the New Jersey State Police put in place to ensure internal transparency. I think the process was a help to us. We did not put anything in place that we were not going to do eventually in any case. But putting the force of a court order behind it created a momentum that would not have otherwise existed.

**Detroit Commander James White:**

*Detroit Is a Better Department  
As a Result of the Consent Decree*

The Detroit Police Department is a better police department as a result of the consent decree. Today we have a very specific way of taking a citizen's complaint, and we have a management awareness system through which we are able to manage our employees. We used the consent decree to get some of the tools we needed. I am not saying that a consent judgment is the greatest thing that ever happened, but in reality, we are a better department for it.

## What Should Every Police Department Know To Avoid Problems That Could Result in a DOJ Investigation?

*We asked Summit participants if they had recommendations for police department actions that could help avoid the need for DOJ investigations, or could help an investigation process to move smoothly and rapidly:*

**Jonathan Smith, Chief,  
Special Litigation Section:**

*You Need Policies, Supervision,  
And a System that Will Detect Problems*

You need to have the right policies, you need to have the right supervision, and you must have a self-correcting system so you will know what's going on in your department and whether any problems are developing. You have to collect the right data, look at the data, and make decisions about individual discipline, corrective actions, policy changes, supervision changes, and training changes that may be necessary.

**Prof. Sam Walker, University of Nebraska:**

*Police Can Respond on Their Own  
When They Detect a Problem*

I think the major takeaway is that you can do it yourself. The most recent example, from last summer, is Dallas. Dallas experienced an increase in officer-involved shootings; and in response, the chief issued an eight-point plan for improving the department. The plan included tightening up their training on Electronic Control Weapons, reexamining their foot pursuit policy, and looking at national best practices.

If every police department responds to a problem the way Dallas did, these folks at DOJ Civil Rights won't have any work to do.

**Christy Lopez, Deputy Chief,  
Special Litigation Section:**

*We Look at How Well a Department Responds  
When a Problem Crops Up*

When considering whether an investigation is appropriate, the threshold question is whether the problem we are seeing seems to

be widespread, so that it's a pattern or practice of violations, not a few isolated incidents. And we evaluate whether that pattern or practice is severe enough that it constitutes Constitutional harm.

In deciding where to spend our scarce resources, we take other things into consideration as well, such as whether the department seems to have a handle on the problem we are seeing: when a bad thing happens in the police department, how does the department respond to it? Do they respond immediately, or do they fail to do anything until the news media approaches them? In other words, we look to see if the department is able to handle problems that come up on its own.

**Principal Deputy Director Joshua Ederheimer,  
COPS Office:**

*Embracing the Reform Process  
Will Get It Done Faster*

*(Mr. Ederheimer served in the Metropolitan Police Department of Washington, D.C. for 22 years, including during the time it was working with DOJ on use-of-force reforms.)*

To make the process more efficient, the department should get behind the reform effort right away. Leadership from the top and embracing the need for reform are going to get you through this a lot faster.

**Jonathan Smith, Chief,  
Special Litigation Section:**

*Three Tips for Achieving Compliance Expeditiously*

- (1) Move on the fundamentals as quickly as possible. Get your policies and systems in place.
- (2) One of the most critical things is to change the dynamics and the culture of the agency, and often that means making sure that the new officers are not habituated to the old ways.
- (3) It is also important to develop a method to measure whether change is occurring and to self-correct throughout the process.

# The COPS Office Launches A Promising New Approach to Reforms

PERF'S RESEARCH ON DOJ CIVIL RIGHTS DIVISION investigations and the discussions at PERF's Summit produced mixed views.

On one hand, many police chiefs who have been through the process of a DOJ investigation said that the end result was a better police department—with improved policies on critical issues such as use of force, better training of officers, and more advanced information systems that help police executives to know what is going on in the department and manage their employees.

In fact, some chiefs said that without the pressure of a consent decree, their cities would not have allocated funding for things like new training and equipment that were needed to make reforms. In some cases, consent decrees have been instrumental in giving chiefs the authority and the resources to act.

On the other hand, many police chiefs said that the process of entering into a consent decree can be cumbersome, expensive, overly adversarial, and time-consuming.

