

INSTITUTIONAL REFORM LITIGATION IN POLICING:
AN ANALYSIS OF POLICE PATTERN AND PRACTICE LITIGATION

by

CHRISTOPHER W. ORTIZ

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York.

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April 5, 2006
Date

Dr. Dennis J. Kenney
Chair of Examining Committee

April 5, 2006
Date

Dr. Todd Clear
Executive Officer

Dr. Michael P. Jacobson

Dr. William J. Heffernan
Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

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CHRISTOPHER W. ORTIZ

Advisor: Dr. Dennis J. Kenney

Beginning with *Brown v. Board of Education*, broad judicial relief known as institutional reform litigation became a means to advance the rights of traditionally under-represented groups. Since that time, it has been used to reform public education systems, mental health facilities, foster care systems, and prison systems in the United States. Most recently, institutional reform litigation has been employed as a tool to reform police systems accused of tacitly allowing misconduct and unconstitutional treatment to exist within their ranks.

This study analyzes the process and potential outcomes of institutional reform litigation in policing through the study of five police organizations currently undergoing institutional reform. This study begins with an analysis of the extant case law surrounding institutional reform litigation in policing. This is followed by a content analysis of the complaints and reform instruments in each of the five existing policing cases. Lastly, the potential outcomes and effects of institutional reform litigation are assessed. This is accomplished through a secondary analysis of two waves of a citizen survey and the administration and analysis of an officer survey from an agency that experienced institutional reform litigation.

The results demonstrate that, unlike other institutional reform examples, institutional reform litigation in policing could not be undertaken until new legislation was passed. Once promulgated, this legislation allowed the federal government entrée into police organizations accused of allowing two distinct types of misconduct; traditional misconduct and disparate treatment misconduct. The results also reveal that regardless of the misconduct alleged, the managerial omissions remained consistent and appeared to be the more actionable complaint. Finally, the results of the surveys demonstrate that citizens and police officers hold differing opinions of the impacts of institutional reform litigation, but in the end, citizens appear to perceive vast improvements in policing across dimensions of effectiveness and treatment of citizens. This work concludes with a discussion of the legitimacy of the policy of institutional reform litigation in policing.

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Introduction

The 1994 Violent Crime Control and Law Enforcement Act brought forth many sweeping changes to the criminal justice system in the United States. This piece of crime legislation was the largest of its kind ever promulgated with just over \$32 billion dollars earmarked for distribution to state and local governments (D’Olivio, 2005). In addition to this large sum of money, this act also introduced many substantive policy changes such as the expansion of the federal death penalty and the lengthening of sex offender imprisonment terms (Williams, 2005). When taken together, the vast funding opportunities and the substantive policy changes allowed this act to touch upon all aspects of the criminal justice system from corrections to the judiciary to policing.

In contrast to these more visible examples, the majority of the provisions contained within the act received little to no attention. One such overlooked provision was section 14141 of the bill, the police “pattern and practice” litigation section. Section 14141 was conceived as the federal government’s first substantive tool for combating police misconduct. As codified, 42 U.S.C. § 14141 reads:

(a) Unlawful conduct: It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General: Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Specifically, section 14141 granted the federal government standing to bring suit against any governmental authority, including police departments, found to be engaging in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. In addition to outlining prohibitive behavior, this section also enumerated retributive action. The second half of section 14141 empowered the Attorney General to seek civil action in order to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.” (42 U.S.C. §14141). Armed with this statute, the federal government initiated a policy of intervening into the operational practices of local police agencies.

This seemingly innocuous section of the Crime Control and Law Enforcement Act of 1994 actually had far reaching implications on the management and accountability of law enforcement agencies nationwide. Section 14141, with its prohibitions and prescriptive relief, formally ushered in a new era of institutional reform litigation as an instrument for reforming local police departments.

Problems in the empirical understanding of institutional reform litigation in policing

Since the signing of the act, diverse agencies from a wide cross-section of the country have found themselves subjected to the scrutiny of pattern and practice investigations. According to the Department of Justice (DOJ), its Special Litigation Section has initiated pattern and practice investigations in over seventy jurisdictions (U.S. Dept. of Justice, 2004). As of 2006, federal pattern and practice lawsuits have been initiated in and settled through consent decrees in five police jurisdictions; Steubenville

(Ohio) Police Department, the Pittsburgh (Pennsylvania) Bureau of Police, the New Jersey State Police, the Los Angeles (California) Police Department, and the Detroit (Michigan) Police Department.

On its surface, the policy of federal intervention into local police department practices through institutional reform litigation and its resultant consent decrees appears to be another avenue for bringing accountability to the police, but the reality is that very little is known about the structure, function, and implications surrounding this practice. History is replete with examples of institutional reform litigation efforts that have both succeeded and failed (Blakely, 1997; Geller, Fisher, Wirth and Simon, 1990). Many times, reaching a consensus on even this point remains elusive, with some scholars and practitioners calling the judicially inspired reformation a powerful social reform success and others calling it a complete failure (Rosenberg, 1991; Sandler and Schoenbrod, 2003).

In either event, what scholars do agree upon is that the empirical understandings surrounding this policy are scant at best (Walker, 2005). What is known about this policy stems from two research endeavors involving the first two police departments to be sued under the pattern and practice statute; the Pittsburgh (PA) Bureau of Police and the Steubenville (OH) Police Department. The first empirical study involved a cursory review of the consent decrees in both departments. Relying upon a content analysis of the two consent decrees, Livingston (1999) concluded that based upon the reforms mandated, pattern and practice litigation had the ability to bring about broad progressive changes to many local police departments. But, as pointed out, this conclusion was based solely on the content analysis of two consent decrees. The lack of any substantive field

research makes this finding questionable at best. In fact, the author of this work is forthright about the shortcomings of her analysis. In the third paragraph of the work, the author states, “This essay does not purport to provide an empirical account of the effects—beneficial and deleterious, anticipated and unanticipated—that section 14141 has already had on the affairs of local police. The law is too recent for such an assessment...” (Livingston, 1999).

Vera Institute of Justice researchers attempted to cure the problems of the earlier research by utilizing quantitative and qualitative data collection techniques in their analysis of the implementation of the institutional reform consent decree in the Pittsburgh (PA) Bureau of Police. Vera’s work helped to shed some light on the issues surrounding pattern and practice reform litigation, but their work was focused in a different empirical direction than the project set forth here. According to Vera’s researchers, their work was conducted in an effort to “understand how Pittsburgh officials responded to the consent decree and what lessons others might take away from this experience” (Davis, Ortiz, Henderson, and Miller, 2002, p. 3). The narrow focus of the Vera project was highlighted in a recent presentation given by the principal investigator during which he explained that there is still very little knowledge surrounding the process and effects of section 14141 pattern and practice litigation and its ability to reform police agencies remains largely unknown.¹

Ultimately, very little is known about the subject of institutional reform litigation involving local police practices. What behaviors is the federal government concerned with? What reforms are mandated in consent decrees? Does the United States

¹ Rob Davis, February 10, 2005: Pattern and Practice litigation: Ten years later. Washington, DC: Office of Community Oriented Police Services Conference.

Department of Justice have a particular reform agenda or strategy that they are trying to push forward through their use of institutional reform litigation? What effect do these reforms have on the operational culture within a police agency? Do consent decrees appear to be a viable source of police reform and accountability? The answers to these and other questions concerning the policy of federal pattern and practice reform litigation remain largely unknown and unexplored.

Research goals and objectives

This project seeks to explore many of these questions through the analysis of five existing police pattern and practice reform decrees. This exploratory analysis will focus on issues surrounding the need for the pattern and practice statute, the structuring of the relief instrument (consent decree), and the effect of the reform measures on the involved police agencies. Specifically, this project will answer three main research questions:

1. Why was new legislation needed in order for the federal government to take affirmative action against police agencies accused of misconduct and abuse?
2. What are the typical allegations and reforms involved in federal “pattern and practice” institutional reform litigation?
3. What is the effect of institutional reform litigation on the operational culture of a police department?

In order to fully explore these research questions, this project will utilize a multimethodological approach which includes aspects of content analysis, survey research, and secondary analysis of preexisting data. The first part of this research will attempt to analyze why the federal government remained powerless to intervene in cases of rampant police misconduct prior to the passage of the pattern and practice statute. This will be achieved through a review of the extant case law surrounding the early

attempts to initiate institutional reform litigation in policing. The second part of this project will focus on the structure of institutional reform litigation in policing. This will be completed by analyzing the content of five existing institutional reform consent decrees. The third and final part of this project will focus on the implications of the policy of institutional reform litigation on police and citizens alike. This will be done by reanalyzing data from a Vera Institute of Justice/Office of Community Oriented Police Service study of the first police agency to successfully navigate a consent decree. Utilizing data collected from the Pittsburgh Bureau of Police, this study will examine citizen survey data in an effort to gauge the impact of the consent decree on community perceptions of police effectiveness. Finally, a survey of officers working in a police department operating under a federal consent decree will be conducted in an effort to gauge officer attitudes and perceptions about the policy of federal intervention through institutional reform litigation and the consequences of consent decrees within local police agencies.

Implications for knowledge and practice

The project laid out in the following pages and chapters is intended to inform practitioners and scholars alike. From the practitioner's standpoint, it is hoped that this project will be utilized by the Department of Justice, presiding judges, and police managers to inform their decisions concerning pattern and practice reform litigation. It is expected that this project will inform the field on issues pertaining to the perceptions of citizens about the policy and effects of pattern and practice litigation. It is also expected that this project will help to inform the field about the perceptions of officers working in

police agencies involved in pattern and practice reform. Lastly, it is hoped that this project will help to identify some unintended consequences associated with this practice and that this will serve as a departure point for future police leaders attempting to mitigate the potential negative consequences associated with pattern and practice reform litigation.

From a scholar's standpoint, it is anticipated that this project will help to explore the relatively new practice of federal litigation against local police departments. It is hoped that this work will provide empirical knowledge about the latest example of the use of institutional reform litigation; police pattern and practice litigation. This knowledge will be used to inform the continuing story laid out by other works dealing with institutional reform litigation in schools, prisons, and psychiatric hospitals. Additionally, this work represents the next logical step in the scholarly understanding of police accountability. It is expected that the work presented here will inform the scholarly knowledge base by adding a cursory evaluation/understanding of police pattern and practice litigation as a source for police accountability. Finally, this exploration is fully expected to identify other important avenues for research. Perhaps this project's most important implication for knowledge rests in its ability to move the discourse of this policy forward by highlighting important avenues for future research through the presentation of a strong grounded understanding of the policy of police pattern and practice litigation.

Assumptions and limitations

This project is intended to be an exploratory analysis of the policy of federal police reform litigation. As such, it should not be anticipated that this project will provide a definitive evaluation of the successes and failures associated with this policy. Rather, it is hoped that this piece will inform policy decisions made concerning the continued or discontinued use of institutional reform litigation in policing. In addition, it is hoped that this piece will provide a grounded understanding behind the promulgation and implications of the policy of pattern and practice reform, an understanding that can be significantly built upon through further research that will be suggested in the conclusion of this work.

Finally, as mentioned above, this piece ranges from the purely exploratory to the merely descriptive. Therefore, it is not guided by a larger theoretical framework, although this must be stated with a caveat. The core of this work will be informed by the scholarly discourse surrounding two important subjects; institutional reform litigation and police accountability. Whenever possible and/or applicable, reference will be made to various theories stemming from the work already conducted in these two substantive areas. It is expected that this will assist the reader in placing the police experience within the context of institutional reform litigation and will aid in ranking the policy of federal intervention as a police accountability measure.

Conclusion

The goal of this work is to present the reader with a grounded understanding of the process and potential impact of institutional reform litigation in policing. Many

volumes have been written about institutional reform litigation in schools, prisons, mental health facilities, and as a general process, but to date, there has been no works written that discuss the use of this tool in police agencies. This work intends to be the first.

In being the first, this work must necessarily address the background issues in sufficient detail in order to educate the reader about the diverse issues present in the reformation of police agencies through institutional reform litigation. These issues include an understanding surrounding institutional reform litigation, police accountability and reform, and how the two blend into the reform litigation efforts being undertaking in policing. Once accomplished, this work will move on to an empirical discussion of this policy through the analysis of multiple data sources from police agencies in the throes of institutional reform litigation.

Thus, the structure of this work is as follows. Chapter one will present the reader with a detailed understanding of the rise and continued use of institutional reform litigation. This chapter will define this term and fix its position in governmental policy making. It will accomplish this by utilizing the example of the institutional reform litigation efforts in two of the most significant institutions in the United States; schools and prisons. Chapter two discusses the current understanding surrounding the failures of police accountability and reform efforts. This discussion will focus on the contemporary criticisms of each method ultimately highlighting the need for institutional reform litigation efforts in policing. Chapter three will discuss the use of institutional reform litigation currently underway in policing. This chapter will begin with a discussion of the early attempts to reform internal hiring and promotional policy in police departments and continue on to “pattern and practice” reform. Chapter four will outline the methods and

research questions involved in this work's empirical analysis. Chapter five will present the findings from an analysis of the relevant case law seeking to derive why new legislation was needed before institutional reform litigation could take hold in police agencies. Chapter six will present the findings from a content analysis of the institutional reform instruments utilized in the first five police agencies to enter into consent decrees. Chapter seven will present findings from an analysis of citizen and officer survey data collected from a police agency currently undergoing reform stemming from institutional reform litigation. Chapter eight will conclude this work. It presents the reader with a detailed discussion of the process of institutional reform litigation in policing as a police accountability and reform method and includes a more general discussion of the process as a governmental policy.

Chapter 1

Institutional reform litigation

This chapter examines the history of institutional reform litigation. It traces this history through the example of two of the most prominent institutions to undergo deliberate and widespread judicial reform intervention in the United States; the educational system and the prison system. This chapter is intended to present the reader with a firm understanding of the logic and theory behind institutional reform litigation upon which to ground the current example of police pattern and practice reform litigation. This will be accomplished by blending the thoughts, opinions, and experiences of numerous scholars and practitioners into a coherent framework outlining the rise and use of institutional reform litigation by the judiciary in the United States.

Institutional reform litigation defined

Institutional reform litigation is the name given to the process of reforming public organizations through the use of judicial intervention. Various names have been forwarded to describe this process, but whether termed public law litigation, structural reform litigation, or institutional reform litigation, the process and its results are often the same. Chayes (1976) presents the most comprehensive definition of institutional reform litigation to date. He accomplishes this by contrasting it with the traditional model of judicial intervention in private disputes. According to Chayes, traditional litigation involves private parties “locked in controversy” that is “retrospective” and “bounded in time” (1978, p.4). The goal of this controversy is often reparations for an injury received. Chayes contrasts this private action against institutional reform litigation by stating:

“In [institutional reform litigation], the subject matter of the litigation is not a dispute between private parties, but a grievance about the content or conduct of policy—most often governmental policy, but frequently the policy of nongovernmental aggregates. Again, this characteristic dictates the main features of the litigation. First, the party structure and the matter in controversy are both amorphous, defined ad hoc as the proceedings unfold rather than exogenously determined by legal theories and concepts. Second, the temporal orientation of the lawsuit is prospective rather than historical. Third, because the relief sought looks to the future and is corrective rather than compensatory, it is not derived logically from the right asserted. Instead, it is fashioned ad hoc, usually by a quasi-negotiating process. Fourth, prospective relief implies continuing judicial involvement. And because the relief is directed at government or corporate policies, it will have a direct impact that extends far beyond the immediate parties to the lawsuit. All of these features press the trial judge into an active stance, with large responsibilities for organizing the case and supervising the implementation of relief.” (Chayes, 1982, p.4)

Through the operation of this definition, it becomes evident that institutional reform litigation differs from traditional litigation in important tangible processes such as the structure of the relief and formation of the injury. But intangible differences are also evident. One such difference is the inherent goal of the litigation. According to Nichol (1993), “these lawsuits seek the vindication of constitutional and statutory interests, not a private, common law right...[and are] designed to alter future behavior, not pay for prior wrongs” (p. 1166). Therefore, a differentiating theme is the structure and goal of the relief sought. Gilles (2003) gives an account of what she saw as the goals of the plaintiffs involved in institutional reform litigation in the educational setting. According to Gilles (2003), “The plaintiffs in these cases sought remedies that went well beyond traditional penalties. Arguing that the violations of their rights could not be cured with mere monetary penalties, these plaintiffs sought judicial decrees mandating the reformation of various institutions to bring them into conformity with constitutional requirements” (p. 143).

Low and Jefferies (1994) offer up a similar deductive strategy for defining the key parameters involved in institutional reform litigation. In their introductory paragraph to the topic, they outline what is entailed in traditional private litigation and contrast that with the following definition of what they call structural reform litigation:

“Structural reform litigation, by contrast, is not merely a dispute resolution. It is a means of participating in government. It is an attempt to vindicate constitutional values in the context of large-scale organizations that affect the rights of many people. Often numerous interests are represented, by intervention or otherwise in complex and extended judicial proceedings. The remedy sought is systemic in nature- typically an injunction that requires affirmative steps to prevent constitutional violations from occurring. The objective is not merely to prevent recurrence of specific wrongs, but to reform institutional structures so as to reduce the future threat to constitutional rights.” (Low and Jefferies, 1994, p. 721-22)

This definition is much broader in scope than that of Chayes. Low and Jefferies view institutional reform litigation as a process of government whereby ordinary citizens are able to vindicate constitutional values. They also chart the full breadth of reform, specifically, systemic reformation of institutional structures.

Taken together, the combination of these two definitions allows us to gain a more comprehensive understanding of what is meant by the term institutional reform litigation than if each were to stand alone. Initially, it must be understood that institutional reform litigation is different from traditional litigation in many respects. Although it has its locus in the same species, it is a vastly different animal. Secondly, institutional reform litigation involves the behavior of public entities, whether in the form of public service organizations such as schools and prisons or in the form of large publicly held corporations, rather than private litigants. This behavior often affects large groups of people extending well beyond those named in the suit. Therefore, the dispute becomes

unconstrained and no longer is bounded by the injury at hand. This allows the corrective thrust of the litigation to affect many beyond the original complainant. Finally, the goal of institutional reform litigation is the prospective reformation of the functioning of public institutions through affirmative policy changes. The end game of the litigation is systemic corrective relief from perceived faulty institutions accused of perpetrating constitutional harms. This corrective relief is had through a process of negotiation and continuing judicial involvement via monitoring and/or special masters. In sum, institutional reform litigation is litigation undertaken by public or private actors with the inherent goal of reforming public institutions accused of violating broad constitutional or civil rights. Invariably, this reformation has been carried out through the use of proscriptive injunctions often referred to as consent decrees.

The structure of institutional reform litigation

As pointed out in the definitions presented above, institutional reform litigation is concerned with forward-looking protracted reform. The reform effort is usually concentrated at the core guiding principles of the accused institution; its set of values, its policies, its manner of doing business. This reformation is achieved in two distinct ways; through the drafting of formal agreements called consent decrees outlining the changes to be made and through the continued monitoring of progress by court appointed monitors, auditors, or special masters.

Consent decrees

A consent decree is an enforceable agreement reached between two parties involved in a lawsuit. The agreement is binding and serves to settle the dispute at issue

and all subsequent claims. Usually, both the plaintiff organization and the defendant institution are involved in the negotiation of the specific provisions contained within the decree (Sandler and Schoenbrod, 2003), but ultimately, the final document is drawn up by an officer of the court. Upon entering a decree, both parties become subject to the court and must utilize the court for any clarification purposes (Rosenberg, 1991). Upon satisfactory compliance, the defendant institution can appeal to the court for the dissolution of the consent decree. If the defendant institution fails to satisfy its part of the consent decree, the plaintiff organization can appeal to the court for the reinstatement of the original lawsuit and the continuation of the trial. In addition, as it is an order of the court, the offending party can be held in contempt for failure to follow the decree's stipulations.

In essence, consent decrees outline the reformation plan to be followed. Through these documents, the tenor and pace of the reform effort is charted for all to see. It is to this plan that the institution will ultimately be held accountable. Sandler and Schoenbrod (2003), describe consent decrees as "long-term plans for the operation of the governmental institution that is the target of the suit. Typical arrangements include detailed specifications of tasks to be performed by particular people or offices, due dates and interim milestones, periodic reporting requirements, and an obligation to meet and iron out problems" (p. 127-8). In this sense, they are different from traditional injunctions in that they not only outline prohibitive behaviors, but also forward corrective actions. "Rather than enjoining the defendant institution from acting in a particular unconstitutional fashion, [consent decrees] order forward-looking, affirmative steps be taken to prevent future deprivations" (Gilles, 2003, p. 1385).

Scholars have pointed out that the formulation of consent decrees requires a delicate ability to balance governmental authority and the rights of institutions to govern themselves. If made too inflexible, consent decrees can potentially usurp the democratic process and disregard the will of the people. If made too loose, they may deed away their structure and power altogether. Palfrey (2002) echoes these concerns in his article critiquing the school desegregation efforts after *Brown v. Board of Education*. According to Palfrey (2002), the court “must avoid overstepping the boundaries of its expertise and authority, without abdicating its responsibility for ensuring that constitutional rights will be vindicated and constitutional duties will be fulfilled.” (p. 38). Palfrey goes on to note that the reforms forwarded must operationalize the constitutional values in question in addition to remaining highly flexible and individualized in order to adjust to a changing community.

Consent decrees are not new to the arena of jurisprudence. They have been widely utilized to settle disputes arising between private corporations and local governments. Consent decrees have been utilized to settle pollution claims, health care issues, child welfare issues, civil rights cases, and unfair hiring claims (Sandler and Schoenbrod, 2003; Rosenberg, 1991).

In addition to their use in these areas, consent decrees have been utilized in the criminal justice system. For example, consent decrees have a long history of use within the correctional systems and prisons across the United States. Litigation concerning the treatment of prisoners has historically been settled through the use of negotiated consent decrees (Feeley and Rubin, 1998). Consent decrees have also been utilized as settlement instruments in police departments, but the issues were traditionally limited to fair and

equal employment practices. A more detailed history of the use of consent decrees in the criminal justice system will appear later in this volume.

The monitoring process

Whereby consent decrees outline the necessary changes to be made, the monitoring process ensures that these changes will actually occur. As we will see, it is the process of ensuring the change that is by far the most challenging aspect of this litigation strategy. By its very nature, institutional reform litigation sets the ambitious and often difficult goal of creating social reform; reform that often rocks the traditions and changes the histories of the organization it is directed at. Deep-rooted social reform of this level takes an immense amount of power and persuasion to produce. This was especially true in the example of school desegregation. But as pointed out by some observers of the court, the judiciary may lack the necessary power to enforce their mandates (Powers and Rothman, 2002). This idea was most eloquently expressed in the writings of Thomas Hamilton. Rosenberg (1991) effectively quotes Hamilton to express the idea that the courts have traditionally been thought to have little control over the enforcement of their will. He writes:

“But as Hamilton pointed out two centuries ago in *The Federalist Papers* (1787-88), courts lack such [enforcement] powers. Indeed, it is for this reason more than any other that Hamilton emphasized the courts’ character as the least dangerous branch. Assuaging fears that the federal courts would be a political threat, Hamilton argued in *Federalist 78* that the judiciary “has no influence over either the sword or the purse; no direction either of strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments” (*The Federalist Papers* 1961,465 as quoted in Rosenberg, 1991).

At the time of their authorship, Hamilton's words were both an accurate and insightful commentary on the powers of the judicial system. The courts did not command an army or cadre of judicial police. The courts were armed only with logic, law, and opinion. This would come to change with the advent of institutional reform litigation. According to Horowitz (1983), "The assumptions carried by the traditional model into institutional reform litigation are easily stated. A decree, when rendered, demands compliance. If the requirements of a decree were not fulfilled, there must be noncompliance, typically because of bureaucratic intransigence. To achieve compliance, some combination of coercion (or threat of coercion), persistence, and expertise... is necessary." (Horowitz, 1983, p. 1295). In institutional reform litigation, the coercion that Horowitz speaks of has been ensured by the process of judicial monitoring.

The need for a judicial monitoring process was first recognized in the school desegregation example. The difficulties involved in the desegregation of schools after the decision rendered in *Brown v. Board of Education* had shown the court that it sometimes needed to gnash its teeth, but first that it needed to grow teeth. In addition to creating a system whereby the court could monitor and enforce mandated reforms, the court also realized that it needed to ensure that it had the requisite knowledge to intervene in the complex social and governmental institutions. As Palfrey (2002) points out, "Beyond setting outcome-based goals and input-based minima, actually deciding what measures are necessary to implement reform requires a level of expertise courts simply do not possess." (p. 43). But, the court often was not capable of possessing the level of intimate knowledge about the systems of the particular institution in question necessary to proffer informed reform decisions. Special masters, auditors, and monitors often

times fill these gaps in knowledge and understanding, allowing the courts to possess intimate knowledge on an adjunct basis. Additionally, the overwhelming difficulties entailed in the battle to desegregate public schools demonstrated that if the court was to take institutional reform litigation seriously, it needed to retain jurisdiction over the cases in order to influence the direction of the reform process. Shortly after the school desegregation efforts, the courts began to pack their institutional reform litigation efforts with mechanisms meant to ensure ongoing compliance. According to Rosenberg (1991), “One such mechanism is court appointments of special masters to fill in many of the courts’ structural weaknesses. Special masters can survey and gather information, talk with interested parties, hold hearings, conduct investigations, draft and float potential remedial decrees, and generally serve as the eyes and ears of the judge.” (p. 27). Special masters are able to attain a level of intimacy with the proceedings that the court often can not. Many times, the monitoring process not only ensures but facilitates compliance by identifying key goals and clarifying outcomes. In their report about judicial intervention in the Pittsburgh Bureau of Police, Davis et al. (2002) found just that. According to the researchers:

“The monitor initially played an active role, going beyond the requirements of the decree and assisting the city with its implementation rather than simply evaluating its performance. When requested, the monitor aided the Implementation Committee, which was facing the decree one deadline at a time without developing a master plan. “He gave us the framework for compliance,” stated one committee member. The monitor produced a compliance manual, which broke down the provisions of the decree into manageable steps. He outlined the things he was going to look for at each stage. The monitor also played a significant role in implementing the legal requirements in the consent decree. (For example, he operationalized ‘substantial compliance’ in the decree as 95%.) His willingness to act as intermediary between the city and DOJ helped avoid disputes over interpretation of the decree.” (Davis et al, 2002, p. 11)

Together, the reforms outlined in consent decrees and the prospective monitoring by court appointed auditors ensure that the constitutional deficiencies at the heart of these cases can be cured.

Institutional reform litigation in practice

Beginning in the 1950's, the judicial system in the U.S. was increasingly being asked by large groups of people to provide guidance in cases alleging clear abuses of constitutional protections. Often, these groups represented minority classes or other groups of people in similarly situated positions. These plaintiff groups were different in important ways from traditional plaintiffs. Although the plaintiffs asserted constitutional injuries, they did not seek monetary compensation. Rather, the plaintiffs in these cases sought the complete and permanent reformation of public institutions that they perceived as causing them injury (Gilles, 2003).

The seeds of institutional reform litigation were sewn in the fight to desegregate public schools during the era of Jim Crow and the doctrine of "separate but equal". Beginning with African American school children, the courts began to reform public institutions while all the while forwarding new social policy. The battle to desegregate public schools soon led to movements to improve harsh, often racist, prison conditions. According to Patterson (2001), "*Brown*...stimulated the Court to emerge as a stalwart warrior in a wide range of subsequent crusades for social change." (p. 31). Soon, private corporations found themselves the subject of reform litigation (Sandler and Schoenbrod, 2003). Eventually, these efforts would lead to calls for dramatic reforms in policing, the subject of the current work.

School desegregation

The first judicial foray into institutional reform litigation began in the public education system. Prior to the Supreme Court decision in *Brown v. Board of Education*, racially segregated schools were the norm in many state compulsory education systems, especially those in southern states. The course of litigation culminating in *Brown I* and *Brown II* would cast aside racial segregation in schools and begin a long history of continued institutional reform litigation in education, a history characterized by both successes and failures.

The elementary and high school education system that existed in many parts of the United States in the mid-Twentieth century was a dual system defined by racial segregation. The majority of public school systems operating in southern and boarder states operated according to a “separate but equal” doctrine deemed constitutional by the Supreme Court’s decision in *Plessy v. Ferguson*, 163 U.S. 537 (1896). According to that doctrine, racial segregation in public conveyances such as transportation facilities and schools was not to be considered violative of constitutional standards if wholly separate, but completely equal systems, were maintained. In fact, the majority opinion in *Plessy* referred directly to the constitutionality of racially segregated schools. In that opinion, Justice Brown wrote:

“Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored

race have been longest and most earnestly enforced.” *Plessy v. Ferguson*, 163 U.S. 537 (1896) at 544.

Indeed, the years after the *Plessy* decision witnessed the steady rise of state sponsored, constitutionally protected system of racial segregation known collectively as Jim Crow (Patterson, 2001). As a policy, Jim Crow had its stalwart states. In education, by 1951, seventeen southern and boarder states mandated racially segregated schools and four other states permitted their use (Rosenberg, 1991).

Jim Crow presented itself as a formidable system of racial oppression. One that many leaders of the African American community believed must be overthrown. It was with this goal in mind that Thurgood Marshall, a vibrant and determined leader of the National Association for the Advancement of Colored People (NAACP), plotted a course to invalidate Jim Crow through the battle to end public school racial segregation. According to Patterson (2001), “[These leaders] had come to believe that desegregation of schools would lead-*had* to lead-to some larger betterment of conditions for black people. So it was that they singled out schools as prime targets of their litigation.” (p. xvii).

Although it was not the first litigated school desegregation case, *Brown v. Board of Education* became the focal point in the fight to end *Plessy* “separate but equal” segregation practices. *Brown v. Board of Education* was actually a compilation of four different cases from four diverse states; South Carolina (*Briggs v. Elliott*), Virginia (*Davis v. County School Board*), Delaware (*Gebhart v. Belton*), and Kansas (*Brown v. Board of Education*). In each of the four cases, the plaintiffs, young African American children, “had been denied admission to schools attended by white children under laws

requiring or permitting segregation according to race.” (*Brown v. Board of Education*, 347 U.S. 483 (1952) at 487). Due to the complexity of the issues involved and the potential volatility surrounding the case, the Supreme Court pondered the case for nearly two years before rendering a decision.

In the spring of 1954, under the leadership of a new Chief Justice, the Supreme Court handed down its decision. A unanimously united court penned the following decision:

“We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal protections? We believe that it does...We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and other similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.” *Brown v. Board of Education*, 347 U.S. 483 (1954) at 494,495.

Plessy had finally been invalidated. In an instant, the Supreme Court had issued what would become its most famous decision and set the tone for the Warren Court (Rendleman, 2004). Although the Court overturned “separate but equal” in public education systems, the fight to reform the compulsory education system in the United States had only just began.

