CIVILIAN OVERSIGHT OF THE POLICE IN THE UNITED STATES

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Global Meeting on Civilian Oversight of Police

Rio de Janeiro

September 2002

INTRODUCTION.

More than ten years have elapsed since the Rodney King incident where officers of the Los Angeles Police Department were recorded on a bystander's videotape beating an African-American motorist senseless with their batons. Since then, there has been wave upon wave of controversial incidents rocking the foundations of US law enforcement. Events in two of the nation's most highly respected police departments — the New York Police Department (NYPD) and the Los Angeles Police Department (LAPD) — serve as graphic examples. In New York, the NYPD's brutalization of Abner Louima and the shooting of Amadou Diallo generated strong criticism. Officers involved in the Louima case were put on trial. In Los Angeles, the LAPD has been subject almost constantly to one investigation or another since the Rodney King beating. Recently, the LAPD suffered embarrassment and opprobrium from the Rampart scandal, where LAPD officers were shown to have planted evidence and guns and wrongfully shot young Latinos suspected of gang activity. In April 2001, there was rioting in the city of Cincinnati following the fifteenth police shooting in a row of a young African-American male. This past summer, American television stations repeatedly played a videotape showing an Inglewood California police officer picking up a handcuffed, passive young

black man, slamming him into the hood of a police car, and then punching him in the face. In the wake of these and other similar events, informed public opinion in the United States has expressed strong misgivings about whether law enforcement is capable of unsupervised self-regulation – whether the police can police themselves and deal appropriately with unethical conduct, be it corruption or misuse of force. It has lead to experimentation over the last ten years with different methods of civilian oversight and control. But before considering further how these different experiments have worked, it is interesting to consider some basic facts about policing in the United States of which an international audience may not be fully aware.

A. A Brief Sketch of American Policing.

Unlike the pattern in many places in the world where law enforcement is exclusively a state or national function, policing in the United States is predominantly a matter for local municipal government. Although there are federal law enforcement agencies like the FBI, the Border Patrol, and the Drug Enforcement Administration, their jurisdiction is limited to defined federal crimes. Individual states in the US have statewide police forces, such as the California Highway Patrol or the New York State Troopers, but their jurisdiction extends generally to patrolling the roads and highways in the state. The overwhelming amount of municipal street patrol and basic police services is provided by local law enforcement agencies, including both police and local sheriff's departments. There are far more individual law enforcement agencies in the United States than one would expect.

Indeed, there are more than 16,000 separate law enforcement agencies in the United States, and of these, 13,524 are local police departments.[1] The rest are sheriff's departments, employing about 185,000 full-time sworn employees. There are about 436,000 full-time sworn police officers in these 13,000 police departments, out of a total of 738,028 full-time sworn officers in all types of law enforcement agencies in the United States.[2] More than 10,000 American police departments have fewer than 25 police officers. There are only about 1300 American police departments with more than 50 police officers.[3]

The largest police departments are obviously in the largest cities. But even in the largest cities, there are wide variations in the number of officers per each ten thousand residents. New York City, with a population of approximately 8 million people, has over 40,000 police officers, or 53 per 10,000 residents, one of the highest police officer-to-resident population ratios in the US.[4] Chicago, which has about 3 million people, has 13,000 officers, or 49 per 10,000 residents.[5] Los Angeles, on the other hand, with nearly 4 million people, only has about 9,000 police officers, or 27 per 10,000 residents.[6] One-third of all full-time local police officers work for a department with more than 1000 officers, and three-fifths are employed by departments with at least 100 officers. An estimated 52.4 percent of all American police departments employ fewer than ten sworn personnel.[7]

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[1] United States Department of Justice, Bureau of Justice Statistics, *Local Police Departments 1999* (May 2001).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*

Police officers are generally well-paid. The per capita annual income in the United States is about $21,000. The overall average base starting salary for a police officer in 1997 was about $23,300. In the largest departments, the average starting salary is $30,600. In the smallest departments, the chief of police has an average salary of about $25,700, and in the largest departments, the chief has an average salary in excess of $100,000.[8] In Los Angeles, both the Chief of Police and the Sheriff make over $200,000 annually.