The quick pace of Civil Rights Division investigations of local police agencies has continued since PERF's Summit in October 2012. Since that time, DOJ has announced formal investigations related to use of force of the Albuquerque Police Department, the Cleveland Division of Police, and the Miami Police Department. The Civil Rights Division has also commenced investigations at several universities,

including the University of Missoula, related to the handling and reporting of sex offense cases.

Many of the police executives at the Summit suggested that the Civil Rights Division should develop more collaborative alternatives to the consent decree process, in order to achieve change in a more efficient manner.

**One promising approach is the recent partnerships between the Justice Department's Office of Community Oriented Policing Services (COPS Office) and local police departments.**

This new approach was first tested in 2012 in Las Vegas. The *Las Vegas Review Journal* had published a series of articles on officer-involved shootings by the Las Vegas Metropolitan Police Department (LVMPD) over the previous 20 years, and had raised questions about the department's accountability. In response to those articles, COPS Office Director Bernard Melekian contacted LVMPD Sheriff Doug Gillespie and offered the assistance of the COPS Office in developing reforms in the areas of policy and procedures, training and tactics, investigation and documentation of use-of-force incidents, and external review.

Sheriff Gillespie immediately sent a team of his executive command leaders to Washington to meet with COPS officials and discuss this proposal.

They reached an agreement, and 10 months later, in November 2012, the COPS Office released a 154-page report detailing its findings and recommendations.<sup>25</sup>

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25. The report, *Collaborative Reform Process, A Review of Officer Involved Shootings in Las Vegas*, is available at [http://www.cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process\\_FINAL.pdf](http://www.cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf)

More recently, in May 2013, Philadelphia Police Commissioner Charles Ramsey asked the COPS Office to review and analyze his department's use of force in light of a spike in police shootings.

Newspaper articles noted that for Ramsey, "there was a bit of déjà vu in his request for help," as the Philadelphia *Inquirer* put it, noting that in 1999, when Ramsey was Chief of Police in Washington, D.C., he had invited the Civil Rights Division to investigate police use of force in that city. However, in Philadelphia in 2013, Ramsey asked the COPS Office to take on the investigative role, citing its successful process in Las Vegas.<sup>26</sup>

Because the COPS Office—unlike the DOJ's Civil Rights Division—has no authority to file civil lawsuits if its recommendations are not implemented, its role depends more on a collaborative relationship between the DOJ and local police departments.

At PERF's Summit, the DOJ Civil Rights Division expressed support for the COPS Office approach as an alternative means of producing reforms in cases where a Civil Rights Division investigation may not be necessary.

*Following are several comments made at the PERF Summit regarding this new approach:*

**Bernard Melekian, Director of the COPS Office:**

*The COPS Model Is Less Expensive and More Collaborative*

The COPS Office worked in partnership with the Civil Rights Division in a non-adversarial, collaborative model to address use-of-force issues in Las Vegas. Las Vegas was facing a great deal of local concern about the number of officer-involved shootings. The Las Vegas Police Department, the Civil Rights Division and the COPS Office all agreed

that this was an issue that needed to be studied and addressed. Therefore, the COPS Office agreed to do a technical assistance project and review the department's policies and procedures. We produced an extensive and far ranging report with a series of recommendations and action steps that will benefit the department and the community. If this model is successful, it will be a far less expensive and much more collaborative alternative to the consent decree process.

**Las Vegas Captain Kirk Primas:**

*Seven Months into the Process, We Are Already Making Major Changes On Use of Force*

Sheriff Gillespie wanted to make positive changes and was interested in this technical assistance program. He met with Director Melekian in the COPS Office about the new Collaborative Reform Process and agreed to participate. We started the collaboration with the COPS Office to do an assessment and now, seven months into it, we have made a substantial change in our use-of-force policy and our culture. The report is an excellent template that will give you some great insight as to things we have done over the last two years and what we will do next. I hope this program goes forward and that agencies can take advantage of it.