Brown v. Board of Education unequivocally announced that segregation in public education systems was unconstitutional, but conspicuously missing from the decision was clear remedial guidance. The decision did not include any announcement as to the appropriate relief for the plaintiffs. The Court explained this by stating that, “Because these are class actions, because of the wide applicability of this decision, and because of

the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity” and held off any relief decisions for reargument (*Brown v. Board of Education*, 347 U.S. 483 (1952) at 495).

On May 31, 1955, the Court handed down its decision as to the appropriate relief for the plaintiffs in *Brown* in what has come to be called *Brown II*. As it would have it, their decision would form the basis for modern day institutional reform litigation. Early in the decision, the Court forwarded the notion that the relief plans were to be outlined in consent decrees and that these decrees should be guided by equitable principles allowing flexibility based upon local considerations. In the Court’s own words, “In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.” (*Brown v. Board of Education*, 349 U.S. 294 (1955) at 300). The Court then assigned the duty of monitoring the move toward desegregation to the lower courts. According to its decision, “courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.” (*Brown v. Board of Education*, 349 U.S. 294 (1955) at 299). Lastly, the Court elucidated what would become one of the core principles of institutional reform litigation; the retention of jurisdiction. In its decision, the Supreme Court ordered the lower courts to “retain jurisdiction of these cases” while the desegregation plan implementation is carried out (*Brown v. Board of Education*, 349 U.S. 294 (1955) at 301). Thus, the plan to end racial segregation in public schools was outlined and institutional reform litigation had its birth.

In the years following *Brown I* and *Brown II*, the desegregation of public schools in the United States proceeded in a painfully slow manner. Often, advances made in one county or state would be subverted by straightforward attacks against the validity of *Brown* (Rosenberg, 1991). At best, the reform history that flows from *Brown* can be characterized as schizophrenic with the Court announcing bright line principles and the states adopting muddled guidelines. According to Patterson (2001), “To be sure, states of the deep south, which had the highest percentages of blacks, remained as immovably defiant after *Brown II* as earlier.” (p. 89). In fact, the slow pace of the desegregation effort led to the creation of more than 150 school desegregation consent decrees (Powers and Rothman, 2002). These decrees mandated enumerable changes to school district policies and practices including detailed busing strategies to assist in the integration of schools. But according to Orfield and Yun (1999), these strategies appeared to have a short-lived effect with many southern schools returning to their previous levels of segregation in the mid-to-late eighties.

The fight to end school segregation was fought over many years and in as many courtrooms. *Brown* was neither the beginning nor the end. Rather, it served as the punctuation; the turning point. But, the true impact of *Brown* went well beyond the school setting, eventually permeating all aspects of the American social life. According to Feely and Rubin (1998), “*Brown* provided the heroic image of what courts should do; they were supposed to discern, articulate, and implement the rights of individuals against the state.” (p. 221). With its decision, the Court exalted itself to the forefront in the battle to create progressive public policy. *Brown* was as much a response to a violation of the Fourteenth Amendment's Equal Protection Clause as it was a response to the rampant

racial discrimination, to the imposition of southern justice, and to the institution of Jim Crow. As we will see, many of the same basic elements present in *Brown* were present in the fight to reform the prison system in the United States.

Brown was the beginning of institutional reform litigation. After *Brown*, widespread constitutional violations by state actors became the province of judicial policy making through the process of institutional reform litigation. Through the retention of jurisdiction, the drafting of comprehensive decrees, and continued monitoring, courts would come to reform institutions. But what began with *Brown* would be altered in significant ways by future institutional litigation efforts. Indeed, the next major institution to undergo litigation, the U.S. prison system, would broaden the scope of institutional reform litigation moving actionable claims well beyond constitutional violations.

Prison reform

In stark contrast to young African American school children, prisoners appeared to be the least likely class of individuals in need of stringent constitutional protections. Appearances aside, the reality was that prisoners suffered greatly at the hands of their wardens since the creation of the first prisons. This suffering continued unabridged and with little hope for relief well into the sixties before the judiciary finally began to take notice. Through incremental court decisions, the course of institutional reform litigation in prison was set into motion. What culminated from this effort was the most ambitious and far-reaching example of institutional reform litigation in recent history (Feeley and Rubin, 1998).

The first half of the twentieth century marked a dark time in the history of the U.S. prison system. Prisons of this era were characterized by the harsh treatment of prisoners sentenced to terms within their walls. This was particularly true of southern prisons. Following the end of slavery, southern plantation owners and other former slave owners sought to devise alternative methods for the control of freed African Americans (Ozimek, 1997). What resulted was widespread incarceration and a subsequent system of forced labor called peonage. Under peonage, southern landowners could legally lease inexpensive prisoner laborers to work their fields. According to Gutterman (2002), many of the prisoners under this system found themselves working in the same coal mines, railroad camps, and in many cases, the same plantations that they had worked in before as slaves. In both form and function, peonage did not differ significantly from slavery. In fact, it was a particularly cruel system of virtual slavery. African American prisoners were subjected to greater dangers and more rampant abuse than they had witnessed under slavery (Gutterman, 2002). According to Schmidt (1982), annual death rates for prisoners under this system were close to twenty percent and in some areas, nearly fifty percent. The obvious horrors of the peonage system forced its outlaw in many southern states (Ozimek, 1997). Although the leasing of prisoner labor by private individuals was outlawed, it did not stop state sanctioned use of prisoner labor for public projects. Convict leasing systems were legally replaced with prison farms and chain gangs that were equally as brutal as the peonage system (Gorman, 1997; Gutterman, 2002). One evil had essentially replaced another. According to Gutterman (2002), in many southern states, prison farms began to flourish. Prisoner life in southern chain gangs was equally as harsh. Beatings, maiming, and even death were commonplace (Ozimek, 1997). In at

least one court decision, it was noted that “chain gang prisoners [were treated] with persistent and deliberate brutality.” (*Johnson v. Dye*, 175 F.2d 250 (1949) at 252). This was the state of prisons at mid-century.

During this time, many prisoners attempted to challenge these harsh conditions. They brought actions in state and local courts around the country. But, as Gutterman (2002) points out, “...no one in power on the state level seemed to care about the prison farm’s cruelty.” (p. 1534). States were allowed to operate their prisons with no federal oversight and apparent impunity for nearly a century.

In many cases, prisoners attempted to bypass the unsympathetic state courts electing rather to appeal to the mercies of the federal judiciary. But, as they would soon find out, the federal courts were not yet willing to provide relief. *Johnson v. Matthews*, 182 F.2d 677 (Columbia Cir. 1950) typifies one such case. In *Johnson*, the appellant fought his extradition from Washington, DC to the State of Georgia where he was a fugitive. The appellant argued that he would be subjected to abuse at the hands of his Georgian confiners and that he needed federal protection due to the unavailability of relief opportunities in that state. In their decision, the United States Court of Appeals District of Columbia Circuit stated:

“We are asked to assume that appellant would not be protected by the courts of Georgia. We not only decline to make the assumption but we repudiate the suggestion that we make it. We will not impugn either the capacity or the integrity of the state courts of Georgia or of any other states. And even if we were to assume, upon the basis of this fugitive’s allegations, that the state courts are impervious to his assertions, we would make no such assumption concerning the federal courts having jurisdiction in that state. Those courts of the United States are as capable and faithful as are the courts of this or any other jurisdiction. If that Court of Appeals errs, certiorari to the Supreme Court will lie.” *Johnson v. Matthews*, 182 F.2d 677 (Columbia Cir. 1950) at 681.

In spite of the precedents set in cases such as *Johnson*, litigation continued. During this period, hundreds of cases were brought before federal judges in courtrooms across the United States (Feeley and Rubin, 1998). But, to the one, these cases were summarily dismissed (Robertson, 2000). In the courts view, the judiciary had no right to intervene in the functioning of prisons. This concept was most clearly announced in the case of *Platek v. Aderhold*, 73 F.2d 173 (1934). Joseph Platek, a prisoner in a federal penitentiary, appealed a decision by a District Court denying his release on a *habeas* claim. In addition to appealing his *habeas* claim in the Fifth Circuit Court of Appeals, he sought an injunction to stop the warden of the penitentiary from discrediting his “good time” credits. The *Platek* court affirmed the dismissal of the petitioner’s relief claim by the lower courts and refused to entertain his injunction claim based upon the rationale that, “the prison system of the United States is under the control of the Attorney General and Superintendent of Prisons, and not of the District Courts.” (*Platek v. Aderhold*, 73 F.2d 173 at 175 (1934)). In its decision, the Court of Appeals continued on to state that “the court has no power to interfere with the conduct of the prison or its discipline”. (*Platek v. Aderhold*, at 175).

Platek is typical of the judiciary’s attitude toward prisoners during the first half of the twentieth century. Courts employed a “hands off doctrine” when rendering their opinions in prisoner cases (Powers and Rothman, 2002; Robertson, 2000; Feeley and Rubin, 1998). The federal court decisions of this time were characterized by judges that were unwilling to intervene in the management and affairs of state prisons. Citing federalist concerns and relying on the concept of *stare decisis*, courts refused to act in cases brought by prisoners seeking relief from abusive conditions. The “hands off

doctrine” would remain the dominant rationale well into the sixties when the judiciary began to take affirmative steps toward the reformation of prisons.

The roots of institutional reform litigation in prisons took firm hold in the mid-sixties. The reliance on the “hands off doctrine” began to crumble as federal court dockets were inundated with *pro se* petitions from prisoners seeking relief from all aspects of their confinement. According to Robertson (2000), statistics from the Administrative Office of the United States Courts show that prisoner civil rights petitions filed in federal courts rose from 218 in 1966 to just over 2000 by 1970. These petitions were often times filled with complaints outlining horrific prison conditions. The courts could no longer ignore the situation through the “hands off” approach.

One of the first indications that the courts were beginning to break away from the “hands off doctrine” appeared in the case of *Talley v. Stevens*, 247 F. Supp. 683 (1965). In *Talley*, three prisoners incarcerated in the Arkansas State Penitentiary claimed that they were subjected to treatment that amounted to cruel and unusual punishment in violation of their constitutional rights. The court, in rendering its decision, attempted to balance the retraction of certain rights upon a person’s imprisonment with the need for constitutional and civil rights protections for that prisoner. With clear language, the court announced that a person does not lose all of their rights upon walking through the gates of a penitentiary. In the court’s own words:

“Although persons convicted of crimes lose many of the rights and privileges of law abiding citizens, it is established by now that they do not lose all of their civil rights, and that the Due Process and Equal Protection Clauses of the 14th Amendment follow them into the prison and protect them there from unconstitutional administrative action on the part of prison authorities carried out under color of State law, custom, or usage.” *Talley v. Stevens*, 247 F. Supp. 683 (1965) at 685.

Talley was a straightforward pronouncement that prisoners did indeed possess affirmative protections under the Constitution and Civil Rights Act. More importantly, *Talley* marked the end of the “hands off doctrine”. According to Feeley and Rubin (1998), “Fifteen years before *Talley*, the general view had been that the federal courts lacked jurisdiction over any American prisons, whether state or federal. Even if prisoners were allowed to bring a *habeas corpus*, Civil Rights Act, or constitutional case, it would be rejected on the merits because the internal management of prisons was the realm of prison officials, not the judiciary.” (p. 39). The *Talley* court began the process of institutional reform litigation in prisons. At the conclusion of the court’s decision it was ordered that a remedial decree be entered into in order to repair the deficiencies complained of in the case.

In the close to 100 years since its decision in *Ruffin v. Commonwealth* (1871), the judiciary had changed the view of prisoners from being “slaves of the state” to protected classes of people in full possession of all of their constitutional and civil rights. Over the course of the next twenty years, courts would continue to find in the favor of prisoners. In decision after decision, courts announced that, “there is no iron curtain drawn between the Constitution and the prisons of this country.” (*Wolff v. McDonnell*, 418 U.S. 539 (1974) at 556). In fact, in *Bethea v. Crouse* (1969), the court’s decision not only recognized the existence of the “hands off doctrine”, but denounced it by stating that, “one does not lose all his constitutional rights when he enters a prison” (*Bethea v. Crouse*, 417 F.2d 504 (1969) at 505,506). The *Bethea* court’s decision continued on to state that prisoners not only possess the full protection of the Constitution, but they also have affirmative protections under the Civil Rights Act. This was echoed by the court’s

decision in *Wolff v. McDonnell* (1974). In its decision, the *Wolff* court stated, “if the [respondent’s] position implies that prisoners in state institutions are wholly without the protections of the Constitution and the Due Process Clause, it is plainly untenable.” (*Wolff v. McDonnell*, 418 U.S. 539 (1974) at 555).

The perpetuation of institutional reform litigation in prisons systems had officially begun. With the court’s decision in *Talley v. Stevens*, the Arkansas State prison had become the first prison system to enter into a consent decree, but it would not be the last. Five years after *Talley*, the entire Arkansas state corrections system was placed under a comprehensive injunctive decree (*Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970)). By 1975, prisons in Mississippi, Oklahoma, Louisiana, and Alabama were operating under the guidance of consent decrees established by federal courts (Powers and Rothman, 2002). By 1980, “prisons or prison systems in twenty-eight more jurisdictions” would be subjected to the control of federal courts through the use of consent decrees and would eventually swell to forty-eight states by 1998 (Feeley and Rubin, 1998, p. 40).

The scope of the reform effort in prison systems remains unsurpassed to this day. The sheer number of lawsuits brought by prisoners (26, 824 in 1992²) is unparalleled in any other example of institutional reform litigation. But, the prison reform cases remain important for one other reason. These cases expanded the scope of the actionable violations that could form the basis for institutional reform well beyond the Equal Protections Clause of the Constitution. Eventually, Due Process violations, Eighth Amendment violations, and violations of the Civil Rights Act would form the basis for the actions.

² See Powers’ and Rothman’s (2002) discussion of Administrative Office of the U.S. Courts figures, p. 93.

Conclusion

In the years after *Brown*, numerous other governmental and private institutions found themselves the subject of institutional reform litigation efforts. The diversity of institutions (special education systems, local municipalities, telephone companies) was impressive, but the extent of the reforms and the range of affected institutions pales when compared to the education and prison reform examples. This would change with the passing of the 1994 Violent Crime Control and Law Enforcement Act. Embedded deep within this crime bill was a statute that would change the focus of institutional reform litigation. For the first time in history, police departments would become the subject of institutional reform litigation.

Chapter 2

The road to institutional reform litigation in policing

This chapter outlines the path leading to institutional reform litigation in policing. As an institution, police in the United States have often been criticized for utilizing extra-judicial and sometimes brutal tactics in the performance of their duties. In response; police executives, elected officials, public advocates, and specially convened bodies have undertaken varied reform efforts and instituted numerous accountability measures to stem the tide of police misconduct and abuse. This chapter presents a critical examination of these methods. The goal is to present the reader with an understanding of why these methods have failed to stem the tide of police misconduct, malfeasance, and brutality, for it was this failure that led to the call for institutional reform litigation. This chapter concludes by introducing a new source of police accountability, institutional reform litigation.

The dark side of policing

Police agencies have often been criticized throughout history for unchecked abuses of force and corruption. Walker (2001) notes that as early as 1931, the Wickersham Commission found rampant police abuse of force in the landscape of policing. Skolnick and Fyfe (1993) present evidence stemming from an American Bar Association report of the existence of the “third degree”, a tactic of merciless beatings at the hands of the police, in early police departments.

Nowhere was the lack of accountability more nascent than in the example of police corruption. In the late nineteenth century and early twentieth century, police graft

and patronage were commonplace (Fogelson, 1977). According to Lardner and Respetto (2000), political machines and ward bosses controlled early police officers and outwardly encouraged the use of heavy-handed tactics to fix elections and line their pockets with graft and payoffs. Dulaney (1996) notes that police brutality during these earlier times was routine and especially atrocious. This behavior continued and eventually sparked the Progressive call for reform and the movement toward professionalization (Walker, 1998).

The coming of age for many police departments in the United States followed this general path. As citizen patrols coalesced into formalized governmental organizations, opportunists began to fill the ranks. Through the utilization of brutal devices, they ensured that their pockets were fat and that early policing was marred by reports of beatings and widespread corruption. It was not until the emergence of the Progressives that the first nebulous of accountability would take hold.

The rise of police accountability and reform

In recent years, the idea of police accountability and reform has soared to the forefront of the American conscience. Highly publicized incidents such as the Los Angeles Police Department's Rampart scandal, the brutalization of Rodney King and Abner Louima, the death of Amadou Diallo, and the practice of racial profiling on New Jersey State highways have highlighted the problem of police misconduct and abuse. In fact, a simple "Google" search on the internet using keywords such as "police abuse" and "police misconduct" returns 314,000 and 3,810,000 hits respectively highlighting the current level of discourse on this subject. Simply turning on a television set exposes one to stories, "real" video footage, and news coverage surrounding a wide variety of police improprieties. According to Leuci (1999), in the late nineties, television coverage and

public dialogue about the subject of police misconduct “occurred with numbing regularity.” (p. 216). But the public discourse surrounding police incivilities and misconduct are not limited to present time. Almost since the inception of government sanctioned policing there have been calls for reform. As the history of policing unfolded, so to did the evolution of police reform and accountability.

Police accountability first became a salient issue at the turn of the twentieth century. Policing at the time was plagued by widespread reports of corruption and brutality often committed in the name of corrupt politicians. Nowhere was this more apparent than in New York City under the control of the Democratic Tammy Hall machine. Under Tammy rule, police officers fixed elections, brutalized the political opposition, and created large streams of graft that swelled their bosses’ coffers (Fogelson, 1977; Walker, 1998).

Eventually, this caught the ire of the elite members of society. Seeing the unfair nature of this practice and sensing their own mortality and jeopardy, the elites began to call for the reform of the police. In what is termed the Progressive movement, powerful members of society began to point to the co-dependant relationship between the police and the political leaders as a source of potential problems and conflict (Fogelson, 1977). Through their critiques of policing, the reformers were able to draw attention to the many problems facing the police.

The Progressive era battle to reform the police eventually culminated in a great paradigm shift in policing. This shift witnessed the downfall of the politically controlled watchman mode of policing and the rise of a new professional model of policing. Under this system, accountability to corrupt ward bosses was replaced by accountability to the

greater public and the Chief of Police. Systems of patronage atrophied as civil service regulations standardized police hiring. More importantly, the efforts of progressive reformers set in motion a century long battle to reform police practices.

The police reform efforts of the early twentieth century spurred on the rise of various methods of controlling police violence and corruption. Although these methods differ from each other in considerable terms, it is possible to group them based upon where each derives its source of accountability. Table 1 illustrates a typology of police accountability methods based upon the source of accountability; internal, external, or judicial. These three accountability sources will form the basis for the remaining discussion of police accountability. Each source, and its component methods, will be discussed in terms of its ability to provide for meaningful police accountability systems. Ultimately, it will be demonstrated that these methods could not provide for a robust system of accountability for the police and that an additional source was needed. That source being institutional reform litigation, the subject of this work.

Table 1: Source based typology of police accountability measures.

Accountability Source	Definition	Examples
Internal	Accountability to the police organization	Strong police leadership, Internal affair units
External	Accountability to independent organizations located outside of the police organization	Citizen complaint boards, blue ribbon commissions
Judicial	Accountability to the judicial system through laws and due process requirements	Criminal prosecution, civil prosecution, civil injunctive relief

Internal police accountability

Internal accountability methods are those methods that make the police accountable to their own organizations. Essentially, internal accountability methods locate the accountability source within the police department making the department, or more likely a cadre of administrators, responsible for the prevention, detection, and punishment of police misconduct. Although these accountability measures operate in many police organizations today, they trace their roots to early progressive reform recommendations. These recommendations, which included politically divorce police leadership and internal corruption detection, are embodied today in internal affair units and the workings of professional police leaders (Fogelson, 1977; Walker, 1998). A more detailed analysis of some of these methods is presented below.

Police leadership

One of the earliest forms of internal police accountability was found in the workings of police leaders. The progressive reformers believed that strong police leadership could overcome many of the corruption difficulties observed in the police of the time. With this idea in mind, they set out on a course to elevate intelligent professional police managers to leadership positions in many police departments. These leaders' names, such as Vollmer and Wilson, are familiar to most students of policing, but their legacies are sometimes obscured.

Skolnick and Fyfe (1993) use the example of August Vollmer to illustrate this fact. Vollmer had been the Chief of Police for the Berkeley, California Police Department for a number of years. At Berkeley, Vollmer became a prominent police chief best known for his ability to bring about police reform through the use of a

professional police model (Walker, 1998). Vollmer was able to secure many advances in policing including the use of bicycle patrols, radio dispatch, and police laboratories (Fogelson, 1977). But, Skolnick and Fyfe (1993) are quick to demonstrate that Vollmer failed to reform the Los Angeles Police Department after being hired there to bring accountability and professionalization to that department. The same fate would befall Vollmer's protégé, O.W. Wilson. Wilson also rose to the level of a great police reformer, but after being tapped to reform the Chicago Police Department, Wilson fell short. Within a year of his departure, the Chicago Police were no better off than they were a few years earlier (Skolnick and Fyfe, 1993). Sherman (1978), in his study of police reform in three police agencies, offers a key insight into the difficulties police executives face when attempting to reform a police agency. According to Sherman, often, police administrators do not have sole control over the police department they head. Sherman notes that the actual administrative control over the police department may be shared by a variety of administrators acting as a "dominant coalition" and in some cases, the police chief "may even be excluded from [this] dominant coalition" (Sherman, 1978, p. 93). This may help to explain Vollmer and Wilson's shortcomings.

Ultimately, the ability of a police reform executive to bring about lasting reform is tied to many variables beyond their control. Variables such as adequate time to ensure reforms take hold, ability to gain the buy-in from the rank and file, and external support often cannot be controlled by the individual chief. Skolnick and Fyfe (1993) posit a theory that many of the great reformers were successful in reform efforts within their own departments, departments where they advanced through the ranks giving them instant credibility, but lacked institutional buy-in when attempting to reform other agencies.

The ability of professional police leaders to bring about the full accountability of the police seems questionable. History has illustrated this fact. Many times, the strength of the police reform chiefs' ability proved to be situational, allowing for great reforms in one place at one time, but not allowing for them in another agency or at another time. It is for this reason that the ability of internal police reformers to provide for meaningful accountability and lasting reform is still in question.

Internal affair units

An integral part of the Progressives' police reform movement was the ability of police administrators to effectively police their own officers. This led to the creation of police internal affair units. In the formal organization of police departments, internal affair units are charged with the duty of "policing the police". In other words, they were, and in many jurisdictions, still remain the formal body that investigates allegations of corruption, malfeasance, and any dereliction of duty resulting in an internal or external complaint concerning any member of the police department. Although their creation represented a great move forward, the evidence points to a problematic history and an ambiguous future.

Time and again, internal affairs units have been called an ineffective form of police accountability (Human Rights Watch, 1998; Prenzler and Ronken, 2001). Skolnick and Fyfe (1993) observe that internal affair units are of "little or no help" and often seem to be "designed to protect police from complaints rather than conduct searching and impartial inquiries." (p. 220). According to a report conducted by Human Rights Watch (1998), no external review of police internal affairs units has ever demonstrated that they are capable of protecting citizens from police abuse. But a report

by the National Research Council (2004) concluded that there is a dearth of empirical evidence to support this claim. In fact, the National Research Council (2004) concludes that very little is known about the functioning of internal affair units and they call for more empirically grounded research efforts into this subject.

In spite of this, evidence can be drawn from the work of the multiple police blue-ribbon commissions and the work of Human Rights Watch. Both sources present a pessimistic view of police internal affair units. Their findings from two agencies in particular highlight the shortcomings of internal affair units. In Boston, the St. Clair Commission found that the Boston Police Department's Internal Affairs Division did not effectively handle investigations and failed to keep records on individual officers (Bratton, 1998). They found that many investigations were handled by the officer's immediate supervisor from intake to closure and that these complaints were rarely sustained (6% in 1992). The Commission concludes, "Our study revealed an investigative and hearing process characterized by shoddy, halfhearted investigations, lengthy delays, and inadequate documentation and record-keeping." (St. Clair Commission Report, as quoted in Human Rights Watch, 1998). The Christopher Commission reported similar findings in the Los Angeles Police Department. According to their report, between 1986 and 1990, fewer than two-percent of the complaints against Los Angeles police officers were sustained (Christopher, 1999). These findings led the Commission to conclude that the internal affairs system in Los Angeles protected abusive officers and stacked the odds against the citizen complainant.

Additional insights into the function of internal affair units can be gleaned from the few empirical studies carried out on this topic. In a study of the functioning of one

such unit, Lersch (1998) found that the internal affairs division of a large city police department classified a majority of complaints filed against the police as not having enough evidence to support the initial complaint. Other research seems to back this finding. In a meta analysis of empirical studies of internal affair units, Lersh and Mieczkowski (1996) report that the available research points to internal affair unit complaint substantiation rates of about 0% to 20%, with a mean of about 10%.

A final criticism of police internal affair units concerns that lack of transparency. Many researchers have noted that police internal affair units often fail to compile statistics and report both on their performance and the magnitude of departmental transgressions (Walker, 2001; Christopher, 1999). At least one source claims that internal affair units “operate as a rule with excessive secrecy.” (Human Rights Watch, 1998).

What emerges from this is an awkward view of police internal affair units. On the one hand, their mere existence represents a commitment on the part of police management to address problematic officer behavior, but their often perfunctory and token functionality serves to nullify their net effect. Clearly, police internal affair units alone do not have the wherewithal to provide for a robust system of police accountability.

External accountability

External accountability methods are those methods that have their source of accountability located outside of the police organization. Typically, external accountability methods take the form of independent organizations that serve as police watchdogs. Examples include blue ribbon commissions and citizen complaint boards.

Many times, these bodies have formalized powers such as the investigation of complaints against the police, but other times they seem to only have ceremonial power. External police accountability methods were developed early in the history of policing. But, they did not become popular until the politically tumultuous days of the Civil Rights Movement and the war in Viet Nam. It was during this time that one of the largest blue ribbon commissions in the history of policing was formed and the roots of independent complaint investigation bodies began to take hold.

Police reform commissions

Police reform commissions, sometimes referred to as blue-ribbon panels, have a long history of use within urban police departments. According to the Nation Research Council (2004), “Blue ribbon commissions have played an important role in setting general standards for the police and in that respect guiding reform efforts across the country.” (p.290). But there has been some issues raised about their function and their ability to bring about reform within a police agency. One of the most often cited issues with these commissions is that they are temporary bodies (Nation Research Council, 2004). As the literature has shown, meaningful police reform often takes an investment of many years and requires the commitment of many different players (Toch, Grant, and Galvin, 1975; Pustintsev, 2000). This idea is echoed by Silverman (1999) when he states, “Ultimately, fundamental change requires a vibrant implementation plan, strategy, management approach, and, above all, constant monitoring.” (p. 53). The difficulty with police reform commissions is that they convene for short periods of time, rarely exceeding six months. Walker (1985) points to this lack of longitudinal monitoring as the greatest failure of police reform commissions. Below, a discussion of some of these

commissions is conducted in order to point out their reform concerns and their apparent lack of impact.

The Wickersham Commission

The Wickersham Commission was one of the first such panels to review police practices (Skolnick and Fyfe, 1993). This commission was convened in 1929 at the behest of President Herbert Hoover to take a critical look at law enforcement in the United States (Fogelson, 1977). The result of this commission was a chiding report entitled, "Report on Lawlessness in Law Enforcement." According to Walker (2001), this report was a "devastating expose of police brutality." (p. 21). This report painted a picture of policing as a profession replete with graft and violence and in desperate need of drastic change.

Although direct evidence of the true impact of the Commission's work is difficult to discern, the increasingly growing levels of police corruption and brutality that occurred in the decades after its final report casts its reform power in a disparaging light.

The Kerner Commission

In 1967, President Lyndon Johnson formed the Kerner Commission in an effort to study issues surrounding law enforcement and its intersection with race. The commission was formed in response to the turbulent times in U.S. racial relations. Fallout from Civil Rights demonstrations, race riots in major cities, and the police behavior in all of these incidents raised questions about the relationship between law enforcement and race (Walker, 1998). Among the Commission's key findings was the idea that the nation was polarized into two societies, one African American and one white (Stone and Bobb,

2002). The Commission concluded that this polarization was the main source for the hostility between the police and minorities communities, ultimately leading to the riots.

The recommendations of the Commission have done little to ease the tension between the police and minority communities. To this day, disparities in race concerning satisfaction with the police are a salient and widely documented finding (Campbell & Schuman, 1972; Murty, Roebuck, & Smith, 1990; Carter, 1985). The riots in South Central Los Angeles and Atlanta after the Rodney King fallout are clear examples of this tension.

The Knapp Commission

The Knapp Commission was formed in the wake of a corruption scandal that rocked the rank and file of the New York City Police Department. A fellow officer, Frank Serpico, stunned the department and the public by coming forward with information about corruption and misconduct within the New York City Police Department (Doyle, 2000). Within a month of Serpico's whistle blowing, the Knapp Commission was empanelled to investigate allegations of widespread corruption and misconduct in the NYPD (Doyle, 2000). According to Silverman (1999), the commission found evidence of bribe receiving, payoffs, and graft, eventually concluding that corruption was pervasive in every precinct of the NYPD.

The Commission's report sought to bring attention to the topic of corruption so that reformers could ensure that the NYPD would never be embarrassed again. But, twenty years later, a second commission would find that the lessons of the Knapp Commission had failed to take hold and that corruption still flourished within the NYPD. In fact, corruption and scandal occurred within the ranks of the NYPD so often that some

scholars have noted that a major scandal occurs every twenty-years with surprising regularity (Lardner and Reppetto, 2000).

The Mollen and St Clair Commissions

In the early nineties, two major cities would be forced to take a difficult introspective look at their police operations. In Boston, then Mayor Flynn appointed an eight-member panel to investigate the management and operations of the Boston Police Department after widespread claims of misconduct and brutality began to surface against the police. That same year, then New York Mayor Dinkins appointed a five-member panel to investigate the New York City Police Department after the arrest of an officer focused negative attention on the department.

The St. Clair Commission began its work in 1992. The commission found many examples of mismanagement within the department including a dysfunctional internal affairs process and problematic departmental leadership (Human Rights Watch, 1992). Some other notable findings were that African Americans complainants filed the vast majority of complaints against the police even though they represent on 26% of Boston's population and that the police failed to implement a community policing philosophy. All of this led the commission to call for the resignation of Boston Police Commissioner Francis Roache, but as with many of the commission's recommendations, it fell upon deaf ears and Commissioner Roache did not step down until 1993 when he ran for mayor of Boston (Bratton, 1998).