Police officers in the United States are moderately well-educated. Eighty-three percent of all US police departments require at least a high school degree to become a police officer.[9] Fourteen percent require at least two years of college, and one percent requires a 4-year college degree. [10] In large US cities, police recruits undergo an average of about 1300 hours of classroom and field training.[11] The average police officer in the United States is required to undergo approximately 1000 hours of training. On the average, a police officer in the US also receives about 30 hours of additional in-service training each year. [12]

Policing is considered a dangerous profession, but the number of police officers killed in a given year is relatively small. In the year 2000, 51 police officers were killed feloniously throughout the United States, and in 1999, the number was 42. Of the 51 officers killed in 2000, 13 were killed while responding to traffic pursuits or stops; 12 were killed while making arrests; ten in ambushes; eight while responding to disturbance calls; six while investigating suspicious persons and circumstances, and two while

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[8] United States Department of Justice, Bureau of Justice Statistics, *Local Police Departments 1997* (February 2000).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*

transporting prisoners.[13] In the Los Angeles County Sheriff's Department, a local law enforcement agency that I monitor, there are approximately 9000 sworn officers patrolling a population of about 3 million persons. In the ten year period between 1991 and 2001, there were 7 officers killed and 51 wounded. Last year, there were two officers wounded and one killed.

Encounters by US residents with the police in the United States are relatively rare. In 1996, a survey was conducted showing that an estimated 44.6 million people in the United States had face-to-face contact with a police officer during the prior 12 months. There are approximately 280 million people in the US. An estimated 33 percent of residents who had contact with the police had either asked for assistance or had provided it to officers. About 32 percent of those who had contact with the police had reported a crime, either as a victim or a witness. Of all persons who had contact with the police, only one percent said the police officer used force or threatened to use force.

In a study of use of force patterns in six US law enforcement agencies in connection with 7500 adult custody arrests, researchers found that use of serious force was infrequent.[14] According to the study, in 97.9 percent of the arrests, the police did not use a weapon. If a weapon was used, the most frequent was oleoresin capsicum (OC) spray, which was used in 1.2 percent of the arrests in the study. The second most frequent weapon was the flashlight, used in 0.5 percent of the arrests. Batons were used in 0.2 percent. Handguns were used by the police is 0.1 percent of arrests, and rifles or

[13] Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 2000* (2001).
[14] United States Department of Justice, National Institute of Justice, Office of Justice Programs, *Use of Force by Police: Overview of National and Local Data* (October 1999). The use of force study involved police departments in Dallas, Texas; San Diego, California; Colorado Springs, Colorado; St. Petersburg, Florida; Charlotte, North Carolina; and the Sheriff's Department in San Diego County, California.

shotguns were similarly used in 0.1 percent of arrests. Handguns were *displayed,* in contrast to being *used*, by the police in 2.7 percent of the arrests.[15]

Use of lethal force by the police in the United States is not as widespread as an international audience might think from watching American movies and television. In the United States, in cities over 500,000 people, there are 0.5 persons shot by the police per 10,000 residents per year.

Regardless whether use of force in general is a relatively rare occurrence, there nonetheless is heightened concern across the US about *excessive* force. Increasingly over the last ten years, a consensus has formed that law enforcement agencies rarely, if ever, can confront problems of excessive force and undertake substantial internal reform on their own. Over the same ten years, different ways to introduce more civilian oversight and control of law enforcement have been tried. The mechanism that has proven least threatening to law enforcement, yet still effective, is the appointment of a monitor with the acquiescence of the law enforcement agency to be monitored. Local governments appoint monitors in an attempt to minimize the risk of police misconduct and excessive force. Monitoring enables persons from outside of law enforcement as such to conduct investigations and then report frankly to the public about the fairness, thoroughness, and integrity of internal police processes for self-examination, self-investigation, and self-regulation. These outsiders either vouch for the fairness and integrity of those police processes or point out their shortcomings in public audits and reports. The reports deal explicitly with excessive force.