COPS Office Director  
Bernard Melekian

26. "Added scrutiny as Philadelphia police shootings mount." June 2, 2013. Philadelphia *Inquirer*. [http://www.philly.com/philly/news/20130602\\_Added\\_scrutiny\\_as\\_Phila\\_\\_police\\_shootings\\_mount.html](http://www.philly.com/philly/news/20130602_Added_scrutiny_as_Phila__police_shootings_mount.html)



Las Vegas Police Capt.  
Kirk Primas

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**Jonathan Smith, Chief,  
Special Litigation Section:**

*We Are Pleased to Be Working  
With the COPS Office*

We are thrilled to work with the COPS Office. We have spent some time working together to try to figure out how to develop a model so that there are more tools in the toolkit. We want to figure out what is the appropriate role for the Civil Rights Division, what is the appropriate role for the COPS Office, and whether there are appropriate roles for other people. So we don't have a one-size-fits-all approach.

**Missoula Chief Mark Muir:**

*A More Collaborative Model  
Would Produce Better Outcomes*

COPS has been able to provide assistance through a more collaborative model, and I am going to recommend to the Special Litigation Section that you utilize that model more often, especially with respect to emerging issues. The first thing that I said to Jonathan Smith when he came to my office was, "Why didn't you talk to me about this issue before you announced an investigation?" When the Department of Justice announces an investigation into an agency, there is a significant impact on the agency's reputation and credibility with the community. I believe that we could have quickly achieved a mutually desired outcome if the process were more collaborative.



# Conclusion:

## Key Lessons Learned

THIS REPORT CONTAINS DOZENS OF QUOTATIONS from police chiefs, Justice Department officials, and others with expertise and experience regarding DOJ investigations of local police departments.

Perhaps the most fundamental points were made by two participants. First, DOJ Civil Rights Division Chief Jonathan Smith said that for local police chiefs, the appropriate question is *not* “How do you keep the Civil Rights Division from investigating my police department?” That question is inappropriate because local police chiefs are every bit as interested as DOJ officials in providing policing that meets the standards of the Constitution, Mr. Smith said.

“I think everyone in this room can agree that the proper question really is, ‘How do we deliver police services in an effective manner that complies with the Constitution and builds public confidence?’” Smith added.

The second basic point was made by Professor Sam Walker, who noted that the DOJ has a nearly 20-year track record of investigating local police, and each case has produced publicly available information, in the form of consent decrees, investigative findings letters, and other documents that spell out the reforms that were undertaken.

Thus, “No police department should be in a position where it can be sued by the Justice Department, because the past cases make clear what is expected of them,” Professor Walker said.

*PERF’s goal in this project has been to document these lessons that can be learned from past DOJ investigations. Following are some of the key points about DOJ civil rights investigations and the types of*

*reforms that have been mandated since the DOJ was given legal standing to investigate police agencies in 1994. These points summarize what the experts at PERF’s Summit said were the most important issues to keep in mind:*

- **DOJ’s role is limited to investigating patterns of misconduct:** The Special Litigation Section does not investigate individual incidents. Its mission is to investigate police agency policies that violate the Constitution, or multiple incidents that amount to a “pattern or practice” of conduct that deprives people of their Constitutional rights.
- **Key Issues:** Many of the DOJ investigations to date have focused on certain key issues, including: police use of force; Early Intervention Systems; management and supervision of officers; unlawful stops, searches, and arrests; and racial or ethnic bias in policing. In recent years, DOJ also has focused on the investigation of sexual assaults, and on police interactions with persons with mental illness.
- **Use of force:** A review of consent decree documents shows that DOJ typically requires use-of-force policies to include certain elements, including the following:
  - Clearly identified types and levels of force;
  - Clearly described consequences for unreasonable uses of force;
  - Policies, procedures, and training specific to certain weapons or types of force, such as

firearms, Electronic Control Weapons, and vehicle pursuits;