The Mollen Commission convened in July of 1992 in the wake of the fallout from the arrest of NYPD officer Michel Dowd. Officer Dowd was arrested by Suffolk County Police for selling cocaine (McPhee, 2004). Upon his arrest, the NYPD was forced to take

a hard look into its policies and corruption investigation efforts. The five-person Mollen Commission was formed to investigate “the nature and extent of corruption in the department; evaluate the departments procedures for preventing and detecting corruption; and recommend changes and improvements to those procedures.” (Mollen Commission Report, as quoted in Human Rights Watch, 1998). What they found was a complete failure on the part of the NYPD that allowed one of their own, Officer Dowd, to shake down drug dealers, extort protection money, and re-direct confiscated drugs for sale at his Suffolk County home (Silverman, 1999). In 1993, Dowd would testify before the commission detailing how brutality and corruption were allowed and sometimes even encouraged in the NYPD. Eventually, the commission released their report and included many reform recommendations. In the years after the report, some of the recommendations have been put in place by the department, but many others have not.

The Christopher Commission

The Christopher Commission began its work after the fallout from the Rodney King beating and subsequent riots. According to Warren Christopher (1999), the chair of the commission, the panel was formed to investigate all aspects of the Los Angeles Police Department including the failures of the complaint investigation system, the role of the LAPD leadership, and the “culture” of racial bias that was said to exist within the department. Among the key findings of the commission was that within the LAPD, a large number of officers misused force and consistently ignored department procedures prohibiting excessive force (Christopher, 1999).

After examining all of the evidence, the commission recommended that the LAPD was in great need of reform. Among the reforms suggested were a continuous

monitoring process and the imposition of term limits for the Chief of Police (Christopher, 1999). Although these recommendations represent forward thinking reforms, there is evidence that many of them were disregarded or never fully implemented (National Research Council, 2004). In fact, only a few years after the report, the LAPD became the focus of a Department of Justice investigation and was successfully sued using the new “pattern and practice” statute.

External independent police complaint bodies

The idea of external police complaint investigatory bodies is not new to policing. Walker (2001) states that as early as 1931, the Wickersham Commission had recommended the creation of an uninvolved independent agency in each city to oversee police practices. But, it was not until the late sixties that external oversight, in particular civilian oversight, would gain popularity as a police accountability tool (Walker, 2001). According to Skolnick and Fyfe (1993), the popularity of and the expanding calls for external review of the police can be solely attributed to the fact that at some deep level, citizens do not trust the police to investigate themselves. By the close of the twentieth century, external review of police practices had become entrenched in policing and was touted as being the most promising remedy for police misconduct (Finn, 2001).

In the world of policing, there are as many ways to provide for external oversight as there are jurisdictions (Perez, 1994). Citizen review, independent auditing, and professional standards boards are just a few. The role and function of external review methods also vary greatly. Some are purely ceremonial in their function, having little power or authority, while others function as powerful independent investigatory bodies. Walker (2001) identifies four models of external oversight eventually noting that these

models are solely generic representations and that actual models “include enormous variations in roles and responsibilities.” (p. 63). Kerstetter (1985) forwards the proposition that there are three models of external review. His models overlap with Walker’s, but an amalgam of the two lend to a logical presentation of the methods of external oversight of the police and is presented below.

Citizen review model

In recent years, citizen review boards have evolved from perfunctory organizations into highly skilled monitoring bodies. Central to the structure of this type of system is that no police department sworn employee is involved in the investigation of citizen complaints (Walker, 2001; Finn, 2001). Although on their face these systems would seem to be immune from coercion, some scholars argue that the function of these systems are prone to undermining by police executives and officers (West, 1998).

The extant research on the efficacy of citizen review raises many important issues. In an extensive review of the function of the citizen review process, Perez (1994) concludes that citizen review tends to be more lenient and forgiving than traditional models of police complaint investigation. This backs an earlier finding from a study of the Philadelphia citizen review board that found that the board was less likely to find officers guilty and meted out less severe punishments than internal departmental accountability systems (Hudson, 1972). More recent research has been even more critical. Cao, Deng, and Barton (2000) report on their analysis of citizen complaint process in a large city and conclude, “The hypothesis that the civilian review board is an effective way to control police brutality is not supported by our data.” (p. 372). The National Research Council, after taking an extensive look at the literature on citizen

review concluded that, “there is very little evidence regarding the effectiveness of citizen review.” (p. 289).

Independent auditor model

The Independent Auditor model positions an independent auditor to track, sample, and monitor the citizen complaint investigation process that is housed within the department’s internal affairs unit. Investigations in this system are performed by internal affairs investigators. The auditor does not investigate complaints (Walker, 2001). Instead, internal affair’s work is carefully scrutinized by an independent auditor in order to ensure a fair and thorough investigation. If the auditor is not satisfied with an investigation, the auditor may request that the investigation be reopened and investigated further (Finn, 2001). The auditor can also appeal to the city manager or other local governmental executive for assistance.

Little is known about the function of auditor models. Walker (2001) quotes one source as saying that recent press reports have demonstrated that the auditor style is ineffective and problematic. Additionally, Walker (2001) discusses the Seattle and Albuquerque auditor systems and reports that both failed to bring accountability to the police. At the same time, he credits the Los Angeles County Sheriff’s auditor with assisting in great reform. At a minimum, the accountability potential of this model remains in questions.

Professional standards model

The professional standards office model is a hybrid of the civilian review and the independent auditor models. This office is responsible for investigating all complaints against the police, but it remains outside of the structure of the police department

(Kerstetter, Rasinski, and Heiert, 1996). This ensures structural independence. But, some have expressed concern about this method of external accountability.

Kerstetter et al. (1996) report that a Chicago alderman raised concerns that the Chicago Police Office of Professional Standards (OPS) served to protect abusive police officers and that this was especially true when the complainant was African American. Their research into the complaint dispositions of the Chicago OPS did not support this hypothesis, but it did not put the issue to a definitive rest. Ultimately, we are left with very little evidence supporting the ability of the professional standards model to bring full accountability to the police. Although some examples of professional standards models have been called successes, the empirical evidence concerning their function is scant at best (Walker, 2001).

Judicial accountability

Judicial methods of police accountability have as their source of accountability the judicially derived rule of law. In courtrooms across the United States, judges have handed down decisions that have had profound effects on the functions and accountability of police officers. As with many of the preceding attempts to bring meaningful accountability to the police, the judiciary has sometimes proven to be a strong intervening force and at other times has proven to be a complete failure. Notable Supreme Court decisions such as *Mapp v. Ohio*, *Tennessee v. Garner*, and *Miranda v. Ohio* serve to illustrate that the judiciary sometimes has the power to intercede into local police practices. But, the difficulty with judicial review is that it is often a singular action pertaining to the facts as they exist in the one particular case that is under review. Others

argue that this type of accountability just skirts the true issue of police misconduct. According to Walker (2001), “The Supreme Court’s many decisions related to policing eliminated many of the worst abuses, but they inevitably [leave] much to be done.” (p. 9). In addition, the Supreme Court’s sole charge is to review the constitutionality of overt actions thereby missing the many issues in police accountability that do not fall under the rubric of the legal purview of the Supreme Court. Even when more traditional judicial proceedings are considered, many scholars argue that the judiciary has not played an extensive role in making the police more accountable for their actions (Cheh, 1996).

Criminal litigation

The ability of the criminal courts to provide for accountability policing by punishing officers who utilize brutal and unlawful methods has proven to be questionable at best. According to Skolnick and Fyfe (1993), the use of criminal litigation against the police appears to be an inadequate method for holding individual officers accountable. The problems begin early on in the prosecutorial process and are compounded as the case moves to decision. Agathocleous and Ward (1998) note that grand juries are often unwilling to indict police officers for their wrongdoing. Even when indicted, convictions are rare. No one example serves to prove this more so than the case of Rodney King. King was beaten by a group of Los Angeles police officers after leading them on a high-speed car chase. Upon his apprehension, King was tased twice by officers, maced, and beaten with batons over and over. The entire incident was captured on videotape by a bystander and for the next year, the American public gasped at the sheer brutality that they observed while watching the video on the evening news. According to Son, Tsang, Rome, and Davis (1997), a poll administered during the proceedings of this incident

showed that 9 out of 10 Americans watched the video. In spite of the obvious brutality, a jury eventually acquitted the officers involved sparking riots in South Central Los Angeles and Atlanta (Lersch, 1998).

A few years later, an incident in New York followed a parallel path. On a dark evening in the Bronx, four white police officers opened fire on an unarmed West African immigrant. The shooting death of Amadou Diallo at the hands of the police punctuated the criticism of the New York City Police Department's aggressive order maintenance policy (Lynch, 2000). As in the King case, the four officers involved in the shooting were acquitted of the most serious criminal charges. Daniels (2000) remarks, "The forty-one shots fired at Diallo, nineteen of which hit his body, reverberated around this country, Africa, and the world, a telling sign that something was terribly wrong in American society in terms of police-community relations." (p. 240). This case serves to draw attention to the apparent failure of the criminal law to bring accountability to the police, but the case of Rodney King solidifies this observation as fact. Agathocleous and Ward (1998) remark that, "[Many scholars and practitioners] agree that individual prosecutions often fail to produce the institutional changes needed to eliminate future abuse." (p. 9).

Civil litigation

Civil litigation has also proven to have little effect on individual level police misconduct, although some scholars argue that it can have an effect on department-wide misconduct through policy. Alpert and Fridell (1992), in their examination of police use of deadly force and vehicle pursuits, note that many times, civil litigation has had the ability to shape departmental policies regarding these two pressing public safety

concerns. In other cases, police departments around the country were forced to take a critical introspective look into their actions in many instances and make proactive changes to their policy. No case had more of an impact than that of *Thurman v. City of Torrington*, 595 F.Supp. 1521 (1984). In this case, the plaintiff, Tracy Thurman, claimed that the City of Torrington Police allowed a pattern and practice of affording inadequate protection to victims in domestic violence incidents, including her case during which she was severely beaten. The court agreed and in 1985 awarded Tracy Thurman \$2.3 million dollars in damages. In the wake of this case, many police departments adopted mandatory or preferred arrest policies as a tactic to ward off similar lawsuits.

But some scholars point out that many major cities have paid out millions of dollars in an effort to settle civil cases and move on to conduct business as usual. According to Skolnick and Fyfe (1993), many police administrators do not view high levels of payouts as a sign that something is wrong, rather viewing it as a cost of doing police work. In 1989, the City of Los Angeles paid a total of \$9.1 million dollars to settle cases alleging misconduct on the part of the police and in 1990, the sum rose to \$11.3 million dollars (Skolnick and Fyfe, 1993). For their part in the beating of Abner Louima, the City of New York paid out \$8.75 million dollars. Nowhere has civil litigation payouts been greater than in Detroit. In 1990 alone, the City of Detroit paid out a whopping \$20 million dollars in jury awards and settlements (Skolnick and Fyfe, 1993). All of this led the National Research Council (2004) to conclude, “The outcomes of civil suits are equally ineffective in influencing systemic change within police department.” (p. 279). They evidence this by pointing out that many studies have shown that neither the

NYPD or the LAPD have made any changes in response to the millions of dollars that they have paid out over the years.

Civil injunctive relief

During the sixties, judicial reform efforts began to change direction. Individuals that had suffered injuries at the hands of the police began to realize the relative futility of bringing traditional suits seeking monetary damages and criminal prosecutions seeking punishment. In response, these plaintiffs began to ask the judiciary to provide lasting protections by enjoining the police from behaving in ways likely to cause harm to the individuals they come in contact with. As the next twenty years unfolded, civil injunctive relief would fall in and out of favor. At times, judges would provide deep protections and during others, they flatly refused. In the end, the history of civil injunctive relief reveals a schizophrenic past. This fact tends to make civil injunctive relief, as it has traditionally be utilized, an unreliable police accountability tool. But, in recent years, civil injunctive relief has received a boost in the form of institutional reform litigation. As it is the focus of this work, the ability of civil injunctive relief to bring about the robust accountability of the police will be discussed at length in later chapters.

Conclusion

The majority of police agencies are now held accountable to the public for their actions through some form of external control (Hinds, 1994). The police are accountable to the public in general and somewhat to the law (Walker, 2001; Reiner, 1993). This accountability is ensured by direct and indirect oversight of police agencies. Stone and Bobb (2002) point out that indirect oversight is had through the functioning of the

political system and the courts. Direct oversight has many forms. Internally, police management attempts to provide for accountability through the workings of internal affair and professional standards offices (Reiner, 1993). Externally, the independent review of police actions is carried out by civilian oversight agencies, ombudsmen, governmental fact-finding commissions, and the media (Skolnick and McCoy, 1985; Walker, 2001). The reality is that there are numerous state sanctioned mechanisms in place to hold the police accountable for their actions (Stenning, 1994; Reiner, 1993). But, the functionality of these systems has often been brought into question. The reoccurrence of scandals and abuse of force incidents casts doubt upon the ability of these systems to completely control police abuses.

Internal affair units have been shown to be ineffective in controlling police abuses (National Research Council, 2004). This fact is best illustrated through the example of the Los Angeles Police Department. The Christopher Commission demonstrated that the internal affairs division served to protect the most abusive officers (Christopher, 1999). External citizen review has been touted as a way to solve the problem of lax complaint investigation (Stone and Bobb, 2002; Finn, 2001), but it has been shown to be weak and easily diverted (Cao et al, 2000). Lastly, the problems inherent in criminal and civil litigation have been enumerated time and again (Daniels, 2000; Lersch, 1998).

Reform efforts have an even more troublesome history within policing. The ability of police executives to bring about lasting reform is poor at best (Skolnick and Fyfe, 1993) and police reform commissions have been shown to be too brief to effectuate lasting reform (Walker, 2001). This becomes evident when the examples of the NYPD and the LAPD are discussed. In both agencies, reform managers were hired and blue

ribbon commissions formed, but as policing prepared to move into the twenty-first century, both departments were nursing the wounds from their latest misconduct scandals.

In the early nineties, the deficiencies of the current system of police accountability and the failure of this system to adequately safeguard against police brutality were highlighted for all to see. The beating of Rodney King galvanized the calls to reform policing. The fallout from this incident sparked the call to create the most ambitious police reform initiative. This initiative would entail the creation of new legislation and eventually culminate in a policy of institutional reform litigation against police agencies accused of tacitly allowing widespread misconduct to brew within their ranks. This policy will be discussed at length in the rest of this volume.

Chapter 3

Institutional reform litigation in police departments

This chapter examines recent reform litigation efforts in policing. In contrast to the examples of school desegregation and prison reform, the history of institutional reform litigation in policing is relatively new with the majority of reform efforts coming after the passage of the 1994 Violent Crime Control and Law Enforcement Act. Prior to the passage of this act, the main thrust of the reform litigation efforts in police departments were pointed efforts aimed at remedying specific claims. After its passage, police departments became the subject of deliberate litigation aimed at completely reforming their policies and practices regardless of the limitations of the complaints. The goal of this chapter is to describe the current use of institutional reform litigation occurring in policing; “pattern and practice” misconduct reform litigation.

Police reform litigation

Prior to the passage of the 1994 Crime Control and Law Enforcement Act, there were several attempts to reform police practices through the use of reform litigation. The most successful of these attempts surrounded the hiring practices of police agencies around the country. In fact, court instituted reforms were integral in changing the discriminatory hiring practices in many jurisdictions. Contrary to this example, the history of institutional reform litigation surrounding police misconduct issues was fractured at best and nearly nonexistent at worst. In either case, an exploration of the history of police reform litigation shows that a major qualitative shift occurred after the

passage of the 1994 Crime Control and Law Enforcement Act vaulting institutional reform litigation in policing to the forefront of police accountability tools.

Reform litigation prior to 1994

Prior to the passage of the Violent Crime Control and Law Enforcement Act of 1994, many of the police reform decrees in existence focused on the unfair and biased hiring practices that existed in policing. In fact, interventions into police hiring practices have proven to be a fruitful area for reform litigation. There is a long history of the use of consent decrees in the hiring and promotion of minorities and females. In 1979, the Los Angeles Police Department became the subject of an unfair hiring practice lawsuit. In that suit, it was claimed that the LAPD discriminated against females and minorities in both hiring and promotional decisions. The litigation was eventually settled through the use of a consent decree. The Blake consent decree required the LAPD to eliminate discriminatory hiring practices and required the mandatory hiring of females. In an analysis of the decree, Felkenes, Peretz, and Schroedel (1993) found that the LAPD adhered to the letter of the decree, but that this did not serve to increase female promotional rates. A possible explanation for this can be seen in a post-decree analysis of promotional practices in another agency. In that analysis, Whetstone (1999) found that the decree provisions survived the life of the decree, but that a disparate rate of promotion persisted due to a lack of preparation and failure of the majority of female and minority applicants to take the exam (Whetstone, 1999).

More recent decrees have focused on the civil service examinations given to prospective police officer candidates. In 1990, the Department of Justice entered into a

consent decree with the Nassau County, New York Police Department over their civil service entrance examination. In order to satisfy the decree, the County Police had to develop an entrance exam that did not have an adverse impact on the performance of African Americans, Hispanics and females. In a review of the exam, Gottfredson (1996) concluded that the exam was a failure on the grounds that it was completely diluted and devoid of any objective comparative assessment of candidates in an effort to satisfy the consent decree.

These two examples serve to illustrate the type of institutional reform litigation that was occurring in the nation's police departments prior to 1994. In essence, broad reform of police agencies through judicial intervention was limited to the processes of hiring and promotion.

Reform litigation after 1994

After the passage of the 1994 Crime Control and Law Enforcement Act, police practices and policies became the province of broad judicial intervention better known as institutional reform litigation. The following paragraphs outline the institutional reform efforts currently being carried out across the country. Each paragraph provides some background detail into the alleged complaints and presents the main reform mandates contained within the reform consent decree. Clearly, these efforts lie in stark contrast to the unfair hiring practice decrees that formed the majority of judicial intervention prior to 1994.

Pittsburgh Bureau of Police

On April 16, 1997, the Pittsburgh Bureau of Police became the first police agency in the United States to enter into a federal “pattern and practice” consent decree. The consent decree was the culmination of a Department of Justice investigation into allegations of a pattern and practice of use of excessive force. According to the Department of Justice, their investigation uncovered multiple illegal and unethical practices in Pittsburgh including a “pattern and practice” of excessive force, false arrests, improper searches and seizures, racially insensitive language, failure to supervise officers, and a failure to properly investigate complaints against the department and its officers.

As a result of these findings, the Department of Justice filed suit against Pittsburgh in the United States District Court for the Western District of Pennsylvania. Pittsburgh answered the suit by denying all allegations. This stalemate resulted in the negotiation of a settlement agreement, the first ever “pattern and practice” consent decree.

Pittsburgh’s consent decree consists of four sections: management and supervision, community engagement and training, complaint investigation, and compliance. In all, the consent decree mandates the department comply with 76 tasks spread throughout these four topic areas including the creation of an early warning system, traffic stop data collection and analysis, and the complete overhaul of the complaint investigation system. The final section of the consent decree outlines auditing requirements and sets a lifespan for the decree. According to this section, the Bureau of Police must retain the services of an independent auditor whose function it is to monitor

the department's compliance with the provisions of the consent decree and create quarterly compliance reports for the court. The decree mandates that this be done for a five-year period, but allows the department to file for dissolution of the decree if it can demonstrate substantial compliance for two consecutive years. In 2002, after being in place for five years, the decree was lifted as the department was able to demonstrate substantial compliance with the provisions contained in the consent decree.

Steubenville Ohio Police Department

While the Department of Justice was investigating Pittsburgh, it initiated an investigation against the Steubenville, Ohio Police Department. The allegations in Steubenville mirrored those in Pittsburgh; allegations of a pattern and practice of excessive force, false arrests, improper searches and seizures, racially insensitive language, and a failure to supervise officers and investigate complaints against the police.

On September 3, 1997, the Department of Justice filed suit against the Steubenville, Ohio Police Department in the United States District Court for the Southern District of Ohio. This suit was eventually settled through the use of a consent decree. Steubenville's consent decree consists of 99 paragraphs with many containing multiple sub-paragraphs. The form follows that of the Pittsburgh consent decree in that it addresses training, management and supervision, complaint investigation, and compliance and auditing methods. The decree also requires the creation of an early warning system, new complaint investigation policies, and use of force and traffic stop data collection. Here, as in Pittsburgh, the consent decree was given a five-year lifespan with the provision that the City could file for early relief if it could demonstrate substantial compliance over two consecutive years.

New Jersey State Police

The issues in New Jersey stand in stark contrast to those in either Pittsburgh or Steubenville. The main thrust of the allegations against the New Jersey State Police centered on racial profiling. The State Police were accused of employing a biased drug interdiction policy of pretextual stops and searches against African American motorists driving the State's highways. In *State v. Pedro Soto*, 734 A.2d 350 (1996), a New Jersey court found that the New Jersey State Police had a *de facto* policy of targeting African American motorists on the New Jersey Turnpike for traffic stops and ordered evidence against nineteen African American defendants suppressed. In the court's opinion, Judge Francis wrote, "Here, defendants have proven at least a *de facto* policy on the part of the State Police out of the Moorestown Station of targeting blacks for investigation and arrest between April 1988 and May 1991 both south of exit 3 and between exits 1 and 7A of the Turnpike." (*State v. Pedro Soto*, 734 A.2d 350 (1996) at 360). In bringing suit against the New Jersey State Police, the Department of Justice sought to remedy the pattern and practice of racial profiling.

On December 30, 1999, the New Jersey State Police entered into a consent decree with the Department of Justice in the United States District Court for the District of New Jersey. As could be expected, the New Jersey State consent decree centered on policies surrounding traffic enforcement within the State Police. It required an overt policy denouncing racial profiling, traffic stop data collection, and supervisory review of traffic stops in addition to changes in training, complaint investigation, auditing standards, and the creation of an early warning system. In all, the New Jersey State consent decree consists of 134 paragraphs. The decree was given a five-year lifespan, but noticeably

absent was the provision for early dissolution if the Department could prove substantial compliance for a two-year period.

Los Angeles Police Department

The impetus for the investigation and eventual suit against the Los Angeles Police Department stemmed from the worst scandal in recent departmental history. On August 25, 1998, detectives from the Los Angeles Police Department arrested one of their own, Officer Rafael Perez of the Rampart Division C.R.A.S.H. unit (Los Angeles Times, Aug. 26, 1998). The arrest stemmed from an internal departmental investigation into complaints about missing drugs, beatings of drug dealers at the hands of crooked cops, false arrests, bank robbery, and murder (Los Angeles Times, Aug. 26, 1998). In exchange for a lighter sentence, Perez became the key witness for the State and began to tell a tale of deep-seated corruption, misconduct, and criminality.

It was in this environment that the investigation into the policies and practices of the Los Angeles Police Department began. On May 8, 2000, the Department of Justice released its findings. In his letter to the Los Angeles City Attorney, the Acting Assistant Attorney General for the Civil Rights Division reports, “As a result of our investigation, we have determined that the LAPD is engaging in a pattern or practice of excessive force, false arrests, and unreasonable searches and seizures in violation of the Fourth and Fourteenth Amendments to the Constitution.” He continued on to explain that they found evidence of unconstitutional use of force by LAPD officers, improper officer-involved shootings, improper seizures of persons, seizures of property not based on probable cause, and improper searches of persons and property with insufficient cause.

In response to the findings, the Department of Justice initiated a suit seeking relief under *42 U.S.C. § 14141*. The result of this suit was an expansive consent decree signed on June 15, 2001. The decree consists of 187 paragraphs. It covers issues pertaining to management and supervision, policies concerning use of force, complaint investigation, internal affairs, and training. In addition, it has specific provisions concerning gang enforcement units. Once again, the applicable lifespan of the decree was set at five years.

Detroit Police Department

The Detroit Police Department came under federal scrutiny very early on in the history of pattern and practice investigations. Detroit has been viewed as having a problematic police force as evidenced by the many millions of dollars they have paid out in judgments and settlements arising from police misconduct. This figure reached \$40 million dollars over a four-year period from 1996 to 1999 (Detroit Free Press, March 28, 2001). According to Skolnick and Fyfe, six years earlier in 1990, this figure rose to \$20 million dollars. In addition to the millions paid out, the Detroit police have ranked high in fatal officer involved shootings. In 2000, the Detroit police led the nation in fatal officer involved shooting incidents (Swickard and Ashenfelter, 2000). By 2002, the Department was in such disarray that the police chief at the time, Jerry Oliver, joined with the Mayor in asking the Department of Justice to arrange a consent decree. A Detroit Free Press article quotes Chief Oliver as saying, "Let's cut through all of this and get a [consent decree] and adopt the best practices from A to Z from around the country." (Elrick and Schmitt, 2002).

It was in this operational morass that Detroit settled their consent decree. Detroit was unique in that it negotiated two separate consent decrees. The reason behind this was

due to the operational structure of the criminal justice system in Detroit. The Detroit Police Department not only houses traditional police operations, but each precinct houses a jail complete with non-sworn civilian correction officers. Therefore, one consent decree was needed to respond to the traditional police misconduct issues such as use of force, arrest procedures, and management and training. A second decree was needed to respond to detainee rights such as fire safety, healthcare issues, food services, and management and training. In these respects, the second decree was more akin to the prison litigation consent decrees and is not germane to the research examined here. Therefore, it will not be considered in this work.

The police “pattern and practice” decree in Detroit is extremely comprehensive. The decree outlines the creation of a new use of force policy, including revamping the departments chemical spray policy. The decree also explicates a step-by-step arrest and detention policy. These provisions are in direct response to the investigative findings. In their complaint the Department of Justice states,

“The defendants...are engaging in a pattern and practice of conduct by Detroit Police Department officers of subjecting individuals to uses of excessive force, false arrests, illegal detentions, and unconstitutional conditions of confinement. The defendants have failed to adequately train, supervise, and monitor police officers; to investigate, review and evaluate use of force incidents; to investigate misconduct, and discipline officers who are guilty of misconduct; to review and evaluate the basis of seizures and warrantless arrests and secure timely judicial review of such arrests; to protect detainees from undue risks of harm; and to implement effective systems to ensure that management controls adopted by the Detroit Police Department are properly carried out.”

The final three sections mirror those of the other consent decrees; management and supervision, training, and monitoring. Within these sections, provisions requiring the

creation of an early warning system can be found. As has been the case with past decrees, this decree has a five-year lifespan.

Conclusion

The police, as a public institution, have remained relatively sheltered from broad outside reform efforts (Sherman, 1978; Skolnick and Fyfe, 1993; Walker, 2001). Although specially convened commissions have made some inroads, their reform recommendations have been sometimes ignored as evidenced by the recurring corruption, misconduct, and brutality. Alternatively, bright line rules announced by numerous Supreme Court decisions have proven to have an ability to reform specific police practices on a national basis, but their singular reach is far too narrow to assist in the complete reformation of corrupt police organizations. These factors make institutional reform litigation the most viable method for achieving robust reformation of troubled police organizations. But, much like the prison example, police departments benefited from a “hands off” policy in the federal judiciary. In the early years of police reform litigation, the federal judiciary was careful to constrain their injunctive reform efforts to the controversy at hand, rarely, if ever, moving beyond the boundaries of the apparent injury. In constructing declaratory relief, courts resisted the temptation to order unconstrained reform, the hallmark of institutional reform litigation. This would change with the passage of the Violent Crime Control and Law Enforcement Act. Since that time, a total of five police departments have entered into broad reform decrees as a result of institutional reform litigation.

Chapter 4

Study methodology

This chapter outlines the research methods employed during this project. The project outlined here sought to move beyond other empirical studies on the topic of police pattern and practice litigation by expanding the focus to cover the entire policy of federal “pattern and practice” intervention. In order to accomplish this, the universe of section 14141 reform efforts was studied. Utilizing a wide array of data from multiple sources, this work presents a holistic view of institutional reform litigation as it is occurring today in policing.

Research method

The research plan for this project relied upon a multi-methodological approach. By employing several sources of information and methodologies, this work was able to identify key issues with confidence through a triangulation process. For ease of administration, the study method was broken down into three distinct phases. Each phase built upon the information and knowledge gained in the preceding phase. What emerged was a robust picture of the implications of this policy, an understanding of what is entailed in a police reform litigation consent decree, and the effects of this intervention on local police practices.

Phase one: Case law review

The first phase of this project sought to gain insight into why new legislation was needed in order for institutional reform litigation to take hold in policing. Data from the Administrative Office for the United States Courts pertaining to criminal prosecutions for

civil rights violations and civil prosecutions for civil rights violations was analyzed. The database provided by this office was extremely limited allowing only for aggregated analysis. Still, figures for total criminal prosecutions, total civil prosecutions, and their relevant dispositions were available for analysis. These figures were used as proxy measures for prosecutions against police misconduct.

In addition to this analysis, the history of misconduct litigation in policing was explored utilizing relevant court decisions. The data for this part of the study came from actual federal level court decisions. Utilizing a keyword search in Lexus-Nexus, federal district court, appellate court, and Supreme Court decisions were analyzed. The keywords utilized included “police misconduct”, “consent decree and police”, “police and injunction”, “police and brutality”, “section 1983”, and “section 14141”. In addition, the searches were carried out in the law review database of Lexus-Nexus. Any cases specifically mentioned in the relevant law reviews or in the extant literature were also included. Table 1 summarizes the keyword search hits. This analysis was carried out in an effort to discern the doctrinal history behind injunctive relief in cases alleging police brutality and misconduct.

Table 2: Results of Lexus-Nexus keyword search

Keyword	Lexus-Nexus cases
Police misconduct	102
consent decree and police	32
police and injunction	895
Police and brutality	78
section 1983	642
section 14141	0

Phase two: Content analysis

Phase two of this work consisted of a detailed content analysis of Department of Justice complaints and institutional reform consent decrees. Since 1994, institutional reform litigation efforts were carried out in five police agencies across the country. In each case, the Department of Justice filed formal complaints and investigatory findings in addition to a final reform decree.

Utilizing the five existing consent decrees and their associated complaints, a line-by-line content analysis was conducted. As suggested by Maxfield and Babbie (2002), the goal of the content analysis was to examine the actual wording of the documents under study in an effort to discern their latent meaning. This allowed the data to be grouped into meaningful typologies which aided in their direct comparison (Dey, 1993).

For this analysis, two distinct databases were produced; accusations by agency and reforms mandated by agency. Utilizing a charting analysis, differences between departments in accusations and reforms were noted and explored. In addition, within agency differences between accusations and reform mandates were explored.