There also seems to be a growing common viewpoint in the US that in some circumstances, monitoring and reporting alone may not be enough to reduce excessive

[15] *Id.*

force and produce better internal police investigations. In such instances, police reformers advocate that the power to investigate police misconduct should be ceded by the police in whole or in part to qualified, independent investigative bodies. And in those rare situations where even more stringent measures are needed to bring down the use of excessive lethal and non-lethal force, there is public acceptance in the United States for the federal government to impose compulsory monitoring and far-reaching reforms to put an end these unacceptable patterns or practices. This paper will describe some of the different options currently in use in the US to place police agencies under tighter civilian oversight and control.

I. Independent Monitors.

In the past ten years, there has been healthy experimentation with independent monitors. These individuals or groups are appointed by local government with the acquiescence of the law enforcement agency in question and given unprecedented access to law enforcement files, records, and personnel in order to critically review and comment publicly on the performance of the police in controlling excessive force. For example, in my capacity as Special Counsel for the County of Los Angeles, I monitor and oversee the Los Angeles County Sheriff's Department (LASD).[16] The executive branch of County government that appointed me has guaranteed in writing that I will have

[16] The LASD and the LAPD are two different law enforcement agencies. Each operates within the County of Los Angeles, a large geographic area in southern California with approximately 10 million residents. The city of Los Angeles, with approximately 4 million residents, is the largest city in the County of Los Angeles. The LAPD, with about 9000 sworn officers, is the principal law enforcement agency within the city. The LASD, also with about 9000 sworn officers, is the principal law enforcement agency outside the city of Los Angeles and serves approximately 3 million County residents. The balance of some 3 million County residents is served by smaller municipal police departments. In addition to providing basic police services, the LASD also operates the Los Angeles County jail system. With an average daily inmate population of nearly 20,000, the Los Angeles County jails are the largest urban jail system in the United States.

unfettered access “to such confidential records of the County of Los Angeles, its departments and officers [including the Sheriff’s Department] as may be material and relevant” to my investigations. I comment every six months in written reports on the progress or lack of progress of the LASD in controlling excessive force. The most recent of these reports in attached hereto as Exhibit A.

During the years that I have monitored and reported on the LASD, excessive force has been substantially curbed. Although it would be overreaching to suggest that reporting and monitoring alone achieved the downturn in use of force, they contributed to it. The results in any event are impressive.

During the past ten years in which the LASD has been subject to ongoing independent outside investigation and monitoring, the number of suspects killed or wounded by that department has dropped on a yearly basis from a high in 1991 of 63 persons to a low of 18 persons respectively in 2000, dropping by approximately 70 percent. During the same time period, the number of law enforcement officers in the Sheriff’s Department that have been killed or wounded dropped from a high in 1991 of 10 to a low of 3 in 2001. At the same time, the number of arrests by the Sheriff’s Department has remained roughly constant.

In the United States, a resident who is subject to excessive lethal or non-lethal force by the police may file a lawsuit and collect money damages. The availability of damages is a deterrent to use of excessive force. During the past 10 years of outside independent monitoring and reporting, the total docket of excessive force cases on file against the LASD for excessive force has dropped from a high of 381 cases in 1992 to a low of 93 cases recently. The amounts paid out in settlements and judgments of

excessive force cases dropped from a high of $17 million to a low of $2.1 million last year.

The public monitoring reports are calculated to foster is a constructive, task-oriented, and problem-solving dialog, stripped of ideology and rhetoric, which addresses the fundamental excessive force and integrity issues in policing. A primary goal is to come up with ways to eliminate excessive, unnecessary, or gratuitous lethal or non-lethal force. Another goal is to learn how to handle situations legitimately calling for force in a way that produces an acceptable law enforcement result with reduced risk to both officer and injury to the suspect. This approach sharpens the strategic and tactical analysis and makes room for a wider and more free-ranging inquiry about alternative solutions. By stripping the discussion of blame, rhetoric, and ideology, everyone involved is freer to focus on the problem rather than worrying about of mistrustful suspicions, personal motivations, and political agendas. It reduces the risks of liability at the same time as it leads to better and safer policing.

Monitors are accountable to different constituencies. First, each is accountable to the law enforcement agency to provide assistance or reports calculated to focus police management on internal decision-making, policy formulation, and efforts to responsibly anticipate and manage liability risk. But even more importantly, a monitor is accountable to the public at large to provide a thorough and fair appraisal of law enforcement and to make the heretofore mystery-shrouded internal processes of the police more transparent and comprehensible. A monitor must speak candidly about weaknesses in internal police mechanisms for accountability and responsibility.