- Requirements for certification of officers in use of certain types of force; de-escalation techniques; reporting, documentation, and investigation of force incidents; supervisor response; and auditing and review of incidents.
- **Early Intervention Systems:** Consent decrees in Los Angeles, Cincinnati, Pittsburgh, Washington, D.C. and other cities have required police to implement Early Intervention Systems, which automatically flag officers who may be engaging in inappropriate behavior, or may be at risk of engaging in such behavior in the future. An EIS may also flag officers who are in high-activity assignments, so each case must be reviewed individually. An EIS can be expensive to implement, especially if a department does not have computerized record-keeping systems for the data points that go into the EIS—such as uses of force, citizen complaints, officers’ arrest statistics and performance evaluations, etc. Consent decree documents list certain elements that must be included in an EIS program, including requirements that supervisors periodically review and act on EIS findings.
- **Management and supervision of officers:** Consent decrees typically include requirements designed to ensure that officers receive adequate supervision by their superior officers. Often the ratio of the number of officers per supervisor is an issue, but there is no simple formula for setting that ratio. In a number of cities, consent decrees have specified certain conditions in which supervisors should take actions, such as responding to and investigating use-of-force incidents, and reviewing arrest reports and misconduct complaints.
- **Preventing biased policing:** Racial or ethnic bias has long been a focus of the Civil Rights Division and its investigations of local police departments. Recent consent decrees require departments to have policies and training to prevent biased

policing. For example, the Seattle decree calls for policies stating that officers may not use race, ethnicity, or national origin in determining reasonable suspicion or probable cause, unless race, ethnicity, or national origin is used as part of a suspect’s description. In addition, these policies must prohibit officers from ignoring or condoning biased policing, and must require officers to report incidents in which they observe or are aware of other officers who have engaged in biased policing.

Recent decrees also call for training that includes the following topics: Constitutional and other legal requirements related to equal protection and unlawful discrimination; the protection of civil rights as a central part of the police mission; cultural competency training; how to identify discriminatory practices when reviewing investigatory stop data, arrest data, and use of force data; and developing positive relationships with diverse community groups.

In recent years, DOJ has expanded this focus area to include discussion of “implicit” or “unconscious” bias, by officers who are not aware of biases in their actions. For example, the Seattle findings letter states that “biased policing is not primarily about the ill-intentioned officer, but rather the officer who engages in discriminatory practices subconsciously.”

- **Gender bias in the handling of sexual assaults:** In recent years there has been increasing attention to complaints of sexual bias in the police response to sexual assault victims and the handling of sex crime investigations—for example, high rates of “unfounding” cases (essentially, a statement that the police do not believe that a crime occurred). The recent consent decree in New Orleans requires clear and detailed policies for each stage in the response to a sex offense call; protocols for forensic examinations of victims and suspects; specialized training for detectives; supervisory review of unfounded or other complaints that are coded as non-criminal; creation of a Sexual Assault Response Team; and development of a system for external review of cases.

- **Police interactions with persons with mental illness:** Consent decrees in Seattle, New Orleans, Cincinnati, Los Angeles, and Portland, OR include provisions on the police response to persons with mental illness. These provisions are designed to prevent unnecessary use of force against these persons. In Seattle, for example, the consent decree calls for specialized training, policies and protocols; training of officers in “Crisis Intervention”; and training of dispatchers to recognize calls that may involve persons in crisis with mental illness.
- **Accepting the DOJ role may speed the process:** When DOJ completes an investigation and finds Constitutional violations, it typically enters into negotiations with the jurisdiction to discuss strategies for achieving reforms. Agencies that have been through this process say that embracing the need for reforms from the start can help speed the process.
- **Be careful to define the terms clearly:** Police chiefs also emphasize that defining the terms of any agreement with DOJ is extremely important, because a lack of specificity, or agreeing at the start to an impractical reform plan, may result in years of delay in achieving compliance.
- **Hire someone with experience in such investigations:** A city entering into negotiations with DOJ may wish to bring in an official who has been through the entire process of writing and implementing a consent decree in another city.
- **The choice of a monitor is extremely important:** The choice of a court-appointed monitor is very important. Some departments have had good experiences with monitors, and others have not.
- **Choose experts carefully:** DOJ subject matter experts have sometimes been criticized for lacking experience in running police agencies of the type or size that they are advising, or for not keeping up with current advances in policing.
- **Defining “compliance” is difficult:** DOJ consent decrees are not terminated until the agency

achieves compliance with the terms of the agreement. Defining “compliance” has proved difficult, in part because certain issues, such as investigations of police use of force, do not lend themselves to evaluation on a numerical scale.

However, a number of consent decrees have defined compliance as showing that a given requirement is met 95 percent of the time over a period of two years. Definitions of compliance in DOJ consent decrees are evolving, according to DOJ officials.