Phase three: Survey research

Phase three of this study focused on the analysis of survey data. This phase consisted of a reanalysis of data stemming from the Vera/COPS study conducted in Pittsburgh, PA and analysis of an addition officer survey conducted for this project in Pittsburgh. The Vera study produced two citizen surveys (survey one was conducted while the decree was still in place and survey two was conducted after it had been lifted). The surveys covered a wide array of information including perceptions of police performance and experiential data. The data from these two surveys was regrouped in an

effort to address the research questions presented in this project. The data focused on police performance and perceptions of the reform effort in Pittsburgh. In order to increase the power of the analysis, many of the responses to the survey questions were grouped differently than the original analysis. For example, the typical strategy condensed a five point Likert scale into a three point scale; positive, neutral, and negative.

Pittsburgh citizen survey

Vera conducted two phases of a citizen survey in Pittsburgh. The method employed in both surveys was a telephone survey of Pittsburgh residents residing in Zone 2 of the Pittsburgh Bureau of Police. This zone was specifically selected due to its relatively equal number of African American and white residents (Davis et al, 2002). Utilizing a stratified cluster sample procedure, census blocks were sampled and residents age 18 or older were selected for inclusion in the survey. The first survey was conducted in 2001 and the second was conducted in 2003. The first survey yielded 420 completed instruments and the second yielded 415.

Police officer survey

In 2003, Vera researchers conducted a survey of Pittsburgh officers. The survey consisted of 10 yes/no open-ended questions. This survey did not collect any pertinent demographic information. In addition, it did not address several key issues such as perceptions of the consent decree and Department of Justice investigation process. Therefore, the researchers only had officer perceptions on a few variables and these perceptions could not be explored beyond a yes/no analysis, not to mention a demographic analysis.

This project cured the shortcomings in the Vera study by conducting a new officer survey. The new survey was developed by drawing upon this author's experience working on both Vera projects while he was employed as a research associate for the Vera Institute of Justice. This experience allowed him to draw upon several focus groups as well as multiple interviews with officers, supervisors, and commanders within the Pittsburgh Bureau of Police while drafting the survey. In addition, Dr. Karen Amendola and Rob Davis, both of the Police Foundation, reviewed the proposed survey. This was done in order to ensure construct and content validity (Maxfield and Babbie, 2001). For these same reasons, Chief McNeilly of the Pittsburgh Bureau of Police also reviewed four initial drafts. The result was a survey consisting of 48 questions.

Replicating much of the methodology utilized in Vera's Project II, the survey was distributed during roll call at various police zones within the Pittsburgh Bureau of Police over the course of a four-day period. Unlike the Vera survey, the sample for this project was selected utilizing a stratification process. The process entailed selecting police zones and then selecting shifts within that zone to serve as the sample. At least one shift was selected in each zone and all possible shifts were sampled. The total possible sample consisted of 157 police officers of which 131 participated in the survey. This translated into a response rate of 83%. All participation was voluntary and completed surveys were kept confidential. Table 3 breaks down the survey respondents by shift and zone.

Table 3: Breakdown of respondents by zone and shift

Shift	0700-1500	0800-1600	1500-2300	1600-0001	1900-0300	2000-0400	2300-0700	0001-0800
Police Zone								
1			5	6	6	5	7	
2	6	7	5	5	6			
3	6	7	6	6			8	6
4					7	6	5	5
5	6	5						

As is evident, the sampling process allowed representative officers from all zones and shifts the possibility to be included in the final sample.

Conclusion

The methodology outlined in the preceding pages was intended to elicit specific information about the policy of institutional reform litigation in policing. Each research method was one step in a process that sought to ascertain implications of this policy from three distinct perspectives; a legal perspective, a procedural prospective, and an outcome process. The results of this research process are presented in the remaining chapters of this volume.

Chapter 5

The need for 42 U.S.C. § 14141

In this phase of the research, I explore the history of federal civil rights litigation in policing in an effort to extrapolate the need for a wholly separate legislative line for dealing with police incivilities and civil rights violations. In doing so, I will explore the use and utility of criminal and civil protections against police brutality and explore their flaws in cases alleging police misconduct, abuse, and brutality. Utilizing data collected by Administrative Office of the United States Courts, it will be demonstrated that, although judicial enforcement and policymaking extended well into the spheres of education and correctional policies, it fell short in the case of policing. Following this analysis, a doctrinal analysis of civil injunctive relief in policing will be conducted. From this analysis, the need for 42 U.S.C. § 14141 will be clearly demonstrated.

Pre-Section 14141 protections against misconduct and abuse

The most egregious acts of police violence and abuse usually entail multiple civil rights violations. Beatings of handcuffed suspects, use of excessive force, and the unnecessary use of deadly force all entail violations of basic rights to freedom, liberty, and due process. Although some are of the opinion that these incidents happen in our society with too much regularity and with relative impunity, the federal government has not turned a blind eye toward the outward protection of citizens against the potential abuses by governmental agencies including police departments. In fact, Congress has enacted numerous statutes enumerating the rights of the citizenry against unfair, biased, and harsh governmental practices including police misconduct. This has been achieved

through the drafting of multiple civil rights statutes barring such behaviors by government officials. Through the enactment of prophylactic legislation, Congress has been able to provide a framework for bringing criminal and civil actions against individual police officers and entire police agencies. In fact, of the numerous civil rights statutes, five have become commonly used in the battle to hold individual police officers and entire police agencies accountable for violations of civil rights. Table 4 outlines the five most commonly utilized civil rights statutes.

Table 4: Commonly used civil rights enforcement statutes in the prosecution of police brutality.

Statute	Legislative origin	Overview	Sanction
18 U.S.C. § 242	Civil Rights Act of 1866	Conspiracy to deprive civil rights	Criminal
18 U.S.C. § 241	Enforcement Act of 1870	Criminal deprivation of civil rights	Criminal
42 U.S.C. § 1983	Civil Rights Act of 1871	Deprivation of civil rights under the color of law	Civil
42 U.S.C. § 2000d	Civil Rights Act of 1964	Discrimination based on the ground of race, color, or national origin	Civil
42 U.S.C. 3789d(c)(1)	Omnibus Crime Control and Safe Streets Act of 1968	Discrimination based on the ground of race, color, religion, national origin, or sex	Civil

These five statutes all represent separate actions undertaken in the name of protecting civil rights. Each deals with its own unique set of actionable circumstances, but all have in common the deprivation of rights or outright discriminatory treatment by actors acting under the authority of state laws or policies. For ease of discussion, each will be grouped by sanction type and is discussed below.

Criminal protections

The goal of criminal statutes is to define behavior that is not permissible in our society and to prescribe a set of punishments for those that commit the egregious acts so defined (Kadish & Schulhofer, 2001). In the early fight to create protections for civil rights, Congress saw fit to enact two criminal provisions that sought to protect the civil rights of people against the conspiracy to deprive civil rights and the outright deprivation of civil rights. In recent years, these two statutes have come to be used in cases seeking to prosecute police officers alleged to have caused injuries to citizens.

The first statute, 18 U.S.C. § 241³, concerns violations amounting to a conspiracy to deprive an individual of their civil rights and the second, 18 U.S.C. § 242⁴, concerns the outright violation of those rights. As they are framed, 18 U.S.C. § 241 and 242 guarantee certain rights and freedoms and create a punishment for the violation of these rights. This punishment may range from a fine to a protracted term of imprisonment to death.

³The text of 18 U.S.C. § 241 reads, “If two or more persons conspire to injure, oppress, threaten, intimidate, any person in any state, territory, commonwealth, possession, or district in the free exercise or enjoyment of right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured- they shall be fined under this title or imprisoned not more than ten years, or both; and if death results from such acts committed in violation of this section or if such acts include kidnapping or attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

⁴ The text of 18 U.S.C. § 242 reads, “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

Civil protections

The goal of civil statutes is to compensate victims for injuries and losses incurred as a result of the deprivation of rights (Low & Jeffries, 1994). These losses can be the direct result of an injury inflicted upon the victim (hospitalization costs resulting from a physical injury) or remuneration for the loss of rights. Additionally, civil prosecution may lead to injunctive relief thereby curing the ills that led to the initial injury.

In the civil enforcement of rights against police misconduct and abuse, there are three main statutory vehicles for action; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d(c)(1) and (3)), and the Civil Rights Act of 1871 (42 U.S.C. § 1983).

One of the earliest attempts to statutorily establish robust protection of civil rights was encompassed in 42 U.S.C § 1983. This federal statute was first introduced as part of the Civil Rights Act of 1871, which is commonly referred to as the Ku Klux Klan Act. This act was born of reconstruction era northern ideals (Blum & Urbonya, 1998). Originally conceived to deal with southern states refusing to capitulate to reconstruction era reforms, the crux of the statute is contained in 42 U.S.C. § 1983.⁵ This statute creates a liability for the violation of any federally protected right by a person acting under the

⁵The text of 42 U.S.C. § 1983 reads, “Every person who under the color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

color of law. In the realm of police practices, this statute provides a vehicle for private citizens to pursue a civil court action against police officers or their employers for harms caused pursuant to the officer's duty. In fact, 1983 actions have become the accepted vehicle for providing equitable relief from both individual officer and departmental transgressions (del Carmen & Smith, 1997; Gilles, 2000).

The reliance on 42 U.S.C. § 1983 to resolve allegations of deprivation of rights is a rather new phenomena. According to Gilles (2000), "For almost a century after its passage, the statute lay dormant as the federal courts narrowly construed the 'under color of' state law provision." It was at the end of this era of inaction that Congress passed the most sweeping civil rights legislation of the time, the Civil Rights Act of 1964. This act focused on discrimination based upon race, color, or national origin. In the arena of combating police misconduct and brutality, the Civil Rights Act of 1964 created a right against the denial of benefits or the outright discrimination by any agency receiving governmental financial assistance (42 U.S.C. § 2000d⁶). Since the vast majority of all police departments in the United States receive funds from agencies such as the Law Enforcement Administration Assistance program, this section is enforceable against them. Four years after the passing of this statute, Congress enacted a parallel statute in the Omnibus Crime Control and Safe Streets Act of 1968. This act contained a provision that prohibited discrimination based upon race, color, religion, national origin, and sex by any agency funded under the act (42 U.S.C. 3789d(c)(1) and (3)⁷).

⁶ 42 U.S.C. § 2000d reads, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

⁷42 U.S.C. 3789d(c)(1) and (3) read, (1) "No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter."

The failure of pre-section 14141 protections to guard against police abuses

Although Congress has taken multiple steps to create a system of robust protections for civil rights, the utility of these legislative actions must be called into serious question. In the legal histories of both criminal and civil sanctions against police misconduct and abuse, neither has proven to be a reliable and steadfast sanction.

Scholars agree that criminal sanctions initiated under 18 U.S.C. § 241 and 18 U.S.C. § 242 have done little to protect the public from police abuse (Skolnick and Fyfe, 1993; Cheh, 1996; del Carmen & Smith, 1997). Most posit various reasons for this. Initially, the overwhelming majority of actions initiated under these two statutes are brought against individual officers. This means that police organizations are not subject to these criminal sanctions. In essence, criminal sanctions may punish the immediate perpetrator of the wrongdoing, but they do little to cure the deviant organizations that may have fostered the criminal behavior (Sherman, 1978). The most salient examples of this include the criminal litigation stemming from the Rodney King incident in Los Angeles and the Abner Louima incident in New York. In the King incident, officers Stacey Koon and Laurence Powell were convicted for violations of civil rights under 18 U.S.C. § 242. In the Louima incident, officers Justin Volpe and Charles Schwarz were charged with both a violation of civil rights under 18 U.S.C. § 242 and a conspiracy to violate civil rights under 18 U.S.C. § 241. Neither case addressed the deficiencies inherent in the Los Angeles Police Department or the New York City Police Department

(3) “Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of rights described in this section, including the suspension, termination, or repayment of such funds made available under this chapter as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.”

that contributed to these two horrific acts. In fact, less than ten years later, the LAPD came under fire as an entire division within their ranks was accused of committing savage acts on the same level as the King incident including beatings, falsifying arrests, falsifying evidence, and murder (Los Angeles Times, Aug. 26, 1998). The fallout from the LAPD Rampart scandal serves to highlight the fact that criminal sanctions appear to have little long term protective value.

There are other inherent problems with criminal sanctions in addition to the failure to address deviant police organizations. One innate difficulty lies with the structure of criminal procedure in the United States. In criminal litigation, the prosecutory decision making rests with the state. There is no procedure allowing for a citizen attorney general thereby precluding private citizens from initiating actions under these statutes. As a result of this, there is a paucity of criminal prosecutions against police officers. According to Human Rights Watch (1998), a very small percentage of cases alleging criminal deprivation of civil rights are ever investigated leading to an even smaller percentage that result in prosecution.

The outlook only becomes more bleak when criminal remedies for widespread police misconduct are considered. The ability of criminal statutes to provide for robust protections against endemic police misconduct and abuse is tenuous at best. Skolnick and Fyfe (1993) point out that the use of criminal litigation against the police appears to be an inadequate method for holding entire police agencies accountable. The reason for this is that criminal prosecution is only concerned with one incident thereby only allowing for a delimited number of actors and victims. A criminal prosecution will only be concerned with a policy or practice as it pertains to the single incident under

consideration. The reforming ability of criminal prosecution is often limited to the extent that the prosecuted officer can serve as an example to other peer officers. As Agathocleous and Ward (1998) note, “[Many scholars and practitioners] agree that individual prosecutions often fail to produce the institutional changes needed to eliminate future abuse.” (p. 9). Institutional reform is just not within the scope of criminal actions.

Civil litigation appears to have the opposite problems. Civil litigation has proven to have little effect on individual level police misconduct, but has been a driving force in changing administrative policies through injunctive relief (Schmidt, 1985). Although multiple scholars point to injunctive relief as an effective tool to combat police abuse and violence, an analysis of Administrative Office for the Courts data reveals that the prevalence of injunctive relief is on a downward trend. When combined with apparent doctrinal deficiencies, the utility of civil relief against police misconduct is brought into serious question.

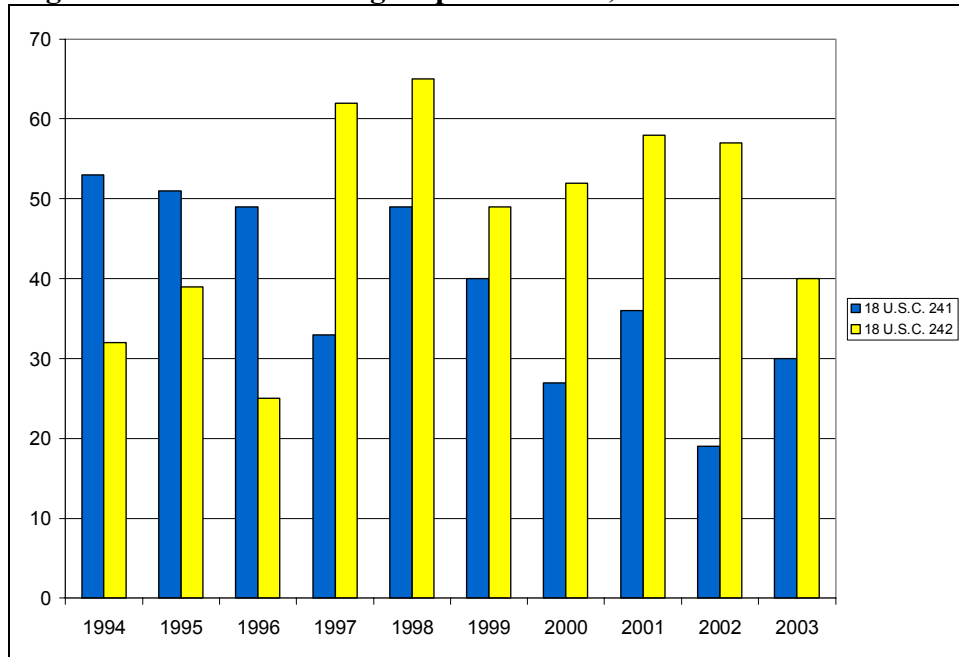
The following sections attempt to empirically demonstrate the failures of pre-section 14141 protections against police abuse. Through an analysis of federal court data, it will be demonstrated that legal sanctions often fail to address the majority of cases either through failure to successfully prosecute or a failure to provide robust relief. Further failures will be demonstrated through a content analysis of case law stemming from police abuse cases. This analysis will demonstrate that the courts have created multiple barriers in cases alleging widespread police abuse and misconduct. This analysis will logically demonstrate the need for section 14141 “pattern and practice” legislation.

An Analysis of Administrative Office for the Courts' data

The results of an analysis of criminal prosecutions occurring in U.S. District Courts back many of the opinions advanced by scholars as evidence for their failure. Utilizing data provided in the Federal Justice Statistics Database, the total number of prosecutions under 18 U.S.C. § 241 and 18 U.S.C. § 242 were tabulated for all years provided in the database (1994-2003). The results show that over the ten year period extending from 1994 through 2003, an average of 39 cases alleging criminal deprivation of civil rights (18 U.S.C. § 241) were filed per year. This figure only slightly improves when cases alleging conspiracy to deprive civil rights (18 U.S.C. § 242) are considered. In the ten year period from 1994-2003, an average of 48 cases were filed under this statute. Due to the nature of the database, these figures represent aggregated yearly totals for each statute and not the number of prosecutions attributable to police misconduct and abuse. In that sense, they represent the maximum bounds for each statute. It may very well be the case that the number of prosecutions of police officers accused of the criminal deprivation of civil rights falls well below these maximum limits. But for the instant analysis presented here, even when the maximum figures are utilized as a proxy measure for total criminal prosecutions of police misconduct, it becomes evident that few cases are prosecuted each year. Figure 1 graphically depicts the total number of criminal cases prosecuted each year for the ten year period extending from 1994 to 2003 under 18 U.S.C. § 241 and 18 U.S.C. § 242. As is depicted in the graph, the highest number of criminal prosecutions under 18 U.S.C. § 241 occurred 1994 when 53 cases were brought before federal courts and the highest number of criminal prosecution under 18 U.S.C. § 242 occurred in 1998 when it reached 65 cases. In contrast, the highest number of civil

prosecutions for civil rights violations during this time period occurred in 1998 when it reached 734 cases (See figure 3).

Figure 1: Criminal civil rights prosecutions, 1994-2003.

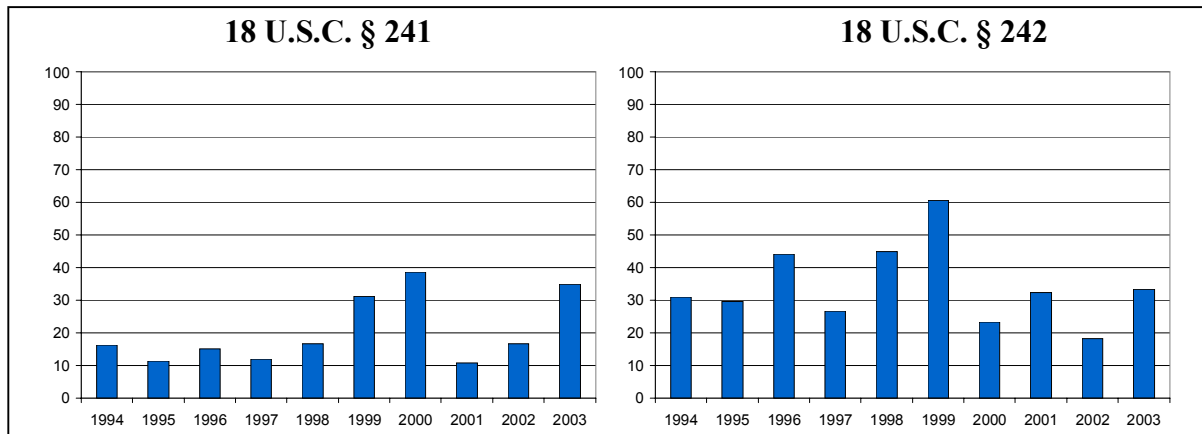


Source: Bureau of Justice Statistics, Federal Justice Statistics Database.

The inherent problems associated with criminal prosecutions only become more exacerbated when prosecutorial dispositions are taken into account. For the period covering 1994 to 2003, a total of 99 section 241 cases and 113 section 242 cases were found not guilty. In fact, over the ten year period, a total of twenty-one percent of section 241 criminal prosecutions and thirty-three percent of section 242 criminal prosecutions ended in a not guilty finding. Taken together, about one in four criminal prosecutions ended in a finding of not guilty during the ten year period between 1994 and 2003. The fact that so few criminal prosecutions are filed each year remains troubling, but when compounded with the fact that one-quarter of these few prosecutions fail, the

prophylactic ability of criminal sanctions moves to nil. Figure 2 depicts the percentage of criminal cases ending in a not guilty finding over the ten year period under study.

Figure 2: Percentage of 18 U.S.C. § 241 and 18 U.S.C. § 242 cases found “not guilty”, 1994-2003.



Source: Bureau of Justice Statistics, Federal Justice Statistics Database.

The figures show that at their peak, nearly forty percent of section 241 and sixty percent of section 242 criminal cases end up in a finding of not guilty. This does not take into account the many other possible dispositions that basically equate to a not guilty finding. Clearly, criminal sanctions have failed to bring about full accountability to police agencies accused of rampant misconduct and abuse of the public.

Although criminal remedies appear to be seldom utilized, civil remedies appear to enjoy widespread favor. This may occur for many reasons including the ability of a private citizen to initiate an action under a civil statute, the availability of monetary awards, and the ability to recoup attorney fees. In any event, the number of civil prosecutions occurring each year outnumbers criminal prosecutions by nearly seven-fold. An analysis of case processing data from the Administrative Office of the Courts reveal that for the period extending from 1994 through 2000, an average of 671 civil

prosecutions were filed per year as compared to an average of 89 criminal prosecutions per year.⁸ In fact, during the twenty-six year period for which data is available, the number of civil prosecutions per year averaged 627 with the highest number reaching 914 cases. Figure 3 depicts the number of civil prosecutions initiated in federal courts per year for the 26 year period extending from 1975 through 2000. Clearly, civil prosecution appears to provide the best hope for reform.

Figure 3: Civil prosecutions per year, 1975-2000.

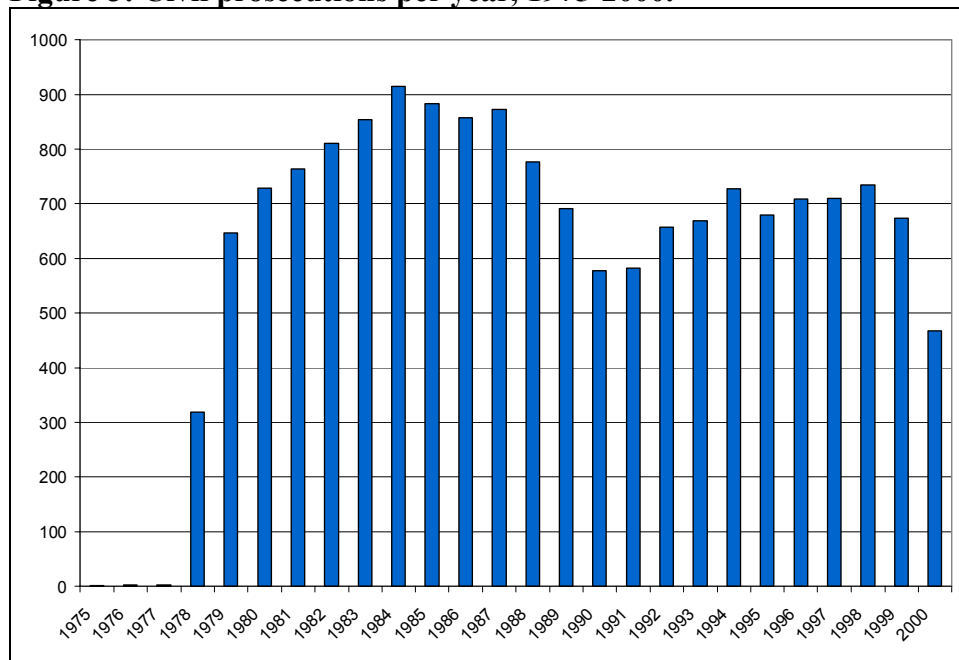


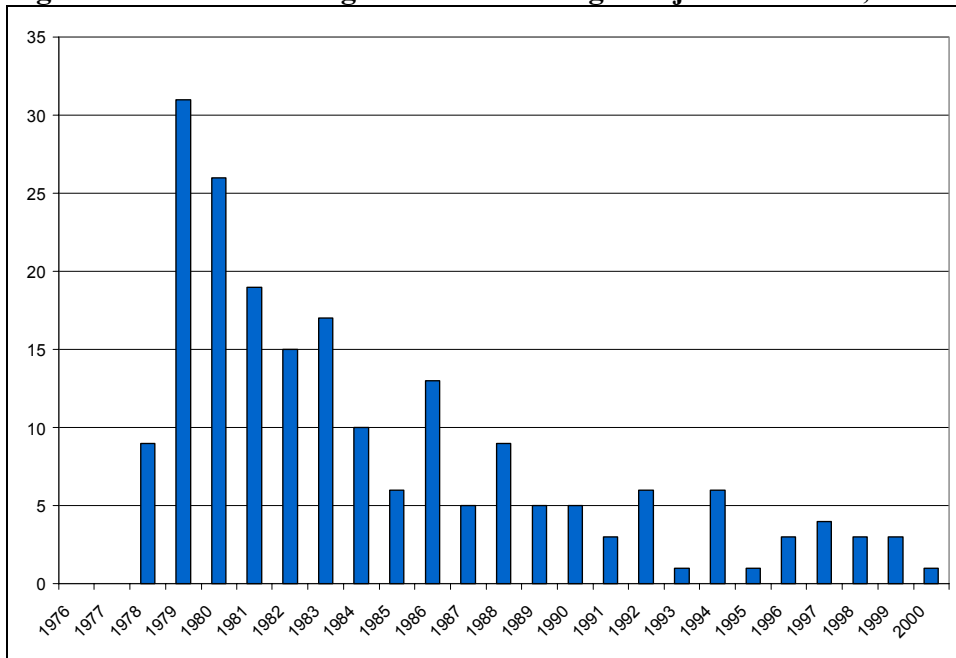
Figure 3 also illustrates the effect of important court decisions on the availability of civil injunctive relief. Beginning in 1978, civil injunctive relief efforts received a motivational boost. The case of *Monell v. Dept. of Social Services of the City of New York*, 436 U.S. 658 (1978) reversed the Supreme Court’s earlier exclusion of

⁸ The period extending from 1994 through 2000 is the only years that the two datasets have comparable data.

municipalities from civil liability arguing that local municipalities could indeed be construed to be “persons” in civil litigation proceedings. The Court reasoned that every governmental entity, such as a city or county, is ultimately created through the imposition of state law and therefore, they and their designees’ actions fall under the ‘color of law’ requirement. In terms of actionability, this decision meant that in addition to bringing suit against the actual individual who was the cause of the injury, his employer, either a local municipality or jurisdiction, could also be enjoined in the suit. In terms of litigating injuries resulting from police misconduct, *Monell* allowed cities, counties, villages, and towns to be subjects to the suit. This immediately increased the number of civil suits brought in federal courts because it opened up the coffers of local municipalities to damage claims. This is clearly illustrated by the 300% increase in federal civil rights prosecutions observed for the year 1978 and the 100% increase noted in 1979.

Monell officially ushered in the use of civil statutes as the preferred tool to combat allegations of civil rights violations. But, as with criminal prosecutions, a dispositional analysis of civil court processing reveals a problematic trend. Figure 4 depicts the number of civil prosecutions resulting in injunctive relief. Again, this is the total aggregate number of civil prosecutions, not the number of police misconduct prosecutions. Therefore, this represents the maximum figure possible and is used only as a proxy measure.

Figure 4: Federal civil rights cases resulting in injunctive relief, 1976-2000.



As is evident in the graph, the number of civil prosecutions resulting in injunctive relief has been steadily decreasing. In the twenty-six year period extending from 1976 through 2000, the number of cases that resulted in injunctive relief decreased from a high of thirty-one in 1979 to a low of one in 2000. Apparently, the judiciary has become more restrained in cases seeking injunctive relief. In fact, when we compare the percentage of cases resulting in injunctive relief in 1979 to the cases resulting in injunctive relief in 1999 (two years where the total number of cases are nearly equal), we see a drop off of four-and-a-half percent. See table 5 below.

Table 5: Civil injunctive relief dispositions for 1979 and 1999.

Year	Total number of cases	Injunctive relief dispositions	percentage
1979	647	31	5%
1999	673	3	.05%

The relative unavailability of civil injunctive relief remains problematic. In the twenty-six year period between 1975 and 2000, the percentage of civil prosecutions resulting in injunctive relief averaged just one-and-a-half percent. In that same period, the highest yearly percentage was just 5%.

The problems associated with civil injunctive relief extend well beyond this analysis. As the following section will demonstrate, modern federal court doctrine rendered civil injunctive relief unavailable in cases alleging the type of widespread police abuse and misconduct found in “pattern and practice” litigation.

An analysis of the doctrinal history of civil injunctive relief in policing

Beginning in the sixties, judicial reform efforts began to change direction. Individuals that had suffered injuries at the hands of the police began to realize the relative futility of bringing traditional suits seeking monetary damages and criminal prosecutions seeking punishment. In response, these plaintiffs began to ask the judiciary to provide lasting protections by enjoining the police from behaving in ways likely to cause harm to the individuals they come in contact with. In some cases, the behavior complained of was very specific and pointed and in others it was widespread complaints of a “pattern and practice” of police brutality. As the next twenty years unfolded, civil injunctive relief would fall in and out of favor. At times, judges would provide deep protections and during others, they flatly refused. In the end, the history of civil injunctive relief reveals a schizophrenic past. This fact tends to make civil injunctive relief, as it has traditionally be utilized, an unreliable police accountability tool.

The first major victory in the injunctive relief effort came in the case of *Lankford v. Gelston*, 364 F.2d 197 (1966). In this case, Samuel Lankford and his wife brought suit

against representatives from the City of Baltimore Police Department. The facts of the case reveal that the officers from the Baltimore Police Department made more than 300 illegal searches of private residences while attempting to ferret out the location of a suspect who shot and killed a police officer. One of the locations searched was the residence of the Samuel and Corinthia Lankford. In bringing their case, the Lankford's alleged violations of their Fourth and Fourteenth Amendment right to privacy. In the originating case, the District Court refused to enter injunctive relief citing federalists concerns, but on appeal, the United States Court of Appeals for the Fourth Circuit overruled the District Court and entered into injunctive relief. The Court of Appeals ordered that the case "be remanded for the entry of a decree enjoining the Police Department from conducting a search of any private house to effect an arrest of any person not known to reside therein, whether with or without an arrest warrant, where the belief that the person is on the premises based only on an anonymous tip and hence without probable cause" (*Lankford v. Gelston*, 364 F.2d 197 at 206 (1966)). Although the *Lankford* Court ruled to enjoin the City of Baltimore Police Department, the full breadth of the injunctive relief was extremely narrow and circumscribed by the allegations contained within the original complaint as evidenced by this stated order.

Approximately eight years later, a second court would hand down a reform mandate in a case alleging misconduct on the part of a police agency. In *Allee v. Medrano*, 416 U.S. 802 (1974), the Supreme Court affirmed a consent decree granting injunctive relief from specific behaviors on the part of the Texas Rangers that were deemed harassing and having little legal justification. In the originating case, the defendants alleged that they were attempting to set about peacefully protesting for

unionization rights. The controversy arose because the Texas Rangers, a state law enforcement agency, took measures that deprived the plaintiffs of their right to peaceful assembly and did deny them their rights by unlawfully arresting them and continuing a course of conduct deemed harassing. In response, the lower courts drafted an injunctive consent decree that enjoined the Texas Rangers from interfering with the lawful protests and rallies organized by the plaintiffs. On review, the Supreme Court affirmed and concluded, “Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate” (*Allee v. Medrano*, 416 U.S. 802 at 813 (1974)). Again, by constricting the reformatory decree to the peaceful protests of the injured plaintiffs this case illustrates the narrow reform construction employed by the courts of the time.

Other victories would come nearly twenty years later. In some of these cases, the courts responded to broad misconduct by entering into consent decrees that proscribed reforms to policies and procedures, training, and administration. But, in all of these cases, the injunctive relief was limited to the direct allegations and findings of factual misconduct elicited during the case. The most striking support for this is given by two separate cases complaining of similar transgressions on the part of the police. In *Alliance to End Repression v. City of Chicago*, 561 F. Supp. 537 (1982), a class action suit was filed in District Court seeking relief from constitutional violations of privacy. Specifically, the plaintiffs alleged that the City of Chicago Police Department was engaged in unconstitutional intelligence gathering activities. In *Handschu v. City of New York*, 605 F. Supp. 1384 (1985), several Plaintiffs lodged complaints against the City of New York Police Department that amounted to unconstitutional intelligence gathering on

the part of that police agency. In both cases, the courts enjoined the police agencies from continuing these practices.

These cases illustrate the fact that federal courts were willing to provide injunctive relief against the police in cases alleging civil and constitutional violations. But, more importantly, these cases illustrate the nature of the claims and relief efforts. Specifically, all of these cases addressed specific police behaviors. In *Lankford*, the violations concerned illegal warrantless searches conducted by the police. In *Allee*, the plaintiffs complained of union-busting tactics being carried out by the Texas Rangers. In *Alliance* and *Handschu*, the plaintiffs alleged that the police conducted illegal surveillance and intelligence gathering. But, as the case law surrounding police civil injunctive relief continued to unfold, it became clear that courts were not willing to enter injunctive relief plans in cases that claimed injuries due to a broad “pattern and practice” of police misconduct. In fact, to the contrary, in cases alleging the existence of a “pattern and practice” of police misconduct the court created or expanded upon existing doctrinal barriers virtually nullifying any institutional reform litigation effort.

The first attempt to establish broad “pattern and practice” injunctive relief came in the case of *Rizzo v. Goode*, 423 U.S. 362 (1976). The plaintiffs in *Rizzo* claimed that in the Philadelphia Police Department of the sixties and seventies, there was a practice of outright police abuse and unconstitutional treatment of minority citizens that resulted in the deprivation of countless civil rights. Seeking injunctive relief, the plaintiffs brought suit under 42 U.S.C. §1983. In finding for the plaintiffs, the lower Court created a comprehensive plan of relief that included expanding the complaint investigation procedure “to an all-encompassing 14-page document”, revisions to policy and

procedure, and the creation and dissemination of a “Citizen’s Complaint Report” (*Rizzo v. Goode*, 423 U.S. 362 at 366 (1976)). Although this decree was upheld by the Court of Appeals, the respondents immediately appealed to the Supreme Court which eventually reversed the ruling. In strong language, the Supreme Court announced,

“Contrary to the District Court’s flat pronouncement that a federal court’s legal power to ‘supervise the functioning of the police department...is firmly established,’ it is the foregoing cases and principles that must govern consideration of the type of injunctive relief granted here. When it injected itself by injunctive decree into the internal disciplinary affairs of this state agency, the District Court departed from these precepts. For the foregoing reasons the judgment of the Court of Appeals which affirmed the decree of the District Court is *reversed*.” (*Rizzo v. Goode*, 423 U.S. 362 at 380,381 (1976)).

The Court gave several reasons for their decision. These reasons help to form the doctrinal boundaries in police civil injunctive relief. First and foremost, the Court argued that federalism necessitates judicial restraint in cases seeking relief from state actors. According to the Court, “principles of federalism... still have weight, [and] where an injunction against a criminal proceeding is sought under [the Civil Rights Act], ‘the principles of equity, comity, and federalism’ must nonetheless restrain a federal court.” (*Rizzo v. Goode*, 423 U.S. 362 at 379 (1976)). Second, and more importantly, the Court refused to accept the notion that a “pattern and practice” constitutes a causal nexus between the actions of police administrators and the injuries suffered by the public at the hands of the police. By stating that there is no injurious relationship between the plaintiff and respondents, the court in effect made *Rizzo* non-justiciable under Article III’s case and controversy requirement. This distinguishes a *Rizzo*-type “pattern and practice” suit from a *Lankford* or *Handschu* suit where the injuries, loss of privacy, were found to be the direct results of police actions. In the Court’s reasoning, the “invocation of the word

‘pattern’ in a case where...the defendants are not causally linked to it, is but a distant echo of the findings in those cases. The District Court’s unadorned finding of a statistical pattern is quite dissimilar to factual settings.” (*Rizzo v. Goode*, 423 U.S. 362 at 375 (1976)). The Court thus held that cases alleging a “pattern and practice” of police misconduct do not satisfy the requirements for justiciability. In the years after the *Rizzo* decision, the courts would not only uphold *Rizzo*’s “pattern and practice” non-justiciability doctrine, but would establish additional standards limiting the reach of injunctive relief.

After the *Rizzo* ruling, the United States Department of Justice attempted to intervene on behalf of the plaintiffs. The case of *United States v. City of Philadelphia*, 482 F.Supp 1248 (1979), marked the first time that the Justice Department attempted to cure improper police practices through the use of litigated injunctive relief. According to the case, the U.S. Department of Justice conducted an independent investigation into allegations of police misconduct occurring in Philadelphia and found a “pattern and practice of verbal abuse, physical abuse, false arrests, compounding charges to cover up false arrests or to discourage the filing of complaints, illegal searches and seizures, and unlawful detainments.” (*United States v. City of Philadelphia*, 644 F.2d 187 at 207 (1981)). As a result of these findings, the Attorney General filed suit against the City of Philadelphia in the federal court. In a four part analysis, the district court opined that the Attorney General has no express or implied right to bring suit against the City of Philadelphia or its police department. Under appeal, the Attorney General’s contentions that the federal government not only had a right, but a duty to intervene in cases of widespread police misconduct, were again found wanting. The court ruled that “the

Attorney General has no standing to advance the civil rights of third persons absent an express statutory grant of the necessary authority.” (*United States v. City of Philadelphia*, 644 F.2d 187 at 189 (1981)). In addition, the Court of Appeals once again noted federalism concerns. In its opinion, the Court noted “the power which the Attorney General claims in this case is simply not compatible with the federal system of government envisioned by the Constitution. This power, in essence would permit the Justice Department to bring a civil suit against any state or local administrative body merely because the Attorney General and his subordinates have determined that the defendant’s operating policies and procedures violate any one of the civil rights guaranteed to citizens by the Constitution and laws of the United States.” (*United States v. City of Philadelphia*, 644 F.2d 187 at 199 (1980)).

The case of *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) further delineated the Court’s justiciability requirements in cases seeking civil injunctive relief against the police. This case concerned injuries caused by an illegal chokehold administered by a Los Angeles Police Officer. The plaintiff, Adolph Lyons, received injuries to his larynx as the result of a chokehold. The plaintiff brought suit seeking damages and an injunction barring the use of chokeholds by the LAPD. In a sweeping decision, the Court ruled that Lyons did not have standing to seek injunctive relief and that even if he did, federalism required that injunctive relief “is not the role of a federal court absent far more justification than Lyons had proffered.” (*City of Los Angeles v. Lyons*, 461 U.S. 95 at 113 (1983)). The Court’s federalism concerns expressed in *Lyons* mirrored those expressed in *Rizzo*. According to the Court, “[They declined] the invitation to slight the preconditions for equitable relief; for as [they] have held,

recognition of the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of States' criminal laws in the absence of irreparable injury which is both great and immediate." (*City of Los Angeles v. Lyons*, 461 U.S. 95 at 112 (1983)). The Court further decided that the plaintiff did not have standing to seek injunctive relief. In its decision, the Court ruled that in order to win injunctive relief, the plaintiff would have to prove that he was very likely to suffer another wrongful chokehold or that all officers in the City of Los Angeles always use chokeholds in their dealing with citizens. According to the Court,

"Lyons' assertion that he may again be subject to an illegal chokehold does not create the actual controversy that must exist for a declaratory judgment to be entered...That Lyons may have been choked by the police on October 6, 1976, while presumably affording Lyons standing to claim damages against the individual officers and perhaps against the City, does nothing to establish a real and immediate threat that he would again be stopped for a traffic violation, or for any other offense, by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part. The additional allegation in the complaint that the police in Los Angeles routinely apply chokeholds in situations where they are not threatened by the use of deadly force falls far short of the allegations that would be necessary to establish a case or controversy between the parties." (*City of Los Angeles v. Lyons*, 461 U.S. 95 at 105 (1983)).

Lyons continued to narrow the court's standing doctrine in cases seeking injunctive relief against egregious police actions. While *United States v. City of Philadelphia* declared that third party standing, in this case the U.S Attorney General's standing, does not exist in cases seeking injunctive relief against the police, the *Lyons* decision raised the bar concerning "case or controversy" standing doctrine in police misconduct cases. In essence, the court ruled that injunctive relief requires that plaintiffs

demonstrate that they will be, as opposed to may be, injured in the future by the practices that they are seeking to enjoin. When combined, these two cases along with *Rizzo* created numerous, and nearly impossible to scale, legal hurdles that served to nullify broad “pattern and practice” injunctive relief claims against police agencies.

As was clearly demonstrated above, the courts were willing to grant limited injunctive relief in cases alleging specific complaints of police misconduct (*Lankford*, *Allee*, *Alliance*, and *Handschu*) But, in the more broad complaints (*U.S. v. Philadelphia* and *Rizzo*) alleging a “pattern and practice” of widespread police brutality and misconduct, the courts were more restrained, refusing to grant injunctive relief. Table 6 outlines the injunctive relief results from several cases brought against police agencies by plaintiffs seeking injunctive relief.

Table 6: Federal cases seeking injunctive relief from police misconduct.

Case	Year	Allegation	Injunctive relief
<i>Lankford v. Gelson</i>	1966	Illegal searches	Granted
<i>Allee v. Medrano</i>	1974	Illegal union breaking	Granted
<i>Rizzo v. Goode</i>	1976	Pattern and practice of brutality	Denied
<i>United States v. City of Philadelphia</i>	1979	Pattern and practice of brutality	Denied
<i>Alliance to End Repression v. City of Chicago</i>	1982	Illegal intelligence gathering	Granted
<i>Lyons v. City of Los Angeles</i>	1983	Illegal choke holds	Denied
<i>Handschu v. City of New York</i>	1985	Illegal intelligence gathering	Granted

The need for 42 U.S.C. § 14141

The police reform litigation efforts that occurred after 1994 lie in sharp contrast to those that occurred prior to this date. The reason for this rests with the promulgation of

new legislation under the Violent Crime Control and Law Enforcement Act that allowed the federal government to bring suit against local police agencies. As the previous section demonstrated, prior to the passage of this legislation, the majority of the reform litigation efforts in police departments were pointed efforts aimed at remedying specific claims. After its passage, police departments became the subject of deliberate litigation aimed at completely reforming their policies and practices regardless of the direction and limitations of the stated allegations.

Specifically, Section 14141 of the crime bill granted the federal government standing to bring suit against any governmental authority, including police departments, found to be engaging in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. In addition to outlining prohibitive behavior, this section also enumerated retributive action. The second half of section 14141 empowered the Attorney General to seek civil action in order to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.” (42 U.S.C. §14141).

As codified, 42 U.S.C. § 14141 reads:

(a) Unlawful conduct: It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General: Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

In practice, section 14141 cured the standing problem that was first noted in *United States v. City of Philadelphia*. The second half of section 14141 grants the Attorney General of the United States the express authority to file “pattern and practice” suits against law enforcement agencies with the direct goal of seeking equitable or declaratory relief. This goes to the central argument relied upon by the court in *United States v. City of Philadelphia* when it was determined that “the Attorney General has no standing to advance the civil rights of third persons absent an express statutory grant of the necessary authority.” (*United States v. City of Philadelphia*, 644 F.2d 187 at 189 (1981)). In fact, it appears that the authors of this statute penned it in direct response to that decision.

Section 14141 also cures the standing problems noted in *Lyons*. By granting the Attorney General third party standing to seek equitable and declaratory relief for past violations⁹, this section nullified the *Lyons*’ court nearly impossible standard that the plaintiff had to demonstrate that he was in fact going to be injured again in the future as a necessary component for the grant of injunctive relief. According to the statute, all that is necessary for relief is “reasonable cause to believe that a violation of paragraph (1) has occurred.” (42 U.S.C. § 14141). It makes no reference to future injuries.

Finally, section 14141 appears to cure *Rizzo*’s doctrinal hurdle of demonstrating a clear nexus between a “pattern and practice” of misconduct and the resultant injuries. The *Rizzo* court found that the City of Philadelphia, its police department, and police department administrators could not be held liable in a suit seeking injunctive relief for injuries caused or allowed due to a “pattern and practice” of police misconduct. The

⁹ The actual wording in the statute is in past tense, “Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred...”

main thrust of its argument was that a causal connection could not be demonstrated between the egregious acts of a few officers and the liability of the respondents. The court noted that the individual officers could be held liable, and in fact there were numerous vehicles for this liability, but the entire agency could not be called to account for the actions of a few officers barring a direct causal nexus between the injuries and the actions of the entire department. Section 14141 deals with this by making it “unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers...” (42 U.S.C. § 14141). In other words, it groups the actions of individual officers with that of departmental administrators and the “governmental agency” as a whole. Even if an individual officer was found to have been engaged in a pattern and practice of depriving civil rights, the Attorney General still has recourse to cure the “pattern and practice”, effectively allowing entrée into the entire agency.

Conclusion

The doctrine surrounding civil injunctive relief against the police had created substantial barriers against those seeking broad injunctions seeking to cure widespread patterns and practices of police misconduct. In 1994, these barriers would crumble as the landscape of civil injunctive relief against the police was altered forever. With the passing of the Violent Crime Control and Law Enforcement Act, Congress ensured that the problem of pervasive police misconduct and disregard for civil rights protections would no longer be non-justiciable. By signing into law 42 U.S.C. § 14141, Congress created a statutory vehicle which allowed the Attorney General of the United States to

bring suit seeking broad injunctions against police agencies accused of fostering a pattern and practice of abuse, misconduct, and brutality. This statute in effect changed the tenor and direction of police accountability in the United States forever.

In addition to allowing for institutional reform litigation policing, the enactment of 42 U.S.C. § 14141 also served to differentiate institutional reform in policing from past institutional reform litigation examples. In a sense, institutional reform litigation could not begin in policing until the passing of an affirmative grant of action by Congress. Therefore, the reform litigation effort in policing can be seen as flowing from Congress rather than judicial activism. This will have important implications for the legitimacy of institutional reform litigation in policing as a public police and police accountability tool.

Chapter 6

An analysis of institutional reform decrees

This chapter presents the results of a content analysis of legal documents filed in the five litigated police “pattern and practice” reform cases. Between 1997 and 2005, there have been five section 14141 “pattern and practice” lawsuits initiated in federal courts. For each of these cases, the original complaint and the negotiated consent decree were obtained and analyzed in an effort to decipher what police behaviors lead to section 14141 liability and what reforms are advanced to control these behaviors.

Results of a content analysis of police institutional reform complaints

A line-by-line content analysis¹⁰ was performed on the original complaints filed by the Department of Justice in federal district courts in the cases of *United States v. Pittsburgh Bureau of Police*¹¹, *United States v. Steubenville Police Department*¹², *United States of America v. New Jersey State Police*¹³, *United States v. Los Angeles Police Department*, and *United States v. Detroit Police Department*. The results show a common pattern of behaviors in four out of five cases. In these cases, the allegations can be grouped into five main topic areas; use of excessive force, improper search and seizures, false arrests, and general misconduct. In the fifth case, *United States of America v. New Jersey State Police*, the behaviors contained in the complaint were limited to differential traffic enforcement and search tactics associated with racial profiling. In all

¹⁰ For a full discussion of the methodology involved in the content analysis, see chapter 4.

¹¹ The full title of the case is, *United States of America v. City of Pittsburgh, Pittsburgh Bureau of Police, and Department of Public Safety* (1997).

¹² The full title of the case is, *United States of America v. City of Steubenville, Steubenville Police Department, Steubenville City Manager, and Steubenville Civil Service Commission* (1997).

¹³ The full title of the case is, *United States of America v. State of New Jersey, Division of State Police of the of the New Jersey Department of Law and Public Safety* (1999).

five cases, the same pattern of management omissions were noted as evidence of a formal tolerance of a “pattern and practice” of police misconduct. Each main misconduct topic area is explored in detail below.

Use of excessive force

In four of the five complaints, use of excessive force was cited as a factor for the “pattern and practice” action. The excessive force incidents listed in the complaints ranged from beatings of handcuffed suspects, to the unlawful use of deadly physical force, to excessive force used during off-duty altercations. In some of the complaints, the police departments were found to have numerous excessive force complaints alleged against them, while in others, there was only one. Only the New Jersey complaint was found not to include any allegation of the use of excessive force by the police.

By far, the most force complaints were lodged in the case against the Pittsburgh Bureau of Police. In that case, the complaint alleged that the Bureau of Police officers were found to use excessive force during arrest situations, custodial situations, and routine citizen encounters. In addition to the use of excessive force in these situations, Bureau of Police officers were also alleged to unnecessarily escalate the level of force used in any given situation. The complaint also alleged that Bureau of Police officers used excessive force in confrontations with ordinary citizens after provoking the citizens into violent confrontations. This excessive force situation was unique to the Pittsburgh complaint.

The complaint against the Steubenville Police Department noted some of the same use of force issues contained in the Pittsburgh case. Most notably, the department was found to use excessive force during arrest and custodial situations. But, the

Steubenville case did include a force complaint that was unique to this department.

According to the complaint, the officers in the Steubenville Police Department were found to use of excessive force in off-duty situations.

The Los Angeles Police Department had the most serious excessive force complaint of all departments. In that complaint, the Department of Justice alleged that officers in the LAPD used deadly physical force improperly during officer-involved shootings. This is apparently a direct reference to the LAPD Rampart Scandal where it was determined that two officers in that unit were involved in a murder of a drug suspect while in uniform and on duty.

In the complaint against the Detroit Police Department, the factual instances of use of excessive force were not expanded upon. The complaint simply stated that the Department had a “pattern and practice” of using excessive force. Table 7 outlines the use of force allegations contained in each complaint. As is evident, in four of the departments, use of force was an issue, but the New Jersey State Police did not have an issue with excessive force.

Table 7: Use of force allegations

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
Use of excessive force:	X	X		X	X
• Improper officer-involved shootings				√	
• During arrest	√	√			
• During police custody	√	√			
• During routine citizen encounters		√			
• Unnecessary escalation of force		√			
• During off-duty incidents	√				

Improper search and seizure

As was the case for complaints of use of excessive force, officers in four out of five departments were found to have engaged in illegal search and seizures. The complaints included unlawful *Terry* type stops, improper vehicle searches, improper business/residential searches, and the improper seizure of property. Again, the New Jersey complaint did not allege any violations of accepted search and seizure law.

Both the Pittsburgh Bureau of Police and the Los Angeles Police complaints contained the most allegations involving improper searches and seizures. In each case, the departments were found to violate all categories including improperly searching vehicles and real property without lawful authority and the improper seizure of property. In the Steubenville complaint, the allegations were limited to two search and seizure incidents. In that case, the Department of Justice alleged that the officers in the department were engaging in unlawful searches of businesses and homes and the improper seizing of property. Finally, the Detroit complaint only alleged one search and seizure complaint; the improper seizure of persons. Table 8 outlines the search and seizure allegations contained in each complaint. Once again, Steubenville, Pittsburgh, Los Angeles, and Detroit all had search and seizure issues, but New Jersey did not.

Table 8: Search and seizure allegations.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
Improper search and seizure:	X	X		X	X
• Detaining without lawful authority		√		√	√
• Improperly searching residences/businesses	√	√		√	
• Improperly seizing property of arrested persons	√	√		√	

False arrests

Again, four out of five departments were found to be engaged in behavior amounting to unlawful arrests. This included retaliatory arrests of civilian complainants and witnesses of police misconduct, unauthorized arrests, and arrests of people who challenged police authority.

The Pittsburgh Bureau of Police had the most complaints lodged against it in this area. According to the complaint, the Bureau of Police continually arrested people who either witnessed or complained of police misconduct and people who challenged police authority. In addition, they were accused of making unauthorized warrantless arrests. The Steubenville Police Department was also accused of arresting civilian complainants, witnesses of police misconduct, and people who challenge police authority. Lastly, both the Detroit Police Department and the Los Angeles Police Department were accused of making unlawful warrantless arrests. Table 9 outlines the allegations of false arrest. Once again, the New Jersey complaint contained no allegations of false arrests.

Table 9: False arrest allegations.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
False arrest:	X	X		X	X
• Civilian complainants/witness of police misconduct	√	√			
• People who challenge authority	√	√			
• Unauthorized arrest without warrant		√		√	√

General misconduct

Only one police agency out of the five was alleged to have engaged in conduct classified as general misconduct. This may be the most troubling category of misconduct

next to use of excessive force because it contains acts equating to intentional efforts to cover-up misconduct. To this end, officers in the Steubenville Police Department were alleged to have falsified and tampered with official reports in order to conceal acts of misconduct. These allegations were unique to the Steubenville Police Department. Table 10 outlines these allegations.

Table 10: General misconduct allegations.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
General misconduct:	X				
• Falsifying official reports	√				
• Tampering with police records	√				

Racial Profiling

Only one police agency out of the five was alleged to have engaged in a “pattern and practice” of racial profiling. The complaint against the New Jersey State Police alleged that the State Police working on the State’s highways performed vehicle stops and post-stop enforcement actions that disproportionately targeted African American motorists. Included under this allegation is the unlawful search of African American motorists based upon no other articulated reason other than race. In fact, this is the only allegation listed in the New Jersey case. No other agency was accused of conducting differential racial enforcement practices. Table 11 clearly depicts this finding.

Table 11: Racial profiling allegations.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
Racial profiling:			X		
• Intentional discrimination based on race during traffic enforcement			√		

Toleration of a pattern and practice of misconduct

In all five police “pattern and practice” cases, the complaints allege that all of the named defendants have tolerated a “pattern and practice” of police misconduct. This is followed by the listing of several management omissions presented as evidence of an informal policy of tolerating misconduct. This is the one area where there is a near consensus between the five complaints. For instance, all of the complaints allege that the involved police agencies failed to prevent misconduct by failing to train, supervise, monitor, and discipline officers under their command. In addition, all of the complaints allege that the agencies tolerated misconduct by failing to properly investigate and adjudicate civilian complaints of police misconduct. In three agencies (Steubenville, New Jersey, and Detroit), the complaint alleged that the departments failed to create or enforce existing policies. In Steubenville, Pittsburgh, and Detroit, the complaints alleged that these departments failed to enforce use of force policies. Table 12 outlines the listed acts of omission contained in the complaints. As is clearly evident, regardless of the diversity of the behaviors complained of, the managerial omissions remain consistent across agencies.

Table 12: Allegations of a toleration of a “pattern and practice” of misconduct.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
Toleration of pattern and practice of misconduct:	X	X	X	X	X
• Failure to create/enforce policies	√	√	√*	√	√
• Failure to create/enforce use of force policy	√	√			√
• Failure to review arrests					√
• Failure to train	√	√	√*	√	√
• Failure to supervise	√	√	√*	√	√
• Failure to monitor	√	√	√*	√	√
• Failure to discipline	√	√	√*	√	√
• Failure to investigate/adjudicate civilian complaints adequately	√	√	√	√	√
• Encouragement of retaliation against complainants	√				

* The New Jersey complaint limits these failures to vehicle traffic stops only.

What emerges from this analysis is a clear picture of the acts and omissions committed on the part of police agencies that lead to section 14141 “pattern and practice” liability. Based upon the results of the content analysis of “pattern and practice” complaints, two typologies of actionable agency misconduct emerge. The first misconduct typology can be classified “traditional” misconduct. In traditional misconduct cases, multiple types of police misconduct are observed. The types of police misconduct, most notably the use of excessive force, improper searches and seizures, and false arrests, are police actions that have formed the basis for criticism against the police for many decades.

The second misconduct typology can be termed “disparate treatment” misconduct. In disparate treatment misconduct, the allegations amount to actions that fall under the rubric of racial profiling. This includes the differential treatment of African American

motorists, the disproportionate targeting of African American motorists for enforcement activities, and pretextual stops of motorists based upon race.

In the present analysis, four out of the five “pattern and practice” suits were initiated due to complaints that amounted to traditional misconduct and only one suit was initiated to remedy disparate treatment misconduct. Table 13 outlines the typology of misconduct for each of the five police agencies under study.

Table 13: Typology of misconduct by police agency.

Agency	Misconduct typology
Pittsburgh Bureau of Police	Traditional misconduct
Steubenville Police Department	Traditional misconduct
New Jersey State Police	Disparate Treatment misconduct
Los Angeles Police Department	Traditional misconduct
Detroit Police Department	Traditional misconduct

Regardless of the type of misconduct alleged, it appears that the managerial omissions evincing a toleration of a “pattern and practice” of police misconduct are consistent across site. In both traditional and disparate treatment misconduct cases, managerial failures in the areas of training, supervision, monitoring, and discipline were observed. It appears that this is the true source of section 14141 liability. Although, affirmative acts of misconduct are needed to support a “pattern and practice” case, it must be demonstrated that there was a managerial toleration of these acts. This leaves two scenarios for 14141 action; the first being acts of traditional misconduct in combination with a toleration of the misconduct and the second being disparate treatment misconduct in combination with a toleration of this type of misconduct.

Results of a content analysis of police institutional reform instruments

This section of the analysis presents the results of a content analysis conducted on the police reform decrees settled in Pittsburgh, Steubenville, New Jersey, Los Angeles, and Detroit. The results reveal that the police “pattern and practice” consent decrees mandate reform in six substantive areas including use of force, search and seizure, complaint investigation, traffic stop policies, supervisory policies, and performance monitoring. In addition, two of the decrees mandated miscellaneous reforms not seen in the other decrees.

Section 14141 liability does not end with the drafting of formal complaints, rather it ends with the creation and continued monitoring of comprehensive reform plans. Known as consent decrees, these plans outline mandated changes to policy and practice that are meant to reform deviant institutions. Consent decrees are different from traditional injunctions in that they not only outline prohibitive behaviors, but also forward corrective actions. According to Gilles (2000), “Rather than enjoining the defendant institution from acting in a particular unconstitutional fashion, [consent decrees] order forward-looking, affirmative steps be taken to prevent future deprivations.” (p. 1385).

Police “pattern and practice” reform consent decrees appear to be comprehensive documents. In fact, the first ever police “pattern and practice” consent decree, which concerned the behavior of the Pittsburgh Bureau of Police, consisted of 76 paragraphs outlining mandated changes to policy and practice. Since the settlement of the Pittsburgh consent decree, the number of mandated reforms outlined in police “pattern and practice” decrees has increased substantially. By the time the Los Angeles and Detroit consent decrees were settled, the number of reforms paragraphs had increased to 187 and 154

respectively, basically doubling the number of reforms contained in the Pittsburgh decree. Table 14 lists the number of paragraphs contained in each police “pattern and practice” consent decree. The table also presents the cumulative average number of paragraphs. As is evident, the average number of reforms mandated is steadily increasing.

Table 14: Number of paragraphs contained in police reform decrees.

Police agency	Number of reforms Paragraphs	Cumulative average
Pittsburgh Bureau of Police	76	76
Steubenville Police Department	99	87.5
New Jersey State Police	134	103
Los Angeles Police Department	187	124
Detroit Police Department	154	130

Use of force reforms

Four out of five of the consent decrees mandate substantive changes to policies and practices surrounding the use of force. The one standout is the reform decree in the New Jersey State Police. In that decree, there is no mention of reforms to force policies or practices. This appears to be appropriate because neither the use of excessive force nor the misuse of force was raised in the New Jersey complaint and therefore, did not appear to be in need of reform.

In three out of the five consent decrees, Steubenville, Pittsburgh, and Detroit, the consent decrees mandate the creation of a new use of force policy that “complies with applicable law and current professional standards.” In essence, this translates into the drafting of a new policy to replace an apparently deficient one. Each decree then includes further specialized mandates that appear to have been drafted in response to distinct complaints in each jurisdiction. For example, the Steubenville decree mandates

the creation of force policies that control the use of firearms while off duty. This mandate addresses section 8-c of the complaint which states that the department was found to use excessive force “against individuals by police officers who are off-duty and involved in private disputes but acting under the color of law.” Other decrees include some force policy issues that do not appear to stem from issues raised in the complaints. For example, the Detroit decree mandates a policy that covers the de-escalation of force and the use of chemical spray even though abuses in these areas were never demonstrated or addressed in the formal complaint against the department.

Finally, the Los Angeles decree does not mandate any changes to the formal use of force policies of the department, but rather, it mandates changes to the policies and procedures surrounding the investigations of force incidents. The decree mandates the responsibility for investigating use of force incidents be moved from the Robbery/Homicide Division to a unit housed in the Operations division. Table 15 outlines the reforms mandated in the area of use of force for each consent decree.

Table 15: Use of force policy and practice reforms.

	Steubenville	Pittsburgh	New Jersey	Los Angeles	Detroit
Use of Force Reforms:	X	X		X	X
• Use of force policy	√	√			√
• Firearms policy					√
• Intermediate/chemical spray force policy					√
• Use of force investigation policy				√	

Search and seizure reforms

Although some complaints contained more glaring examples of violations of accepted search and seizure law than others, all of the reform instruments mandated reforms in this area. For example, the complaint lodged against the New Jersey State

Police made no mention of deficiencies in the search and seizure practices of the State Police, but the reform decree mandates changes in their vehicle search and consent search practices ostensibly in an effort to guard against vehicle searches based upon racial profiling. The reform decree in Pittsburgh also mandated changes to consent search procedures.