- **The costs are often high—but the costs of failing to implement reforms can also be high:** The costs of achieving compliance, and the legal costs paid to monitors, are sometimes contentious. Some chiefs believe that consent decrees that continue for many years have been too costly, and that rules about achieving 95-percent compliance for a two-year period are overly strict. On the other hand, some chiefs say that the costs, while high, are worth it, in terms of improving police departments as well as reducing lawsuits that can also be costly.
- **Some chiefs say that a DOJ investigation can help to overcome political opposition to reforms:** Some police chiefs have welcomed or requested DOJ investigations, because a federal investigation can force otherwise-reluctant local elected officials to provide funding that is needed to implement reforms. In addition, requirements of a court-approved consent decree can overrule labor union opposition to certain changes in policies or practices.
- **The 3 Key Reforms: Policies, Training, and a System for Detecting Problems:** DOJ officials say that the keys to avoiding a federal investigation and consent decree include the following: (1) Adopting strong policies on key issues such as use of force; (2) Ensuring that officers are trained and managed so the policies will be followed; and (3) Developing management and supervision measures, such as an Early Intervention System, to help managers detect and respond to problems as they develop.

# Resources

## Special Litigation Section Documents

The Justice Department's Civil Rights Division, Special Litigation Section has a website that provides links to scores of documents that detail the results of past investigations.

The Special Litigation Section's homepage:  
<http://www.justice.gov/crt/about/spl/>

The "Cases and Matters" tab provides information about investigations of state and local law enforcement agencies as well as other Special Litigation Section investigations, such as those in the areas of juvenile offenders and disability rights:  
<http://www.justice.gov/crt/about/spl/findsettle.php>

The "Law Enforcement Agencies" sub-tab provides links to Case Summaries, Findings Letters, Technical Assistance Letters, Complaints, Memoranda of Understanding, Consent Decrees, and other documents in the following cases: Alamance County, NC Sheriff's Office; Beacon, NY Police Department; Detroit Police Department; East Haven, CT Police Department; Easton, PA Police Department; Escambia County, FL Sheriff's Office; Harvey, IL Police Department; Inglewood, CA Police Department; Lorain, OH Police Department; Los Angeles Police Department; Maricopa County, AZ Sheriff's Office; District of Columbia Metropolitan Police Department; University of Montana Office of Public Safety and Missoula Police Department; New Orleans Police Department; Orange County, FL Sheriff's Office; Portland, OR Police Bureau; Puerto Rico Police Department; Schenectady, NY

Police Department; Seattle Police Department; Suffolk County, NY Police Department; Virgin Islands Police Department; Warren, OH Police Department; Yonkers, NY Police Department; Los Angeles County Sheriff's Department; and other matters.  
<http://www.justice.gov/crt/about/spl/findsettle.php#police>

The Special Litigation Section's "Archives" sub-tab includes documents about closed cases involving: Austin, TX Police Department; New Jersey State Police; Prince George's County, MD Police Department; Buffalo, NY Police Department; Bakersfield, CA Police Department; Cincinnati Police Department; Mt. Prospect, IL Police Department; Villa Rica, GA Police Department; Cleveland Division of Police; Alabaster, AL Police Department; Portland, ME Police Department; Miami Police Department; Steubenville, OH Police Department; Columbus, OH Division of Police; Highland Park, IL Police Department; and Pittsburgh Bureau of Police.  
[http://www.justice.gov/crt/about/spl/split\\_archive\\_findsettle\\_2004.php](http://www.justice.gov/crt/about/spl/split_archive_findsettle_2004.php)

The City of Oakland, CA reached a settlement agreement in the so-called "Riders" case, in a case that was not brought by the U.S. Justice Department, but rather by a group of more than 100 plaintiffs who said their rights had been violated. The text of the Negotiated Settlement Agreement and related information is available on the website of the City of Oakland at  
<http://www2.oaklandnet.com/Government/o/OPD/o/BureauofInvestigation/DOWD004998>.

## COPS Office Report

*Collaborative Reform Process, A Review of Officer Involved Shootings in Las Vegas*, is available at [http://www.cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process\\_FINAL.pdf](http://www.cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf).

This report details the findings and recommendations from the first review of a police department in the Justice Department's new technical assistance program by the Office of Community Oriented Policing Services.