Two of the five consent decrees, Los Angeles and Detroit, mandate changes to arrest procedures. In Los Angeles, the decree requires that all persons arrested be brought before the supervisory watch commander for a physical inspection. In addition, it requires supervisory officers to review all arrest paperwork, especially when arrests are made for discretionary charges such as resisting arrest. The Detroit decree also requires supervisory review of all arrests. It further mandates the creation of a new arrest policy that clearly defines probable cause and prohibits arrests based on anything less than this standard.

The Los Angeles and Detroit reform instruments also mandate changes to each department's stop and frisk policy. Both decrees require the creation of a written report for all stop and frisks performed by their officers. The report must be completed each time a stop and frisk is conducted and must contain information about the subject's identity, race, and conduct. In addition, it requires officers to document the reason for the stop. No other decree requires this.

Three out of the five consent decrees require reforms to search and seizure policy. Both the Pittsburgh and Steubenville decrees require the creation of a search and seizure report. Each decree mandates that a report be completed each time a search or seizure is conducted and that the reports be audited periodically for completeness, accuracy, and

trend analysis. In Los Angeles, the mandated search and seizure policy reforms focus on search warrants. The decree mandates supervisory review of all search warrant applications and requires that a supervisor be present during the execution of search warrants.

Three out of five consent decrees mandate changes to vehicle/consent search procedures. In most instances, the requirements extend to the creation of a formal report for recording all vehicle searches. But the New Jersey decree goes well beyond this requirement. In addition to requiring a written report each time a search is conducted, the New Jersey decree requires a separate report be complete whenever a drug detection dog is deployed and that Troopers provide the subject of the search with a “consent search” form stipulating that they do not need to consent to the search and that this form must be printed in both English and Spanish.

Only one consent decree, Detroit, mandated changes to witness questioning policies. The Detroit decree requires the police department to revise its policy to require that no person is interview in connection with a crime unless reasonable suspicion exists and that under no circumstances is that person to be transported to another location.

Finally, only the Pittsburgh decree mandates changes to stripe search policies. In that decree, the department was required to revise policies concerning stripe searches to mandate that a supervisory officer be notified and approve of all stripe search instances. Table 16 outlines the search and seizure reforms mandated in each decree.

Table 16: Search and seizure reforms.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Search and Seizure Reforms:	X	X	X	X	X
• Arrest Policy				√	√
• Stop and frisk policy				√	√
• Strip search policy	√				
• Search and seizure policy	√	√		√	
• Vehicle search procedure			√	√	
• Consent search procedure	√		√		
• Witness questioning policy				√	√

Complaint procedure reforms

All five consent decrees require reforms to existing citizen complaint receipt and investigation practices. In fact, each decree is consistent in this area to the level of language. In every case, the reforms range from the relocation of complaint bureau offices to adjudication standards. The reforms forwarded appear to be in line with best practices in the area. Examples include the allowance of third party and anonymous complaints, the relocation of complaint bureau offices to a non-police property, the creation of a 24-hour complaint hotline, and the shortening of investigation timelines. Table 17 outlines the complaint procedure reforms mandated in each department.

Table 17: Complaint procedure reforms.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Complaint procedure Reforms:	X	X	X	X	X
• Complaint investigation	√	√	√	√	√
• Disciplinary procedure	√	√	√	√	√

Traffic stop reforms

Three of the five decrees mandate changes in the traffic stop procedures of the police departments. The main recommendation concerns traffic stop data collection. The Pittsburgh, New Jersey, and Los Angeles consent decrees all mandate the collection of analysis of traffic stop data for evidence of racial bias. The New Jersey consent decree goes on step beyond by requiring all State Police patrol cars operating on major thoroughfares be equipped with mobile video/audio recording equipment. It further requires that random audits of the video data be conducted by supervisory staff. Table 18 outlines the traffic stop procedural reforms mandated in each decree.

Table 18: Traffic stop procedure reforms.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Traffic Stop Procedure Reforms:	X		X	X	X
• Traffic stop procedure			✓		
• Traffic stop data collection	✓		✓	✓	
• Mobile video/audio equipment			✓		

Supervisory/management reforms

All of the consent decrees mandated reforms to the supervisory/management function. In every case, the consent decree outlined mandatory supervisory review of all written reports created in connection with the provisions outlined in the decree. This includes use of force reports, search and seizure reports, arrest reports, and where applicable, traffic stop data. The decrees mandate that these reports be checked for accuracy and completeness. Additionally, the reports are to be audited and checked for statistical trends and patterns of biased enforcement practices. In addition, all of the

consent decrees require the creation and use of a performance evaluation system. The decrees require periodic review of police employees by supervisory staff and mandate that the information contained in the performance evaluation be employed when making recommendations for promotion. Table 19 outlines the supervisory/management reforms outlined in the decrees.

Table 19: Supervisory/management reforms.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Supervisory/Management Reforms	X	X	X	X	X
• Supervisory review of reports procedure	✓	✓	✓	✓	✓
• Performance evaluation	✓	✓	✓	✓	✓

Monitoring Policies

All of the consent decrees require police to establish robust monitoring mechanisms and policies. In all cases this is accomplished by mandating the creation of automated early warning systems. Automated early warning systems are “data-based police management tools designed to identify officers whose behavior is problematic and provide a form of intervention to correct that performance.” (Walker, Alpert, and Kenney, 2001). In each case, the department is mandated to create such a system within a few months of the signing of the consent decree. In every case, the department is required to enter data concerning use of force, search and seizures, complaints against officers, arrests, lawsuits against officers, and training. In both Los Angeles and Detroit, information concerning canine bites must also be entered. Table 20 outlines the mandated monitoring reform policies for each police department. As is clearly evident, every institutional reform consent decree mandates exactly the same affirmative changes

to monitoring policies. This is true whether the alleged misconduct is characterized as “traditional” misconduct or “disparate treatment” misconduct.

Table 20: Monitoring policies.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Monitoring Policies:	X	X	X	X	X
• Early warning system policy	✓	✓	✓	✓	✓
• Quarterly review of EWS information	✓	✓	✓	✓	✓

Miscellaneous reforms

Finally, four of the consent decrees mandate specialized reforms that can not be classified under any of the previous reform categories. For example, the New Jersey decree mandates the creation of a formal policy against the use of racial profiling by their troopers and both Steubenville and Detroit decrees mandate the creation of a formal training policy. By far, the greatest number of miscellaneous polices were forwarded in the Los Angeles consent decree, which was also the lengthiest decree. In Los Angeles, the decree mandates the creation of gang unit policy, a training policy, a policy for responding to calls dealing with mentally ill persons, a community outreach policy, and a formal policy against racial profiling. Table 21 outlines the miscellaneous policy changes mandated by each decree.

Table 21: Miscellaneous reforms.

	Pittsburgh	Steubenville	New Jersey	Los Angeles	Detroit
Miscellaneous Reforms:		X	X	X	X
• Gang unit policy				✓	
• Training policy		✓		✓	✓
• Community outreach				✓	
• Metal illness intervention policy				✓	

Conclusion

The content analysis conducted on the legal documents filed in police institutional reform litigation cases reveals a distinct pattern of actionable behaviors and mandated reforms forwarded to cure these behaviors. As was demonstrated above, the actionable behaviors can be classified into two typologies; traditional misconduct and disparate treatment misconduct. Traditional misconduct, a combination of allegations of use of excessive force, improper searches and seizures, and false arrests, was seen in four out of five of the institutional reform litigation cases. Disparate treatment misconduct, allegations of biased policing typified by racial profiling, was seen in only one institutional reform litigation case. Although both types of actionable typologies entail different patterns of misconduct, both have in common the same set of managerial omissions eliciting a “pattern and practice” of tolerating police misconduct. These omissions include a failure to train, supervise, monitor, discipline, and investigate complaints vigorously. Due to their universality in these cases, managerial omissions appear to be the true source of action in police institutional reform cases.

The police reform instruments, or consent decrees, that have been negotiated in these cases show a similar pattern to that of the complaints. In the traditional misconduct

cases, the reform instruments mandate changes to use of force policies, search and seizure policies, and complaint policies. In the disparate treatment misconduct case, the reform instrument mandates reforms to traffic stop policies and other police actions resulting from traffic stops. In spite of these differences, all reform instruments mandate nearly identical reforms in the areas of supervisory/managerial policies. This includes the creation of early warning systems to monitor and alert to questionable officer behavior, the creation of a performance evaluation system, and a system of periodic review of departmental records. In addition to these reforms, all of the decrees were found to have one or more specialized reforms not found in the other cases.

In all of the institutional reform cases examined here, the number of reforms mandated appeared to far outnumber the allegations contained in the complaints. In addition, the reforms were in no way predicated on all of the allegations lodged in the complaints. In fact, it appears that many of the reforms were not in direct response to any given factual complaint. But as the scholarly understanding surrounding institutional reform litigation demonstrates, the reforms are in no way constrained by the complaints and in most cases, far exceed the injuries complained of. This appears to be present in the case of police institutional reform litigation.

Chapter 7

The effects of institutional reform litigation

This chapter attempts to ascertain the effects of institutional reform litigation in policing on the two groups most affected; the people who are served by the police undergoing reform and the police themselves. This will be accomplished through an analysis of multiple surveys conducted in Pittsburgh, Pennsylvania, the first city to have a police agency undergo “pattern and practice” institutional reform litigation. Specifically, this chapter presents the results of a secondary analysis of two waves of a citizen survey administered in Pittsburgh by the Vera Institute of Justice. In addition, data from an officer survey conducted in the Pittsburgh Bureau of Police for this project will be presented.

The Vera citizen surveys

As part of the first Vera study conducted in Pittsburgh, a comprehensive survey of community members was administered. This survey contained questions concerning public opinions about the Pittsburgh Bureau of Police in such areas as fairness, effectiveness, and responsiveness. A second version of this survey was produced for the second Vera study. In an effort to assess any changes in public perceptions, many of the questions on this survey were identical to those used in the earlier Pittsburgh survey.

The first survey was administered in February of 2002. Interviews were conducted via telephone utilizing telephone numbers purchased from a commercial source. Individual respondents from each household were chosen based upon the alphabetical order of their first name. The survey was administered only to households

within the Pittsburgh Bureau of Police Zone 2, a racially mixed area of approximately half white and half African American residents. The complete survey consisted of 32 questions. A total of 420 Zone 2 residents answered the survey. The second survey replicated much of the methodology employed in the first. This survey was conducted over a four-week period from November of 2003 to December of 2003. Again, it was administered via telephone utilizing telephone numbers purchased from a commercial source. Each of the numbers corresponded to a household within the boundaries of the Pittsburgh Bureau of Police Zone 2. This survey consisted of 32 questions, of which 20 were identical to the 2002 survey. A total of 416 Zone 2 residents answered the survey. Both surveys matched 2000 census data quite well on race, although both surveys included a lower percentage of women and younger aged respondents than would be expected based on the census (see Table 22 below).

Table 22: Comparison of survey demographics to Pittsburgh census data.

	2003 SURVEY	2002 SURVEY	ZONE 2 CENSUS 2000
MALE	34%	34%	47%
FEMALE	66%	66%	53%
18-24	7%	8%	24%
25-44	24%	27%	32%
45-65	36%	33%	23%
65+	32%	31%	21%
WHITE	52%	57%	52%
BLACK	43%	40%	44%

Citizens' perceptions of police institutional reform litigation

Ultimately, the success of any police reform effort can only be determined by the satisfaction of the public they serve. When people report that they are pleased with the police services they receive, then the police can be considered to be operating properly. When people report that they are dissatisfied with police services or report that they have witnessed police misconduct, then the police can be considered to be dysfunctional. It is safe to assume that prior to the beginning of any institutional reform effort in policing, the general public would have been dissatisfied with the police services they were receiving. But what direction does satisfaction move after the reform efforts and what impact does it have on the police officers forced to make reforms? The following analysis hopes to shed some light on these issues.

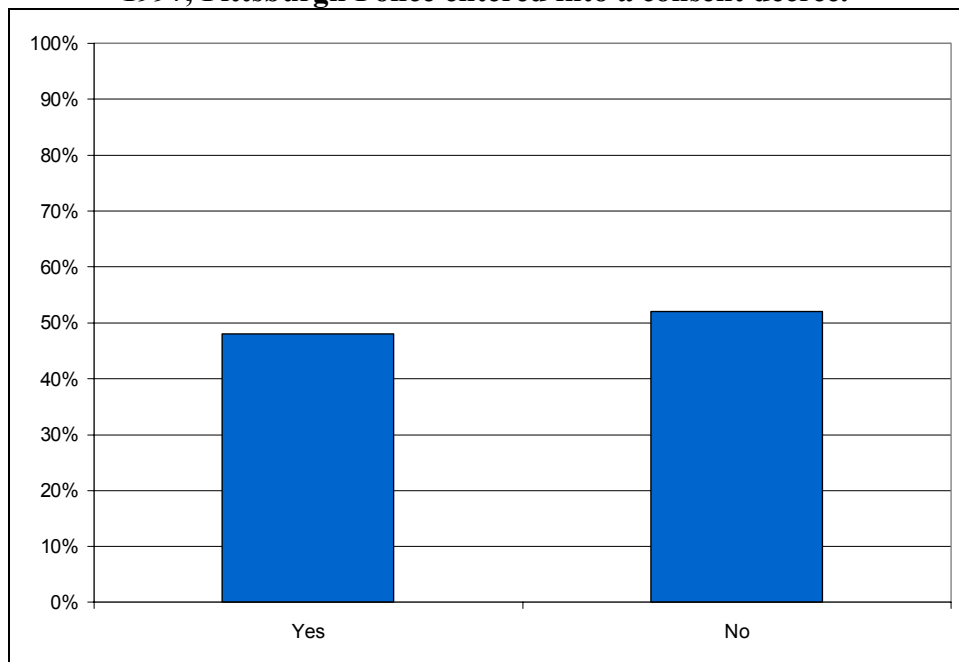
Utilizing questions from both the 2003 and 2004 surveys, it is possible to gain insights into how citizens of Pittsburgh perceived the reformation of their police department. The following section pieces together numerous questions from the two surveys conducted in Pittsburgh in order to present a comprehensive picture of how institutional reform litigation affects the people served by the police undergoing reform.

Awareness of institutional reform effort

The first questions sought to assess the level of public awareness surrounding the institutional reform litigation efforts occurring in Pittsburgh. The results show that a narrow majority of people in Pittsburgh were not aware of the institutional reform litigation effort. Approximately fifty-one percent of Zone 2 residents report that they were not aware that the Pittsburgh Bureau of Police entered into a consent decree with the federal government. This result proved to be universal for all ethnic categories with

no statistically significant differences noted between races.¹⁴ But when both race and age are considered, the results move toward significance with young black respondents reporting the least awareness, followed by young white respondents then older white and older black respondents reporting nearly equal awareness.¹⁵ Figure 5 depicts the percentage of respondents reporting that they were aware of the institutional reform effort occurring in the Pittsburgh Bureau of Police.

Figure 5: Percentage of respondents reporting that they were aware that in 1997, Pittsburgh Police entered into a consent decree.



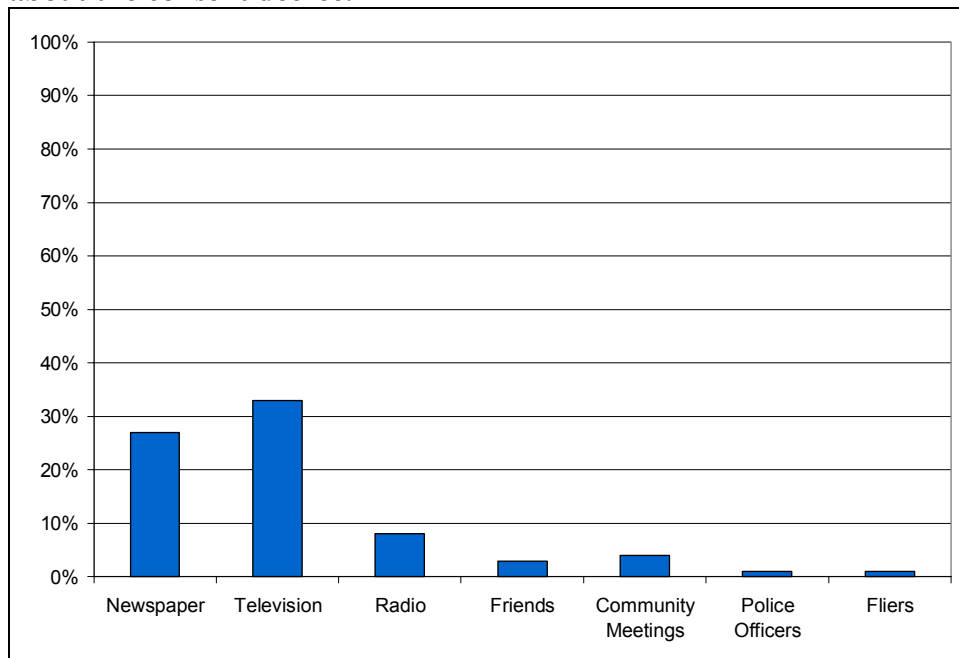
Building upon the previous question, respondents were asked where they received most of their information regarding the institutional reform effort in Pittsburgh. The majority of respondents reported that they received most of their information from television. This was followed by other media sources such as newspapers and radio.

¹⁴ Pearson chi-square = 3.109 at 5 degrees of freedom, p = .683

¹⁵ Pearson chi-square = 7.513 at 3 degrees of freedom, p = .057

Relatively small percentages of respondents, one to five percent, reported that they received information about the reform effort from sources other than news media outlets such as friends, police officers, and community meetings. Figure 6 outlines the source of respondent s information about the consent decree in Pittsburgh.

Figure 6: Percentage of respondents reporting their source of information about the consent decree.



This analysis reveals that a relatively small number of residents in Pittsburgh were aware of the existence of the institutional reform process occurring within the Pittsburgh Bureau of Police. Of those that were aware, the majority of people reported that they received their information from traditional media outlets. Perhaps future attempts at institutional reform should include a media policy thereby allowing more people to be exposed to important information about the reform process.

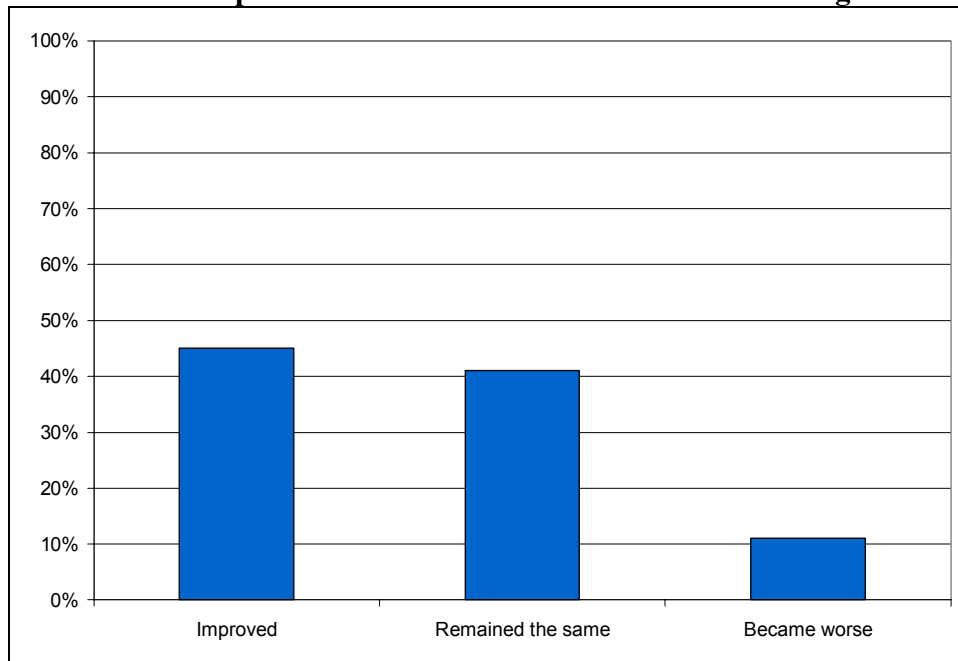
Perceptions of police reforms

Several questions sought to assess community perceptions concerning policing in Pittsburgh after the institutional reform effort. The responses reveal that relatively large numbers of people believed that policing did improve in Pittsburgh since the beginning of the institutional reform effort. Although respondents holding this view were not the singular majority, they far outnumbered respondents who believed that the behavior and performance of the Pittsburgh Bureau of Police had worsened since the beginning of the reform period. One caveat to this finding must be introduced. On many of the questions, significant differences were noted when the data was compared by race. African American respondents tended to hold more negative opinions than white respondents. The full implications of this finding are difficult to discern. Some surveys that seek to measure citizen satisfaction with the police have documented this same trend. Other scholars have found that the low-level of minority satisfaction rates stems from their high levels of negative contacts with the police (Campbell & Schuman, 1972; Murty, Roebuck, & Smith, 1990; Carter, 1985). Perhaps the more negative opinions of African Americans concerning the reform efforts in the Pittsburgh Bureau of Police are due to these global trends rather than a perceived significant difference.

The first of the questions asked respondents if they believed policing had improved in Pittsburgh as a result of the institutional reform effort. A small majority of respondents reported that policing had indeed improved. A total of forty-five percent of respondents reported that policing had improved compared to forty-one percent who believed that it stayed about the same and eleven percent who believed that it had

worsened. These results did not differ by race.¹⁶ Figure 7 graphically depicts the percentage of respondents reporting that policing had improved, stayed the same, or worsened as a result of the institutional reform effort.

Figure 7: Percentage of respondents reporting that policing in Pittsburgh has improved as a result of institutional reform litigation.

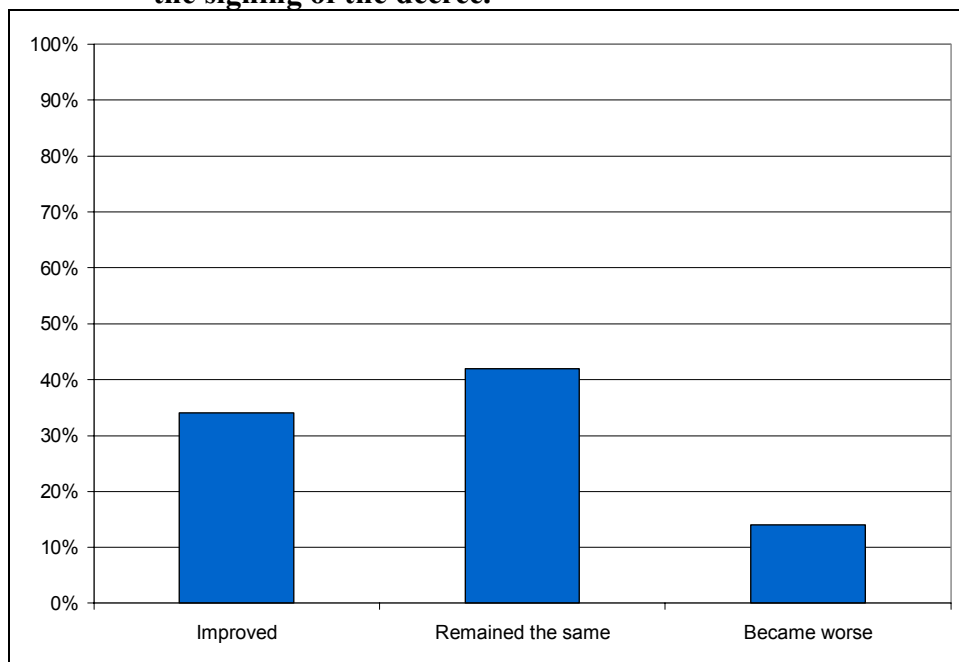


In an effort to localize respondents' perceptions about the ways in which policing in Pittsburgh had improved or worsened, several questions asked respondents to give their opinions concerning the improvement of police performance in several specific areas. The first of these questions asked respondents to report if they believed that the police in Pittsburgh improved in their fair and courteous treatment of citizens since the beginning of the institutional reform effort. The majority of respondents, forty-two percent, reported that the fair and courteous treatment of citizens remained about the same as it was prior to the reform effort. In spite of this, more than twice the amount of

¹⁶ Pearson chi-square = 12.784 at 10 degrees of freedom, p = .236

respondents reported that the fair and courteous treatment of citizens by the police had improved since the institutional reform effort began as compared to those who believe that it had worsened. When responses were compared by race, significant differences were noted with African American respondents reporting a more negative opinion of police improvement.¹⁷ Figure 8 graphically depicts the responses to this question.

Figure 8: Percentage of respondents reporting whether or not the police have improved their fair and courteous treatment of citizens since the signing of the decree.

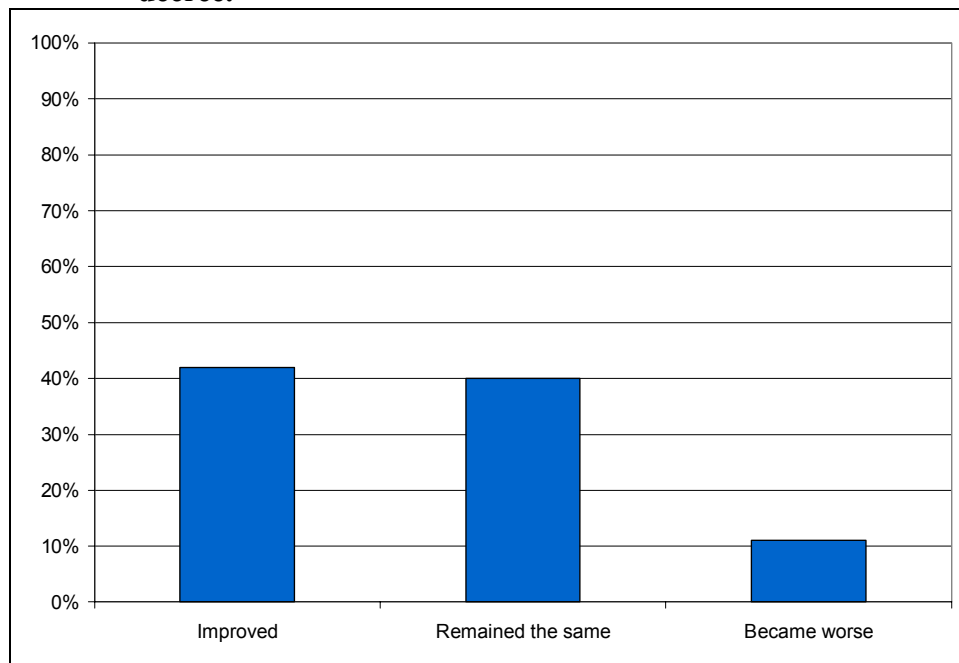


The next question asked respondents whether or not they believed that the crime fighting ability of the Pittsburgh Police had improved since the beginning of the institutional reform effort. A slight majority (42% compared to 40%) of respondents reported that the crime fighting ability had indeed improved as compared to those reporting that it had stayed the same. Only eleven percent of respondents reported that

¹⁷ Pearson chi-square = 27.227 at 6 degrees of freedom, p = .000

the crime fighting ability had worsened since the reform effort began. No significant differences were noted between race.¹⁸ Figure 9 graphically depicts the responses to this question.

Figure 9: Percentage of respondents reporting that the crime fighting ability of the Pittsburgh police has improved or not since the signing of the decree.

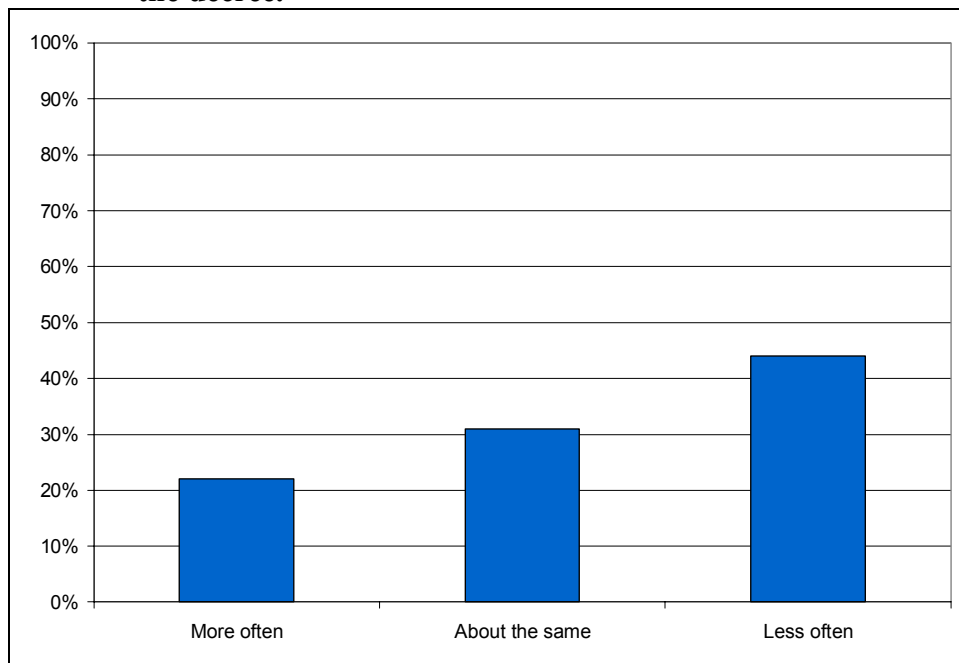


The next question asked about the use of excessive force. Respondents were asked if they believed that the use of excessive force by the police in Pittsburgh had increased or decreased since the beginning of the institutional reform effort. The majority (44%) of respondents reported that the use of excessive force had decreased since the police department entered the reform process. An additional thirty-one percent of respondents reported that the levels of excessive force remained about the same and only twenty-two percent reported that it had increased. Again, when compared over race,

¹⁸ Pearson chi-square = 10.404 at 6 degree of freedom, p = .109

significant differences were noted with African Americans having a more pessimistic view of the use of excessive force by the police.¹⁹ Figure 10 depicts the aggregate responses to this question.

Figure 10: Percentage of respondents reporting whether or not the use of excessive force by the police has increased since the signing of the decree.