## PERF Reports

Throughout its history, PERF has made police use of force a core issue and a priority for research and policy development. Preventing biased policing has also been a key issue for PERF. Following are a number of PERF reports on these subjects, which have figured in many DOJ consent decrees:

*An Integrated Approach to De-Escalation and Minimizing Use of Force (2012)*

This report provides information about policies, practices and programs to reduce and prevent police use of force against persons with mental illness or other conditions that can cause them to behave erratically and in a threatening manner. [http://policeforum.org/library/critical-issues-in-policing-series/De-Escalation\\_v6.pdf](http://policeforum.org/library/critical-issues-in-policing-series/De-Escalation_v6.pdf)

*Improving the Police Response to Sexual Assault (2012)*

This report covers many of the issues that are being investigated by the DOJ Civil Rights Division regarding the police response to sexual assault victims and the investigation of sex offenses, including strategies for preventing the unwarranted “unfounding” of cases, and Philadelphia’s model program for external auditing of sex crime investigations. [http://policeforum.org/library/critical-issues-in-policing-series/SexualAssaulttext\\_web.pdf](http://policeforum.org/library/critical-issues-in-policing-series/SexualAssaulttext_web.pdf)

*2011 Electronic Control Weapon Guidelines*

<http://www.policeforum.org/library/use-of-force/ECWguidelines2011.pdf>

*Strategies for Resolving Conflict and Minimizing Use of Force (2007)*

[http://www.policeforum.org/library/critical-issues-in-policing-series/ResolvingConflict\\_v8.pdf](http://www.policeforum.org/library/critical-issues-in-policing-series/ResolvingConflict_v8.pdf)

*Supervision and Intervention Within Early Intervention Systems: A Guide for Law Enforcement Chief Executives (2005)*

<http://www.policeforum.org/library/early-intervention-systems/Chief%27s%20Guide%20EIS.pdf>

*Deadly Force: What We Know—A Practitioner’s Desk Reference on Police-Involved Shootings (1992)*.

Police Executive Research Forum.

<http://www.policeforum.org/bookstore/>

*Understanding Race Data from Vehicle Stops: A Stakeholder’s Guide (2005)*.

[http://www.policeforum.org/library/racially-biased-policing/stakeholders-guide/Stakeholders\\_v3\\_links%5B1%5D.pdf](http://www.policeforum.org/library/racially-biased-policing/stakeholders-guide/Stakeholders_v3_links%5B1%5D.pdf)

*By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops (2004)* by Lorie Fridell.

<http://www.policeforum.org/library/racially-biased-policing/by-the-numbers/BytheNumbers%5B1%5D.pdf>

*Racially Biased Policing: A Principled Response (2001)*

<http://www.policeforum.org/library/racially-biased-policing/a-principled-response/RaciallyBiasedPolicingfull%5B1%5D.pdf>

Additional materials on preventing biased policing available at:

<http://www.policeforum.org/library/?folderPath=/library/racially-biased-policing/a-principled-response/#documents>

and

<http://www.policeforum.org/library/?folderPath=/library/racially-biased-policing/supplemental-resources/#documents>

# About the Police Executive Research Forum

THE POLICE EXECUTIVE RESEARCH FORUM (PERF) is a professional organization of progressive chief executives of city, county and state law enforcement agencies. In addition, PERF has established formal relationships with international police executives and law enforcement organizations from around the globe. PERF's membership includes police chiefs, superintendents, sheriffs, state police directors, university police chiefs, public safety directors, and other law enforcement professionals.

Established in 1976 as a nonprofit organization, PERF is unique in its commitment to the application of research in policing and the importance of higher education for police executives. PERF has developed and published some of the leading literature in the law enforcement field. The "Critical Issues in Policing" series provides up-to-date information about the most important issues in policing, including several recent reports on the impact of the economic downturn on police agencies.

Other Critical Issues reports have explored the role of local police in immigration enforcement, the police response to gun and gang violence, "hot spots" policing strategies, and use-of-force issues. In its 2009 book *Leadership Matters: Police Chiefs*

*Talk About Their Careers*, PERF interviewed 25 experienced police chiefs about their strategies for succeeding as chiefs and working well with their mayors, their officers, and their communities. PERF also explored police management issues in "Good to Great" Policing: *Application of Business Management Principles in the Public Sector*.