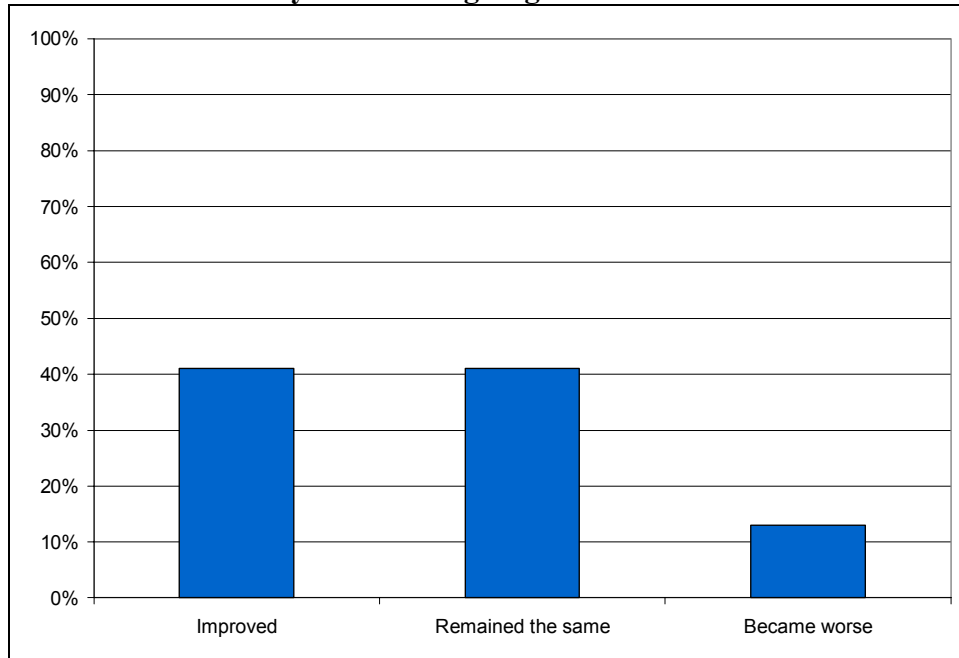


Respondents were then asked if the Pittsburgh Bureau of Police had made improvements in responding to the needs of the community since the institutional reform litigation effort began. An equal percentage of respondents (41% in each category) reported that the department had improved and that the department remained the same in responding to the needs of the community. Only thirteen percent of respondents reported that the department had become worse since the reform effort began. Again, statistically significant differences were noted between race with African American respondents

¹⁹Pearson chi-square = 26.534 at 6 degree of freedom, p = .000

reporting a more pessimistic outlook.²⁰ Figure 11 depicts the aggregate responses to this question.

Figure 11: Percentage of respondents reporting whether or not the police have made improvements in responding to the needs of the community since the signing of the consent decree.



In sum, it appears that the institutional reform effort in Pittsburgh lead to significant improvements in the quality of policing as reported by the public across the different performance levels that were measured.

The need for institutional reform litigation

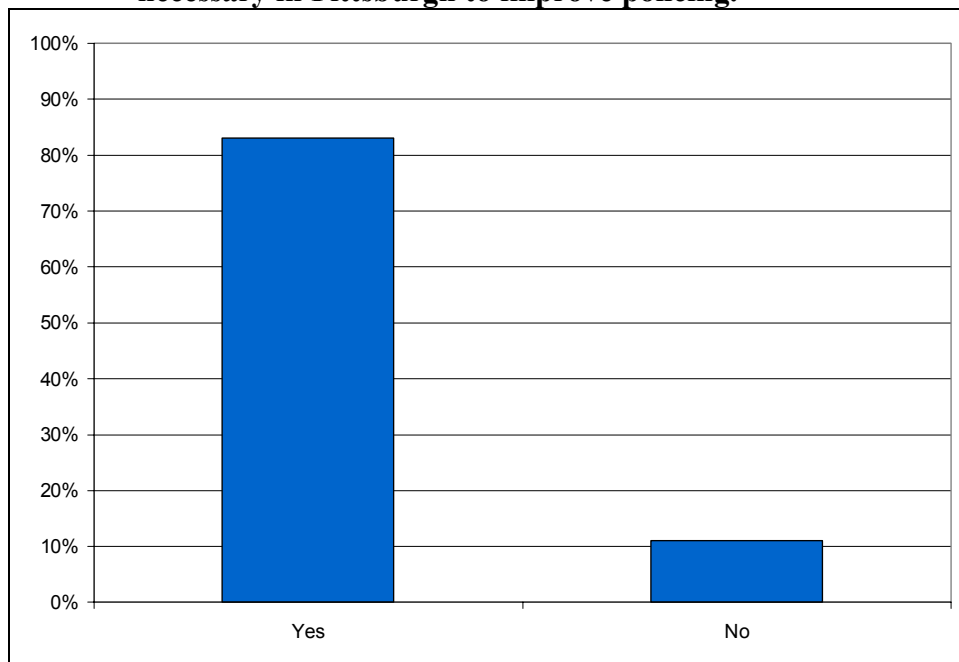
The final question sought to assess the community perceptions concerning the need for institutional reform litigation in Pittsburgh. Respondents were asked whether or not they believed that the institutional reform effort was needed in Pittsburgh to improve policing. The overwhelming majority of respondents reported that the institutional reform effort was indeed necessary to reform policing in Pittsburgh. In fact, respondents

²⁰ Pearson chi-square = 19.629 at 6 degree of freedom, p = .003

reporting that the reform was necessary outnumbered those reporting that it was not by a little more than an eight to one margin. Once again, significant differences were noted between races.²¹ African American respondents were more likely to respond in the affirmative to this question. In fact, among African American respondents, nearly 91% reported that the reform was necessary and compared to 73% of white respondents.

Figure 12 graphically depicts the aggregate responses to this question.

Figure 12: Percentage of respondents reporting that a consent decree was necessary in Pittsburgh to improve policing.



What emerges from this analysis is a picture of police improvement. Overall, a large percentage of Zone 2 residents report that the Pittsburgh Bureau of Police had made significant improvements since the beginning of the institutional reform effort. Nearly half of the respondents reported that overall, the quality of police services had improved.

²¹ Pearson chi-square = 22.422 at 4 degree of freedom, p = .000

When queried further, the results show that improvements were noted in treating citizens fairly, in crime fighting ability, in responding to the needs of the community, and in controlling excessive use of force. Although these results are extremely positive, a problematic trend was also observed in the responses from African American Zone 2 residents. On many of the performance questions, significant differences were between African American and white respondents were observed. The direction of the difference shows that African American respondents were less optimistic about the improvements made in policing.

Police officers' perceptions of institutional reform litigation

In an effort to understand how institutional reform litigation impacts the individual police officers forced to make the reforms, a survey of officers in the Pittsburgh Bureau of Police was conducted. The survey was conducted in April of 2005. Utilizing a stratification process, two shifts in each police zone were selected for inclusion in the sample. The survey was administered to all officers in the selected zone and shift. A total of 131 surveys were completed. The survey sample matched well against departmental demographics gender, rank, and race (See table 23).

Table 23: Comparison of survey demographics to departmental demographics.

	Survey results	Department demographics
Male	80%	78%
Female	17%	22%
Police officer	80%	72%
Detective	3%	15%
Sergeant	5%	8%
Lieutenant	5%	3%
Commander	2%	1%
Other	1%	1%
White	76%	77%
Black	15%	22%
Other	2%	1%

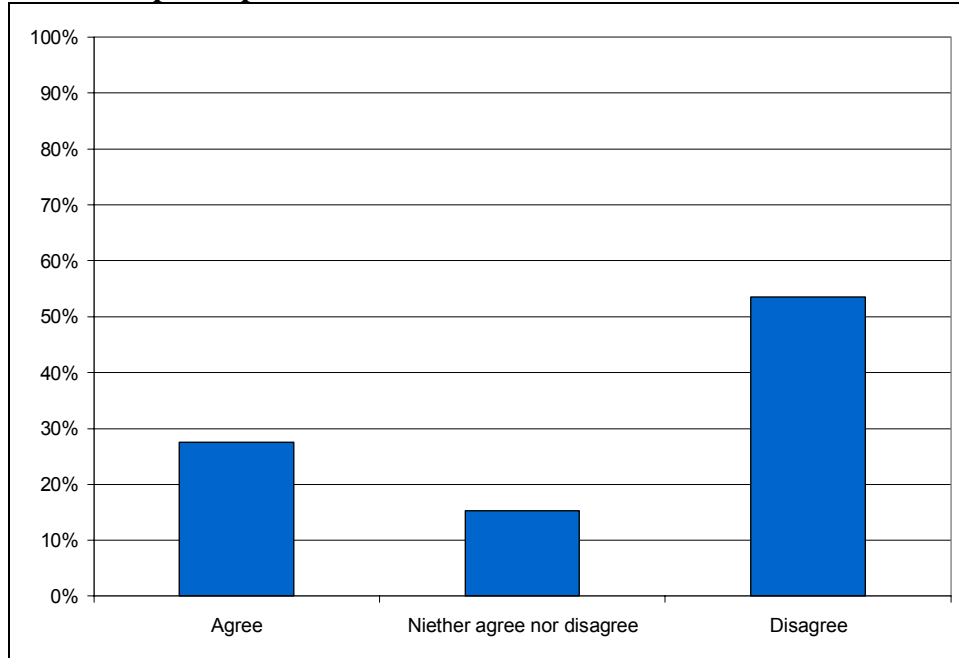
Among many bureaucratic organizations, change is often viewed as the enemy. In policing, this sentiment is magnified tenfold. Police organizations do not respond well to change. The extant research has demonstrated this time and again (See Brown, 1988; Sherman, 1978; Toch, Grant, & Galvin, 1975). In some agencies, police officers have been observed actively sabotaging reform efforts and in others, lethargy and disinterest have led to similar results (Sherman, 1978). With this in mind, it becomes easy to predict the direction of police officers' perceptions concerning reform. Therefore, findings demonstrating dissatisfaction with reform are to be expected. But findings demonstrating satisfaction, even the smallest levels of satisfaction or neutral responses, become very important. For these reasons, the following analysis will not only report dissatisfaction with reform, but will focus on these small movements in satisfaction.

Overall perceptions of institutional reform litigation

The first series of questions attempted to assess police officer perceptions surrounding institutional reform litigation and in particular, the policy of federal intervention into local police practices through institutional reform litigation. The results reveal that officers harbor extremely negative perceptions about institutional reform and especially institutional reform mechanisms.

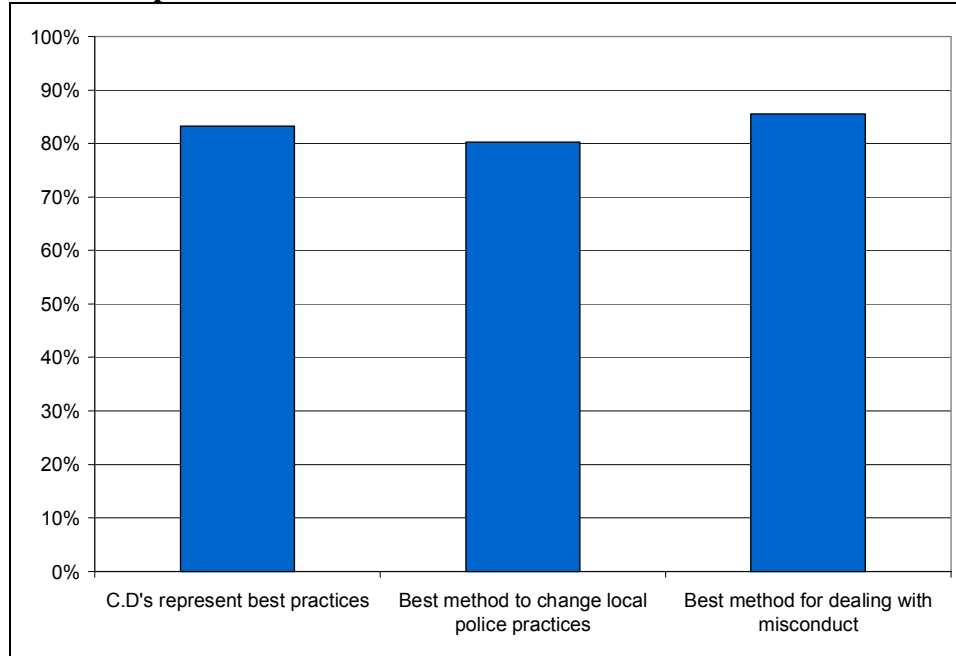
The first question asked officers if they believed that the federal government had a right to intervene into the practices of local law enforcement agencies. More than half of the officers answered in the negative. A total of fifty-four percent of the officers reported that they do not believe that the government has the right. An additional fifteen percent reported that they did not have strong opinions in favor or against such a policy. But, a larger than expected percentage of officers (28%) did believe that the federal government did indeed have the right to intervene into local police practices. Figure 13 presents the aggregate responses to this question.

Figure 13: Does the federal government have a right to intervene into local police practices?



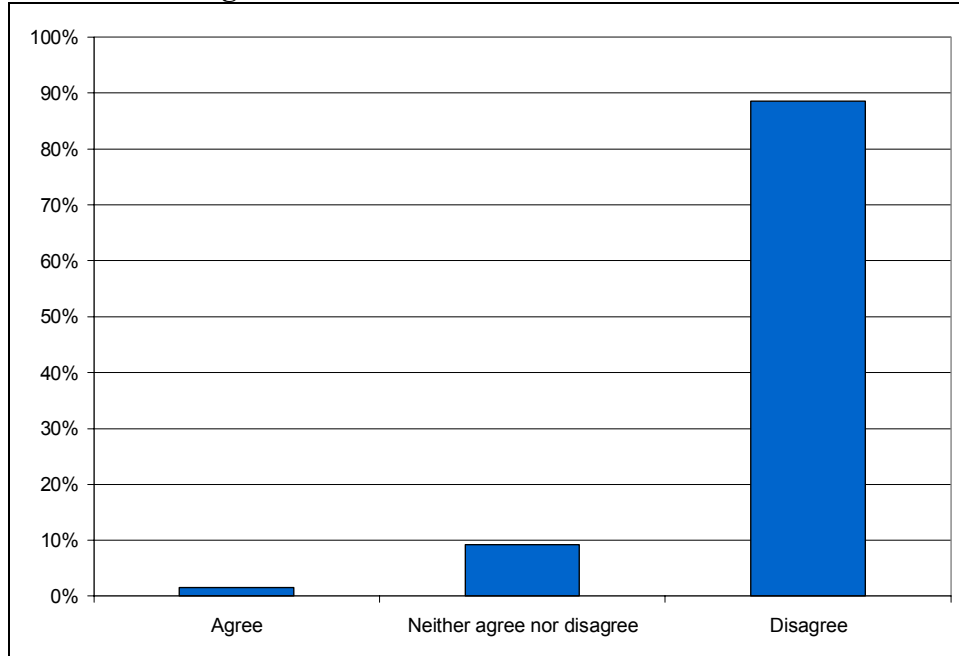
The next question sought to gain insight into officer perceptions surrounding the reforms championed by institutional reform litigation. The question asked officers if they thought the policies and practices mandated in the reform instruments represented the best practices in policing. More than three-quarters of the officers disagreed with the statement. Apparently, the officers took umbrage with some or all of the reforms contained in police reform consent decrees. In fact, this response trend was observed on all questions pertaining to the mandates contained in the reform instruments. When officers were asked if they thought that consent decrees were the best method for the federal government to change local police practices, a total of eighty percent disagreed. An even greater percentage (86%) of officers disagreed with the statement that consent decrees are the best method for dealing with allegations of improper police practices. Figure 14 depicts the distribution of those disagreeing with the above three statements.

Figure 14: Distribution of those disagreeing with the statements concerning police reform instruments.



Finally, officers were asked if they thought that the policy of federal intervention into local police practices should be expanded upon. Not surprisingly, only nine percent of the officers agreed with the statement. The vast majority, eighty-nine percent, disagreed with the statement. Obviously, officers do not believe that federal intervention into local police practices through institutional reform litigation is a positive public policy. Figure 15 below depicts the responses to this question.

Figure 15: I think the policy of federal intervention into local police practices through consent decrees should be used more often.

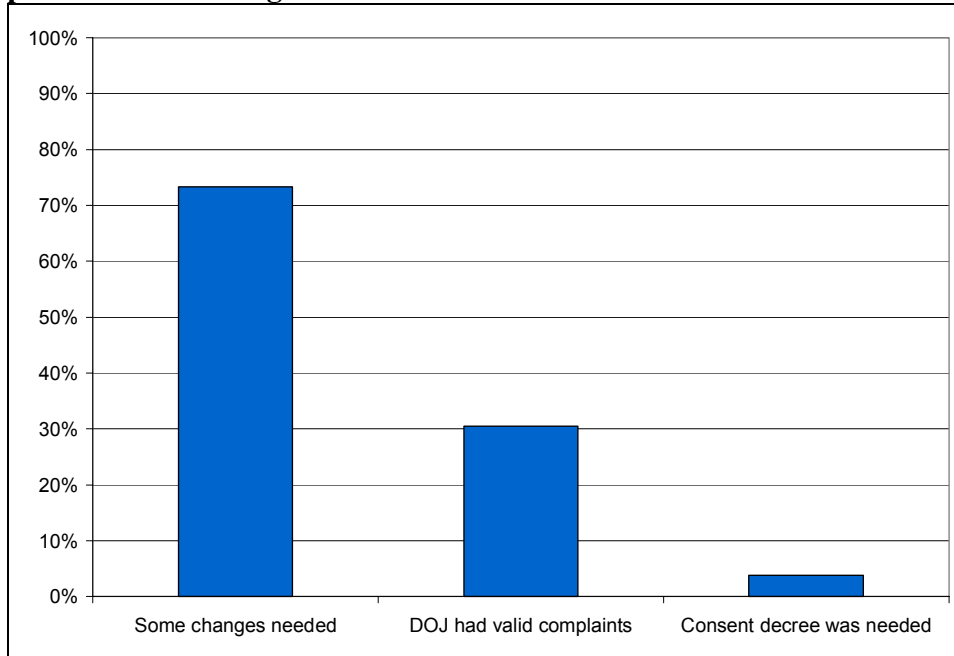


Perceptions of institutional reform litigation in Pittsburgh

This set of questions sought to assess the opinions of police concerning the need for governmental intervention through institutional reform in their police department. The first question asked officers if they thought that some reforms were needed within the Pittsburgh Bureau of Police. Nearly three-quarters of the officers agreed that some changes were needed. Officers were then asked if they thought that the Justice Department had some valid complaints against the department. Half of the officers responded that they did not, but thirty-one percent believed that there were some valid complaints. The final question asked officers if they thought that a consent decree was needed in their department. Only four percent agreed that a consent decree was needed compared to seventy-nine percent that believed that it was not needed. Figure 16 shows

the percentage of officers agreeing that changes were needed, that there were valid complaints, and that a consent decree was needed.

Figure 16: Distribution of those agreeing with the statements concerning police the need for governmental intervention.



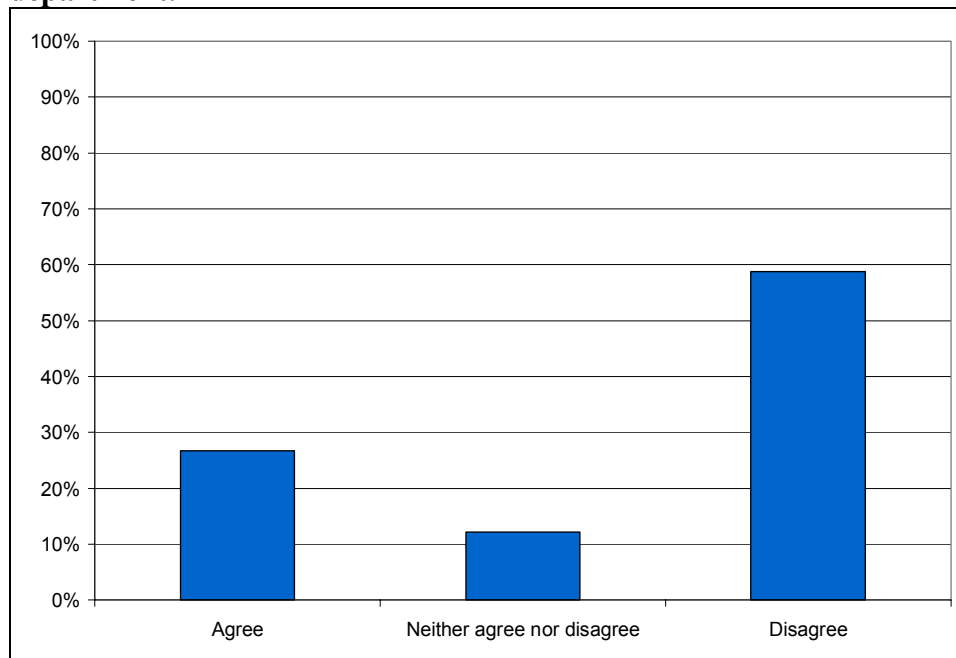
As is clearly evident, officers appear to be willing to concede that some level of change was needed in the department's policies and practices and some even appear to be willing to conceded that the Department of Justice had valid complaints against the agency, but the vast majority were not willing to concede that an institutional reform decree was necessary. This may be the result of deep rooted negative feelings about the consent decree rather than the absolute perception that reform was necessary.

Perceptions of the effects of institutional reform litigation

The next group of questions asked officers about their perceptions surrounding the effects of institutional reform litigation. Several topics were tapped including citizen interactions, morale, accountability, and performance. The results show that officers hold many negative opinions about the consequences of institutional reform litigation.

The first question asked about accountability. Specifically, it asked whether officers thought that the reforms mandated in the consent decree brought more accountability to the department. A total of twenty-seven percent of officers believed that the consent decree brought about more accountability, an additional twelve percent held no strong opinion in either direction, and fifty-nine percent reported that it did not bring more accountability to the department. Figure 17 depicts the responses to this question.

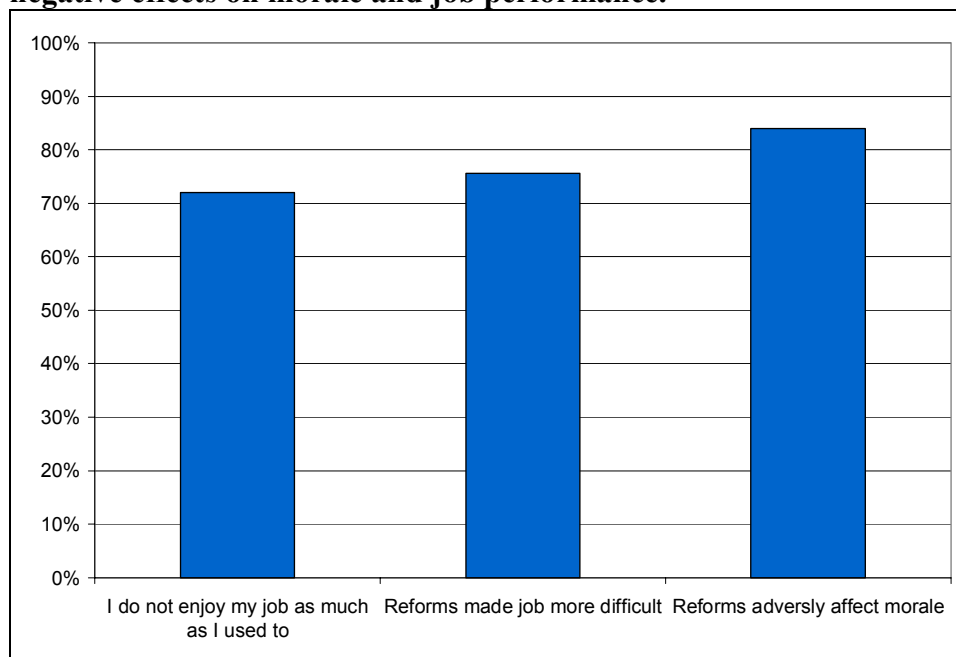
Figure 17: Percentage of officers reporting whether or not they thought that institutional reform litigation brought more accountability to their department.



In order to gain an understanding of the effects of a decree on job satisfaction, the next set of questions attempted to gauge the effect operating under an institutional reform decree on police officer morale. First, officers were asked if they enjoyed being a police officer now as much as they did prior to the existence of the institutional reform decree. The majority of officers (72%) reported that they did not enjoy their jobs as much.

Officers were then asked if the institutional reform decree made the job of a police officer much more difficult to perform. A little over three-quarters of officers agreed that the decree made their job harder. Lastly, officers were asked if the institutional reform decree adversely affected morale within the department. A total of eighty-four percent of the officers reported that the reform instrument did adversely affect morale. Figure 18 graphically depicts the percentages of police officers reporting that they do not enjoy their job as much as they did prior to the decree, those believing that the decree made their job more difficult, and those reporting that the decree lowered morale.

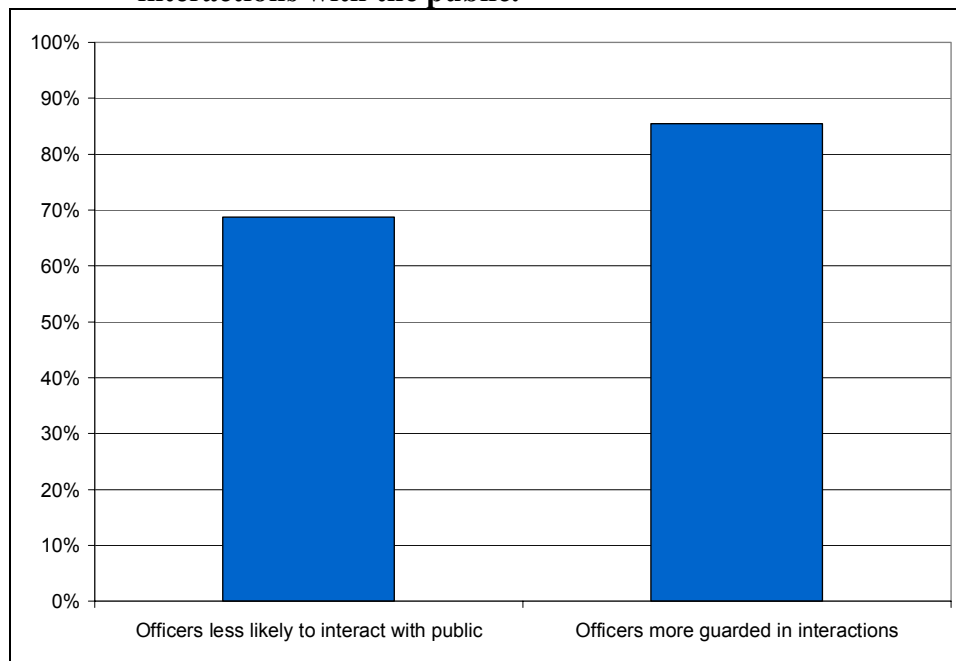
Figure 18: Percentage of officers reporting that the consent decree had negative effects on morale and job performance.



Officers were then asked a series of questions regarding their interactions with the public. The first question asked officers if they thought that the institutional reform decree affected the likelihood of officers interacting with the public. Specifically, it asked respondents if they thought police officers were just as likely to interact with the

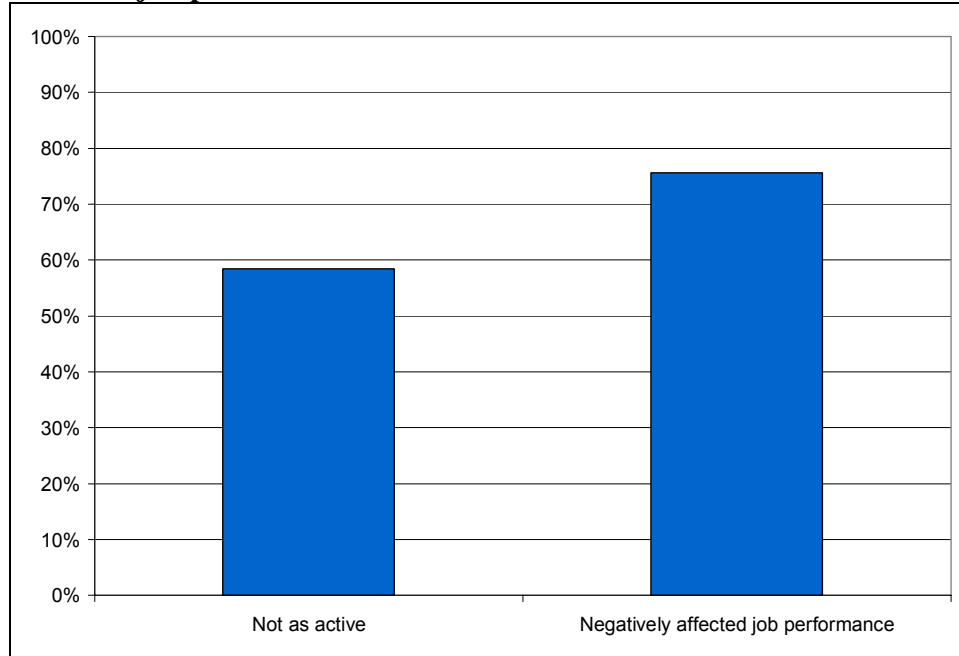
public as they were prior to the decree. Sixty-nine percent of the officers believed that it did have a negative effect. When asked if officers were more guarded in their interactions with the public, eighty-six percent of the respondents reported that they were. Figure 19 depicts the answers to these questions.

Figure 19: Officers' perceptions of the effect of institutional reform on their interactions with the public.



The last set of questions asked about performance. Officers were asked if they were as active now in making arrests and issuing summonses as they were prior to the institutional reform decree. The majority of officers said they were not. A total of fifty-nine percent of officers reported that they were less active than they were prior to the institutional reform effort. When asked if the decree negatively affected the way police officers performed their job, more than three-quarters of the officers agreed that it did. Figure 20 depicts the responses to these questions.

Figure 20: Police officers' perceptions of the effect of institutional reform on job performance.



Conclusion

The results of this analysis show that the perceptions surrounding the utility of institutional reform litigation efforts differ drastically between the two groups most affected; citizens and officers. In fact, the direction and strength of the opinions take polar opposite positions. Citizens are more likely to report that institutional reform efforts result in improved police services while officers are more likely to report that they result in decreased work performance. Citizens reported that the Pittsburgh Police had improved their treatment of the public and decreased their use of excessive force. They also believed that the department made significant improvements in responding to the needs of the community. When asked if the institutional reform effort was necessary in Pittsburgh, the overwhelming majority of citizens reported that it was. Officers on the other hand, were much less willing to agree that the institutional reform effort was

needed. Officers also reported that there were some negative consequences of institutional reform including decreases in morale and increases in job difficulty. Ultimately, the bottom line regarding institutional reform is improving public institutions in order to bring them within constitutional boundaries. It appears that the majority of the public would agree that the institutional reform effort in the Pittsburgh Bureau of Police achieved this goal.