Other publications include:

*Managing a Multijurisdictional Case: Identifying Lessons Learned from the Sniper Investigation* (2004);

*Community Policing: The Past, Present and Future* (2004);

*Racial Profiling: A Principled Response* (2001);

*Recognizing Value in Policing* (2002);

*Managing Innovation in Policing* (1995);

*Crime Analysis Through Computer Mapping* (1995);

*And Justice For All: Understanding and Controlling Police Use of Deadly Force* (1995); and

*Why Police Organizations Change: A Study of Community-Oriented Policing* (1996).

**To learn more about PERF, visit [www.policeforum.org](http://www.policeforum.org).**

*We provide progress in policing.*



# About Motorola Solutions and the Motorola Solutions Foundation

MOTOROLA SOLUTIONS IS A LEADING PROVIDER of mission-critical communication products and services for enterprise and government customers. Through leading-edge innovation and communications technology, it is a global leader that enables its customers to be their best in the moments that matter.

Motorola Solutions serves both enterprise and government customers with core markets in public safety government agencies and commercial enterprises. Our leadership in these areas includes public safety communications from infrastructure to applications and devices such as radios as well as task specific mobile computing devices for enterprises. We produce advanced data capture devices such as barcode scanners and RFID (radio-frequency identification) products for business. We make professional and commercial two-way radios for a variety of markets, and we also bring unlicensed wireless broadband capabilities and wireless local area networks—or WLAN—to retail enterprises.

The Motorola Solutions Foundation is the charitable and philanthropic arm of Motorola Solutions. With employees located around the globe, Motorola Solutions seeks to benefit the communities where it operates. We achieve this by making strategic grants, forging strong community partnerships, and fostering innovation. The Motorola Solutions Foundation focuses its funding on public safety, disaster relief, employee programs and education, especially science, technology, engineering and math programming.

Motorola Solutions is a company of engineers and scientists, with employees who are eager to encourage the next generation of inventors. Hundreds of employees volunteer as robotics club mentors, science fair judges and math tutors. Our “Innovators” employee volunteer program pairs a Motorola Solutions employee with each of the non-profits receiving Innovation Generation grants, providing ongoing support for grantees beyond simply funding their projects.

**For more information on Motorola Solutions Corporate and Foundation giving, visit [www.motorolasolutions.com/giving](http://www.motorolasolutions.com/giving).**

**For more information on Motorola Solutions, visit [www.motorolasolutions.com](http://www.motorolasolutions.com).**

**APPENDIX**  
**Participants at the PERF Summit**  
**“Civil Rights Investigations of Local Police:**  
**Lessons Learned”**

**October 25, 2012, Washington, D.C.**

**Inspector General Carlos Acosta**  
PRINCE GEORGE'S COUNTY, MD  
POLICE DEPARTMENT

**Professor Geoff Alpert**  
UNIVERSITY OF SOUTH CAROLINA

**Director Michael Alston**  
OFFICE FOR CIVIL RIGHTS,  
OFFICE OF JUSTICE PROGRAMS (USDOJ)

**Chief Steve Anderson**  
METROPOLITAN NASHVILLE  
POLICE DEPARTMENT

**Deputy Chief Dean Andrews**  
CHICAGO POLICE DEPARTMENT

**Assistant Chief Jose Banales**  
SAN ANTONIO POLICE DEPARTMENT

**Program Specialist**  
**Ginger Baran Lyons**  
OFFICE ON VIOLENCE AGAINST WOMEN  
(USDOJ)

**Supervisory Special Agent**  
**Jacques Battiste**  
FBI

**Commissioner Tony Batts**  
BALTIMORE POLICE DEPARTMENT

**Former Commissioner**  
**Frederick Bealefeld**  
BALTIMORE POLICE DEPARTMENT

**Chief Operating Officer**  
**Kenneth Bouche**  
HILLARD HEINTZE

**Police Attorney Patricia Bradley**  
FAYETTEVILLE, NC POLICE DEPARTMENT

**Colonel Joseph Burris**  
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**Captain James G. Jones**  
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Titles reflect participants' positions at the time of the meeting in October 2012.



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