Chapter 8

Discussion

Beginning with the landmark decision in *Brown v. Board of Education*, a wide array of public and private institutions found themselves the subject of institutional reform litigation efforts. This reform strategy has been successfully utilized to bring about constitutional standards of treatment in schools, prisons, psychiatric hospitals, private corporations, and foster care systems. In recent years, institutional reform litigation efforts have been focused at a new public institution; the institution of policing in the United States. Since 1994, the reparative force of institutional reform litigation has been focused at correcting the unconstitutional treatment of the public at the hands of the police. Since that time, five police agencies have found themselves the subject of institutional reform litigation efforts. These agencies represent the broad spectrum of policing in the United States with both large and small agencies and urban and suburban agencies represented. In all five cases, allegations of constitutional violations and lapses in management were cited as evidence of an agency in need of reform. In each case, these violations were cured through the use of broad institutional reform decrees directed at correcting long-standing policies and practices deemed to be deficient and unconstitutional. In the end, the course of institutional reform has taken a slightly divergent path in each agency, but in each case it appears that reform was the end result.

This project has explored the process and implications of institutional reform litigation efforts in policing. Beginning with an analysis of the case law and doctrine surrounding institutional reform litigation, this project outlined the need for new legislation in the case of policing. The focus then moved on to describing the structure of

institutional reform in policing. Through an analysis of the police institutional reform decrees, it was demonstrated that the reforms centered on five substantive areas in police policy and practice. Lastly, the implications of institutional reform for the general public and the police officers forced to make affirmative changes in policy and practice were explored. Through an analysis of a citizen survey and an officer survey, it was demonstrated that the two groups held divergent opinions concerning institutional reform, but ultimately the public overwhelmingly approved of the reform process. Utilizing the empirical information derived from these pieces of the research, a complete picture of institutional reform litigation in policing begins to unfold.

Institutional reform litigation in policing

The intentional and deliberate reform litigation effort in policing is a rather new phenomenon. Prior to the passage of the Violent Crime Control and Law Enforcement Act of 1994, broad institutional reform of local police practices could not be achieved through court action. But since that time, fully seventy-two police agencies have come under the scrutiny of section 14141 pattern and practice investigations. In five cases, the United States Attorney General initiated litigation and ultimately negotiated institutional reform consent decrees. In these five instances, lapses in managerial accountability and monitoring were cited as the cause of pervasive misconduct. In four cases, this misconduct took the form of multiple instances of traditional police misconduct claims such as false arrests, illegal searches and seizures, and excessive force. In one case, the misconduct complained of was differential racial treatment typified by racial profiling.

The reforms forwarded in these cases sought to address these misconduct claims, but in each case the reform instrument was in no way bounded by the allegations at hand.

In all cases, the reforms took the form of increased monitoring and supervision. This was achieved by the promulgation of new policies and through the collection and analysis of multiple sources of data including never before collected data culled from new reports. In addition, the data analysis was aided through the mandated creation of automated early warning systems.

It is without doubt that institutional reform litigation has the ability to bring about more accountable police agencies. In each example, the policies forwarded in the reform decrees represented many of the accepted best practices in policing. Additionally, evidence from the survey of citizens in Pittsburgh reveals that citizens perceive improvements in many police performance and fairness indicators. All of this leads to the conclusion that institutional reform litigation in policing has become a new and powerful source for police accountability.

But some disturbing trends are also beginning to surface concerning institutional reform litigation in policing. Most recently, an alarming number of police agencies have been seeking alternative reform avenues when faced with the specter of institutional reform litigation. Since 1998, six police agencies have entered into Memoranda of Agreements (MOA's) or Memoranda of Understandings (MOU's) rather than going through with complete institutional reform litigation.²² These legal instruments do not appear to be on par with consent decrees. Several qualitative differences must be noted. Initially, in policing, these documents are extremely narrow in scope and do not set out to accomplish nearly the amount of reform of consent decrees. Additionally, these documents are often negotiated without provisions for monitoring. In essence, there is no

²² The five agencies include the City of Villa Rica (GA) Police, the Village of Mount Prospect (IL) Police, the Buffalo (NY) Police, the Cincinnati (OH) Police, the Washington, DC Metro Police, the Montgomery County (MD) Police,

accountability to the reforms outlined such as there is in the case of consent decrees.

Finally, there is no judicial whip in many of these cases. If ever the police agency fails to live up to the agreed upon terms, there is no recourse.

Conclusion

As a public policy, institutional reform litigation has both its champions and its detractors. On one end of the spectrum, scholars have pointed to the ability of institutional reform litigation to break down long-standing barriers in the access to equal protection and equal rights. On the other end, they have argued that institutional reform litigation bucks the democratic process and supplants the judiciary into the uncomfortable position of making public policy. In addition to these concerns, fundamental questions emerge about the true impact of the policy of institutional reform litigation. Was the end result that which was sought or was it supplanted by some perverse outcome? If the sought after outcome was the result, is it a true measure of a reformed agency? And in achieving this result, did the federal government impeded on the rights of local government casting aside state autonomy? These issues and questions form the current discourse surrounding the policy of institutional reform litigation.

Although institutional reform litigation has a fifty-year history of use, the intentional and deliberate reform litigation effort in policing is a rather new phenomenon. But, in the relatively short time that institutional reform has been available in policing, it has demonstrated that it has the ability to reform police agencies accused of pervasive misconduct and mismanagement. In fact, it has not only been shown to reform police agencies who have been the subject of institutional reform litigation, there is anecdotal

evidence that it may lead police administrators to proactively make reforms when institutional reform litigation is threatened.²³ Still, there are numerous public policy implications surrounding the continued use of institutional reform litigation in policing besides its ability to reform. This project has explored many of these issues. Below, these issues are explored in light of the findings from this project.

- *Institutional reform litigation in response to widespread police misconduct is a legitimate public policy.*

Some scholars have criticized institutional reform litigation as being an illegitimate source of public policy. They argue against judicially made public policy and invoke federalism concerns to decry institutional reform litigation. Perhaps the most critical commentary to date surrounding institutional reform litigation has been forwarded by Sandler and Schoenbrod (2003). They attack institutional reform litigation on multiple counts, but their most chiding remarks are reserved for what they see as the usurpation of the public policy making responsibility by the courts. Arguing against judicial policy making, Sandler and Schoenbrod point out that the policy of institutional reform litigation sidesteps the democratic process. They argue that institutional reform litigation removes power from those responsible for making public policy and places it in the hands of the federal judiciary thereby nullifying any accountability to the electorate. But, institutional reform litigation in the police setting does not appear to be as susceptible to this critique. As the empirical data stemming from this project suggests, institutional reform efforts in policing differs in important ways from the efforts in other settings such as the prison and educational settings. The main reason for this rests with

²³ At a recent meeting discussing entitled “Pattern and practice litigation: Ten years Later”, several participants made note of this phenomena occurring in policing.

the fact that Congress, and not the courts, was the main impetus behind institutional reform litigation in policing. A chapter five clearly demonstrated, it took affirmative action by Congress, namely the drafting of new legislation, to allow the courts entrée to police practices. Certainly no one would advance the argument that members of Congress or its legislated acts are not accountable to the political process. In addition, as outlined in section 14141, only the Attorney General has a right of action in pattern and practice misconduct cases. As a political appointee, the Attorney General serves at the will of the Executive branch who in turn serves at the will of the people. In the example of institutional reform litigation in policing, there are multiple sources of democratic accountability.

- *Although institutional reform litigation in policing can be attacked on federalism concerns, the complete autonomy of state and local actors in the management and accountability of the police is an outmoded governing policy and should be disregarded.*

Since its inception, policing has been a local concern. Early police agencies arose out of large cities and townships and were rightfully the province of municipal managers. Today, there are fully 18,000 independent police agencies providing police services in the United States. With such a fractured system, the need for standardization of policy and practice becomes all important. This need only becomes highlighted when the current homeland security concerns are taken into account. In addition, the history of policing, in particular the history of police misconduct and malfeasance, demonstrates the need for a central and powerful system of accountability. In the current governmental scheme of the United States, that power can only fall to the federal government. But critics denounce such a policy citing federalism concerns. Indeed, even scholars of institutional reform litigation are quick to point out its anti-federalism stance. Sandler and Schoenbrod

(2003) argue that many of the institutions that have been the target of reform litigation have been institutions whose administration and management have traditionally fallen under the control of state or local administrators. Feeley and Rubin (1998) also make note of this in their work on the prison reform cases. According to them, “the use of this model by the federal courts violated nearly every accepted principle for controlling the judicial branch...[including] federalism.” (p. 18). The fact is that institutional reform litigation in policing does violate the ideals of federalism. Any attempt by the federal government to control local police agencies is in direct violation of long-held federalist policies. But, as Feeley and Rubin (1998) argue, perhaps the ideal forwarded by the notion of federalism is a concept that has past its expiration date. It certainly appears that ensuring and providing for the accountability of police is a proper role for the federal government to undertake. In fact, results from an officer survey reveal that nearly one-third of police officers believe that the federal government has a right to intervene in local police practices.

- *The policy of institutional reform litigation has the ability to provide robust accountability measures for policing, thereby becoming the federal government’s first police accountability method.*

Institutional reform litigation in policing appears to have the ability to bring about more accountable police agencies. The results of a citizen survey in Pittsburgh back this finding. Overwhelmingly, the majority of Pittsburgh Zone 2 residents reported improvements in police performance on a number of indicators since the institutional reform effort. In addition, this finding is backed by the monitor’s reports in the five police agencies that are either currently undergoing or have underwent institutional reform. In fact, two of the five agencies have seen the reform decrees dissolved upon

proof of their substantial compliance for a period of two years and another two are currently in substantial compliance. The final agency is still at the beginning stages and it is unclear what direction the reform progress will take.

- *Police agencies undergoing institutional reform litigation must make every attempt to mitigate the negative impact on rank and file officers, but ultimately, it is the reforms that matter.*

The results of an officer survey conducted in the Pittsburgh Bureau of Police for this project reveal that officers believe that there are multiple negative impacts associated with institutional reform litigation. Officers reported that the changes associated with the institutional reform effort in Pittsburgh negatively impacted their interactions with the public, decreased morale, and generally made their jobs more difficult to perform. But the results of a citizen survey reveal that in spite of these setbacks, policing in Pittsburgh did indeed improve. In addition, information from the monitor's reports in each jurisdiction reveal that four out of five of the police agencies are either in substantial compliance or nearing substantial compliance with meeting the accountability measures outlined in the reform instruments. Perhaps the officers' negative perceptions are the result of bitterness from the reform process in general rather than negative perceptions of institutional reform litigation. If this is the case, there may be administrative steps that can be taken to mitigate these negative perceptions such as transparency in the reform process, inclusion in the reform decisions, and praise for compliance. In the end, constitutional and fair treatment of citizens by the police is the pinnacle concern and institutional reform litigation should not be cast aside to appease unfounded officer concerns.

- *The policy of institutional reform litigation in policing should be expanded upon.*

There are numerous and overlapping methods of ensuring police accountability in the United States today. Police agencies are accountable to any combination of internal oversight bodies and external oversight bodies. In addition, they are accountable to the rule of law and ultimately to the people they serve. When there is a breakdown of all of these systems, or when police agencies act in a covert or deceptive manner to mask their misconduct from these systems, drastic reform is called for. This type of reform can only come from institutional reform mechanisms.

In the end, the use of institutional reform litigation in policing and as a general policy appears to be at a tenuous crossroad. In recent years, the policy and practice of institutional reform litigation has caught the ire of some influential politicians and a movement to curtail its usage is afoot. Beginning with the Prison Litigation Reform Act of 1995 (PLRA), legislation has been passed that constrains the courts and the circumstances surrounding the use of institutional reform litigation.²⁴ Now there is a call to promulgate similar legislation that would affect all cases of institutional reform litigation in similar ways. This legislation might prove to have dangerous consequences on the ability of institutional reform litigation to reform police agencies. One thing is clear; if such legislation does indeed pass, the federal government and the people will have lost a powerful police accountability and reform tool.

²⁴ The Prison Litigation Reform Act constrains reform decrees to those “necessary to correct the violation” and instructs the courts to ensure that their decrees are drawn as narrowly as possible and use the “least intrusive” reform recommendations. In addition, the PLRA forces judges to include a 2 year sunset period for all decrees and narrowly outlines the powers and duties of special masters.

Appendix A

Vera Community Survey, 2003

OPENING TEXT

Hello. My name is _____. I'm calling to conduct a survey asking Pittsburgh residents about their views of the police. This is a government-funded project, being carried out by the Vera Institute of Justice. Your responses will be combined with those of other participating residents.

We need to select one member of your household to interview as part of the survey. This is important if we are to get a representative range of views. In order to identify who we need to talk to, I need to ask you a couple of questions.

Please tell me how many adults there are in your household that are aged 18 years and older? Include yourself if you are at least 18 years old.

ENTER NUMBER:

Of the adult household members, whose name comes first alphabetically?

ENTER NAME:

Is (Person's Name Entered in Previous Response) available now, to answer some survey questions? It will take about 10 minutes.

intro2

You have been selected to participate in a public opinion survey of Pittsburgh residents concerning the police. This is a government-funded project, being carried out by the Vera Institute of Justice. All of your answers will be held in confidence.

I will need about 10 minutes of your time to complete the survey.

GENERAL PERCEPTIONS OF POLICING

q1

The first questions ask for your opinions about policing in Pittsburgh.

In terms of dealing with citizens in a fair and courteous manner, would you say the Pittsburgh police department is doing...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q2

Do you think over the last 5 years, in terms of dealing with citizens in a fair and courteous manner, the Pittsburgh police department has ...

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q3

In terms of fighting crime, would you say the Pittsburgh police department is doing...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q4

Do you think over the last 5 years, in terms of fighting crime, the Pittsburgh police department has...

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q5

In your opinion, how common is it for Police Officers in Pittsburgh to use excessive force. For example, using guns unnecessarily, or using more physical force than is required? Would you say . . .

1. Very uncommon
2. Somewhat uncommon
3. Neither common nor uncommon
4. Somewhat common
5. Very common

q6

Compared to 5 years ago, do you think Police Officers in Pittsburgh use excessive force . . .

1. A lot less often
2. A little less often
3. About as often as five years ago
4. A little more often
5. A lot more often

q7

In terms of responding to the needs of the community, would you say the Pittsburgh police department is doing ...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q8

Do you think over the last 5 years, in terms of responding to the needs of the community, the Pittsburgh police department has...

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q9

When was the last time that you saw a police officer on patrol in Pittsburgh? Would you say ...

1. Today
2. In the previous week
3. In the previous month (but not in the last week)
4. In the previous year (but not in the last month), or
5. More than a year ago

q10

Compared to five years ago, do you think police officers can be seen patrolling within Pittsburgh ...

1. A lot more often
2. A little more often
3. About as often as five years ago
4. A little less often, or
5. A lot less often

q11

How easy do you think it would be to make a complaint against a police officer in Pittsburgh if you were treated badly or unfairly? Would you say ...

1. Very easy
2. Somewhat easy
3. Neither easy nor difficult
4. Somewhat difficult, or
5. Very difficult

q12

Compared to 5 years ago, do you think making a complaint against a police officer in Pittsburgh is now

1. Much easier
2. Somewhat easier
3. As easy or difficult as before
4. Somewhat more difficult, or
5. Much more difficult

q13

In terms of thoroughness and fairness, how well do you think the authorities in Pittsburgh investigate complaints against police officers? Would you say they do...

1. A very good job
2. A reasonably good job
3. Neither a good nor bad job
4. A somewhat bad job, or
5. A very bad job

q14

Compared to 5 years ago in Pittsburgh, do you think the fairness and thoroughness of investigations into complaints against police officers has...

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q15

In terms of their treatment of different racial groups, do you think that the Pittsburgh police department, overall, treats African American citizens...

1. A lot better than white citizens
2. A little better than white citizens
3. About the same as white citizens
4. A little worse than white citizens, or
5. A lot worse than white citizens.

q16

Compared to five years ago, do you think the Pittsburgh police department treats African-American citizens...

1. A lot better
2. A little better
3. About the same
4. A little worse
5. A lot worse

KNOWLEDGE OF CONSENT DECREE

q17

Within the last 5 years, do you recall hearing or receiving any information about how to lodge a complaint against a police officer?

1. Yes
2. No

q18

Were you aware that in 1997 the Pittsburgh police department agreed to a consent decree with the Federal Government. This decree sets out to improve the quality of police services, and arranged for a federal monitor to oversee changes to the police department?

1. Yes
2. No

You may be interested to know that the consent decree requires the Pittsburgh Police department to collect, analyze, and track data regarding citizen complaints, police use of force, and traffic stops. In addition, it required the creation of a less complicated civilian complaint process and a system to track problematic police officers.

q19

As far as you are aware, what should the Pittsburgh Police department be doing as a result of the consent decree?

1. Don't Know, No Response
2. Comments or response provided

q20

Through which of the following ways have you learned about the consent decree? You may choose more than one.

SELECT ALL MENTIONED

1. Newspapers
2. Television
3. Radio
4. Friends
5. Community meetings
6. Conversations with police officers
7. Fliers or pamphlets. Or
8. Some Other way [SELECT AND RECORD]

q21

As a result of the consent decree with the Federal government, would you say policing in Pittsburgh has

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q22

Do you think the consent decree was necessary in Pittsburgh to improve the quality of policing?

1. Yes
2. No

EXPERIENCES OF POLICING

q23

I am going to read you some statements about any experiences you may have had approaching the police. This could include reporting a crime, asking for assistance, calling or going into a police station, or approaching a police officer on the street. Which of the following best describes your experience. [READ LIST]

1. You have approached the police within the last two years
2. You have approached the police in the past, but NOT within the last two years
3. You have never approached the police

q24

On the last occasion you approached the police, how would you describe the way that you were treated overall? Would you say you were treated[READ LIST]

1. Very well
2. Reasonably well
3. Neither well nor badly
4. Somewhat badly, or
5. Very badly

q25

In what way were you treated badly?

[INTERVIEWER: RECORD VERBATIM]

q26

Please tell me which of the following best describes any experiences you may have had being approached or stopped by the police. This might involve a police officer stopping you while you were driving or walking, or having an officer come to your home to question you about an incident: [READ LIST]

1. You have approached the police within the last two years
2. You have approached the police in the past, but NOT within the last two years
3. You have never approached the police

q27

On the last occasion you were approached by the police, how would you describe the way that you were treated overall? Would you say you were treated. . . .

1. Very well
2. Reasonably well
3. Neither well nor badly
4. Somewhat badly, or
5. Very badly

q28

In what way were you treated badly?

[INTERVIEWER: RECORD VERBATIM]

Demographics

The responses to the remaining questions will be used for statistical analysis only and will be kept strictly confidential. If you are uncomfortable giving responses to any of these questions, you may refuse to answer.

q29

How old were you on your last birthday?

q30

Which of the following categories best describes your racial or ethnic heritage?

1. White
2. Black
3. White Hispanic
4. Black Hispanic
5. Asian or Pacific Islander
6. American Indian or Alaskan Native
7. Other [SELECT AND RECORD]

q31

What is the highest grade or year of school you have completed?

1. Elementary school
2. High school or GED
3. Some college
4. College degree
5. Some post-graduate school
6. Master's degree
7. Any doctorate, professional, or medical degree
8. Vocational or technical degree beyond high school
9. Other [SELECT AND RECORD]

q32

Interviewer record respondent's gender

1. Male
2. Female
3. Uncertain

Appendix B

Vera Community Survey, 2004

OPENING TEXT

Hello. My name is _____. I'm calling to conduct a survey asking Pittsburgh residents about their views of the police. This is a government-funded project, being carried out by the Vera Institute of Justice. Your responses will be combined with those of other participating residents.

We need to select one member of your household to interview as part of the survey. This is important if we are to get a representative range of views. In order to identify who we need to talk to, I need to ask you a couple of questions.

Please tell me how many adults there are in your household that are aged 18 years and older? Include yourself if you are at least 18 years old.

ENTER NUMBER:

Of the adult household members, whose name comes first alphabetically?

ENTER NAME:

Is (Person's Name Entered in Previous Response) available now, to answer some survey questions? It will take about 10 minutes.

intro2

You have been selected to participate in a public opinion survey of Pittsburgh residents concerning the police. This is a government-funded project, being carried out by the Vera Institute of Justice. All of your answers will be held in confidence.

I will need about 10 minutes of your time to complete the survey.

GENERAL PERCEPTIONS OF POLICING

q1

The first questions ask for your opinions about policing in Pittsburgh.

In terms of dealing with citizens in a fair and courteous manner, would you say the Pittsburgh police department is doing...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q2

In terms of fighting crime, would you say the Pittsburgh police department is doing...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q3

In your opinion, how common is it for Police Officers in Pittsburgh to use excessive force. For example, using guns unnecessarily, or using more physical force than is required? Would you say . . .

1. Very uncommon
2. Somewhat uncommon
3. Neither common nor uncommon
4. Somewhat common
5. Very common

q4

In terms of responding to the needs of the community, would you say the Pittsburgh police department is doing ...

1. A very good job
2. A somewhat good job
3. Neither a good nor bad job
4. A somewhat bad job
5. A very bad job

q5

When was the last time that you saw a police officer on patrol in Pittsburgh? Would you say ...

1. Today
2. In the previous week
3. In the previous month (but not in the last week)
4. In the previous year (but not in the last month), or
5. More than a year ago

q6

How easy do you think it would be to make a complaint against a police officer in Pittsburgh if you were treated badly or unfairly? Would you say ...

1. Very easy
2. Somewhat easy
3. Neither easy nor difficult
4. Somewhat difficult, or
5. Very difficult

q7

In terms of thoroughness and fairness, how well do you think the authorities in Pittsburgh investigate complaints against police officers? Would you say they do...

1. A very good job
2. A reasonably good job
3. Neither a good nor bad job
4. A somewhat bad job, or
5. A very bad job

q8

In terms of their treatment of different racial groups, do you think that the Pittsburgh police department, overall, treats African-American citizens...

1. A lot better than white citizens
2. A little better than white citizens
3. About the same as white citizens
4. A little worse than white citizens, or
5. A lot worse than white citizens.

Now, I'm going to read five statements about police behavior in your neighborhood. After each statement, I am going to ask if you "strongly agree," "agree," "disagree," or "strongly disagree" with the statement.

q9

The police in your neighborhood do a good job of preventing crime.

1. Strongly agree
2. Agree
3. Disagree
4. Strongly disagree

q10

The police in your neighborhood are helpful to people who have been victims of crime.

1. Strongly agree
2. Agree
3. Disagree
4. Strongly disagree

q11

Overall, the police are effective in dealing with the problems that really concern people in your neighborhood.

1. Strongly agree
2. Agree
3. Disagree
4. Strongly disagree

q12

The police in your neighborhood are doing a good job working together with residents to solve local problems.

1. Strongly agree
2. Agree
3. Disagree
4. Strongly disagree

q13

Overall, the police in your neighborhood are doing a good job dealing with residents in a fair and courteous manner.

1. Strongly agree
2. Agree
3. Disagree
4. Strongly disagree

Now I'll read some descriptions of how the Seattle Police Department might behave toward citizens. For each behavior, please tell me whether you think it is CURRENTLY a: "major problem," "minor problem," or "not a problem."

q14

Stopping people in cars or on the street without good reason is:

1. A major problem
2. A minor problem
3. Not a problem

q15

Police engaging in racial profiling is:

1. A major problem
2. A minor problem
3. Not a problem

q16

Police using offensive language is:

1. A major problem
2. A minor problem
3. Not a problem

q17

Police using excessive force, for example, being verbally or physically abusive is:

1. A major problem
2. A minor problem
3. Not a problem

KNOWLEDGE OF CONSENT DECREE

q18

Within the last year, do you recall hearing or receiving any information about how to lodge a complaint against a police officer?

1. Yes
2. No

In 1997, the Pittsburgh police department agreed to a consent decree with the Federal Government. This decree required the Pittsburgh Police department to collect, analyze, and track data regarding citizen complaints, police use of force, and traffic stops. In addition, it required the creation of a less complicated civilian complaint process and a system to track problematic police officers.

q19

As a result of the consent decree with the Federal government, would you say policing in Pittsburgh has

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q20

Do you think the consent decree was necessary in Pittsburgh to improve the quality of policing?

1. Yes
2. No

q21

Are you aware that the Pittsburgh Police Department successfully satisfied the requirements of the consent decree and are no longer under its control?

1. Yes
2. No

q22

Knowing that the police have completed the requirements of the decree, would you say that your opinion of the Pittsburgh Police has...

1. Improved a lot
2. Improved a little
3. Remained about the same
4. Become a little worse, or
5. Become a lot worse

q23

Based upon your understanding of the reforms carried out under the consent decree, would you say that you are satisfied with the outcome of the intervention in Pittsburgh?

1. Yes, I am very satisfied
2. Yes, I am somewhat satisfied
3. I am neither satisfied nor unsatisfied
4. No, I am somewhat unsatisfied
5. No, I am very unsatisfied

q24

Do you think the reforms required by the consent decree are still being carried out by the Pittsburgh police department?

1. Yes
2. No

EXPERIENCES OF POLICING

q25

I am going to read you some statements about any experiences you may have had approaching the police. This could include reporting a crime, asking for assistance, calling or going into a police station, or approaching a police officer on the street. Which of the following best describes your experience. [READ LIST]

1. You have approached the police within the last two years
2. You have approached the police in the past, but NOT within the last two years
3. You have never approached the police

q26

On the last occasion you approached the police, how would you describe the way that you were treated overall? Would you say you were treated[READ LIST]

1. Very well
2. Reasonably well
3. Neither well nor badly
4. Somewhat badly, or
5. Very badly

q27

In what way were you treated badly?

[INTERVIEWER: RECORD VERBATIM]

q28

Please tell me which of the following best describes any experiences you may have had being approached or stopped by the police. This might involve a police officer stopping you while you were driving or walking, or having an officer come to your home to question you about an incident: [READ LIST]

1. You have approached the police within the last two years
2. You have approached the police in the past, but NOT within the last two years
3. You have never approached the police

q29

On the last occasion you were approached by the police, how would you describe the way that you were treated overall? Would you say you were treated. . . .

1. Very well
2. Reasonably well
3. Neither well nor badly
4. Somewhat badly, or
5. Very badly

q30

In what way were you treated badly?

[INTERVIEWER: RECORD VERBATIM]

Demographics

The responses to the remaining questions will be used for statistical analysis only and will be kept strictly confidential. If you are uncomfortable giving responses to any of these questions, you may refuse to answer.

q31

How old were you on your last birthday?

q32

Which of the following categories best describes your racial or ethnic heritage?

1. White
2. Black
3. White Hispanic
4. Black Hispanic
5. Asian or Pacific Islander
6. American Indian or Alaskan Native
7. Other [SELECT AND RECORD]

q33

What is the highest grade or year of school you have completed?

1. Elementary school
2. High school or GED
3. Some college
4. College degree
5. Some post-graduate school
6. Master's degree
7. Any doctorate, professional, or medical degree
8. Vocational or technical degree beyond high school
9. Other [SELECT AND RECORD]

q34

Do you own the home you currently reside in?

1. Yes
2. No

q35

Interviewer record respondent's gender

1. Male
2. Female
3. Uncertain

Appendix C

Pittsburgh Officer Survey, 2005

Please read all statements completely and circle the answer choice that best sums up your opinion. Your participation in this survey is voluntary. You may skip any questions that you find inappropriate and you may discontinue the survey at any time.

1. How many years have you been a police officer? _____ years.
2. Were you ever given a copy of the Consent Decree? Yes / No Refused
3. Did you ever read any portion of the Consent Decree? Yes / No Refused
4. Did you ever receive training about the Consent Decree? Yes / No Refused
5. Would you consider yourself to be an involved member in the police union? Yes / No Refused

For questions 6-29, choose the statement that best sums up your agreement with its preceding statement.

Overall perceptions of Dept. of Justice consent decrees

6. I think the federal government has a right to intervene in local police practices.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

7. I believe that the Department of Justice's investigations into local police practices are fair.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

8. I believe that the Department of Justice investigates only those departments where change is needed.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

9. I think consent decrees are the best method for the federal government to change local police practices.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

10. I think that the police union should be involved in the consent decree negotiation process.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

11. I think that there are some valid complaints against police departments involved in consent decrees.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

12. I think consent decrees are the best way of dealing with allegations of improper police practices.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

13. I think consent decrees have very few negative effects on police departments.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

14. I think that consent decrees negatively affect the way police deal with the public.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

15. I think that consent decrees negatively affect the way police perform their jobs.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

16. I think that the changes mandated by consent decrees represent the best practices in policing.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

17. I think that consent decrees lead to some positive changes in policing.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

18. I think that consent decrees should only be used as a last resort to reform police departments.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

19. I think the policy of federal intervention into local police practices through consent decrees should be expanded upon and used more often.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

Perceptions of the consent decree process in your department

20. I think the Department of Justice performed a fair investigation in my department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

21. I think the Department of Justice was justified in investigating my department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

22. I think there were shortcomings in departmental policy and practice that enabled the Dept. of Justice to initiate an investigation of my department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

23. I think that the Dept. of Justice had some valid complaints against my department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

24. I think that some changes were needed in the department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

25. I think the department's administration would have made many of the changes regardless of the consent decree.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

26. I think the Consent Decree was needed in my department.

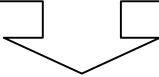
1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

27. I think the Consent Decree brought more accountability to my department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

28. I think the Consent Decree negatively affected the way police in my department perform their jobs.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused



28a. If you answered 1 or 2, how did the consent decree adversely affect the way police in Pittsburgh perform their jobs.

29. I am as active now (arrests, summonses, etc.) as I was prior to the consent decree.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

30. I enjoy my job now as much as I did prior to the consent decree.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

31. I think the Consent Decree made the job of a police officer in my department more difficult.

1 Strongly Agree	2 Agree	3 Neither agree nor disagree	4 Disagree	5 Strongly disagree	X Don't know	Y Refused
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31a. If you think that the Consent Decree made the job of a police officer more difficult, how did it do so?

32. Overall, I think the morale in the department was not adversely affected by the consent decree.

1 Strongly Agree	2 Agree	3 Neither agree nor disagree	4 Disagree	5 Strongly disagree	X Don't know	Y Refused
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33. I think that the layoffs and Act 47 had a more adverse impact on morale than the consent decree.

1 Strongly Agree	2 Agree	3 Neither agree nor disagree	4 Disagree	5 Strongly disagree	X Don't know	Y Refused
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34. I think officers are just as likely to interact with the public now as before the consent decree.

1 Strongly Agree	2 Agree	3 Neither agree nor disagree	4 Disagree	5 Strongly disagree	X Don't know	Y Refused
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35. I think officers are more guarded in their interactions with the public now.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

36. I think the Consent Decree led to some positive changes in my police department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

37. Overall, I think the department is a better department now than it was prior to the consent decree.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

38. I think the successful compliance with the consent decree and having it lifted was a source of pride for officers in the department.

1	2	3	4	5	X	Y
Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know	Refused

39. Gender: Male / Female

40. What of the following best describes your racial or ethnic heritage?

1. White
2. Black
3. Hispanic
4. Asian or Pacific Islander
5. American Indian or Alaskan Native
6. Other

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