The Monitor scours and tests the law enforcement agency's policies, procedures, and practices to see if they in fact are up to the job of preventing misconduct. The Monitor proposes new policies and practices where the old ones have failed. The Monitor suggests the implementation of best practices from other law enforcement agencies. An independent Monitor compares how the agency he or she is monitoring compares to other police departments in its use of lethal and non-lethal force.

Voluntary independent monitoring exists in only a few jurisdictions in the United States, mostly in California. It can be a powerful and useful device. Monitors can be used by themselves or in conjunction with independent investigators, the next topic to be considered.

II. Independent Investigators.

In addition to monitors, some jurisdictions have experiments afoot in which civilians from outside the law enforcement agency are empowered to oversee and direct police internal affairs investigations. In Seattle, Washington, for example, a civilian lawyer has been placed in charge of Internal Affairs within the Seattle Police Department. She reports directly to the Chief of Police. Her title is Director of the Office of Professional Accountability (OPA). The office was created within the Seattle Police Department to receive and investigate complaints of misconduct by Seattle police officers. The responsibilities of the OPA also include regularly advising the Chief of Police, the Mayor, and City Council on all matters involving the police department's investigatory and disciplinary functions, as well as recommending policy on issues relating to the professional standards of the police department. The OPA also evaluates

the internal investigation process and makes recommendations on strategies and policies to improve complaint gathering and investigative procedures.

In the Los Angeles County in 2001, the Office of Independent Review (OIR) was created by the Board of Supervisors of the County. This group of six lawyers with significant civil rights experience has been empowered to direct and shape internal affairs investigations in the LASD. No investigation can be closed unless those lawyers certify that it was full, fair, and thorough. The OIR has the power to participate as necessary and appropriate in ongoing investigations by internal affairs, including interviewing witnesses, responding to crime scenes, and reviewing tangible evidence and relevant documentation. The OIR monitors all ongoing investigations, and reviews all completed investigations, to ensure that the content, disposition, and recommended discipline are appropriate. The OIR additionally is empowered to make recommendations of disposition and discipline on all investigations within its purview.

With respect to the LAPD, the power to investigate and adjudicate misconduct in the LAPD is shared by LAPD's Internal Affairs, an Inspector General, and a Police Commission. The Commission, comprised of five civilians from outside of law enforcement appointed by the Mayor of Los Angeles, is empowered to decide whether officer-involved shootings and other serious uses of force are proper or improper in light of the policies and standards of the LAPD. If the Commission decides a use of force is out of policy, the police officer is subject to discipline or retraining. The Inspector General has independent investigatory authority and also is required to provide independent views to the Commission on the administrative legality of LAPD shootings

and serious uses of force. The Inspector General may also issue reports to the public on the integrity of the LAPD's disciplinary system.

As is the case with the LASD, there can both be independent monitoring and shared responsibility with civilians for investigating complaints. The experiments in Seattle with the OPA and in Los Angeles County with the OIR are among the most exciting and promising new efforts to instill accountability through civilian oversight and participation. If they work well, they could ultimately replace civilian review boards, which we consider next.

III. Civilian Review Boards.

Another frequently-used model is the civilian review board. They have been in use in the US for many years. The boards are usually composed of citizens without substantial law enforcement experience. Generally, their power is restricted to reviewing an already completed internal police investigation and commenting on it to the Chief of Police. Citizen review boards have not been effective at causing reform and often are co-opted by the police department whose investigations they are supposed to review. They wind up agreeing with the police department in almost all instances.

Newer civilian review models provide the board with investigatory as well as review authority. Some of these models contemplate that the board will conduct parallel investigations supplementing an internal affairs investigation. In some instances, the review board will have subpoena power and can force a police officer to testify. In some jurisdictions, even more powerful civilian review boards have sole investigatory power.

It is very rare, however, for a civilian review board to have the final say as to the disposition of an investigation or discipline to be imposed on an officer. These ultimate decisions generally continue to be the province of the Chief of Police. Nonetheless, all civilian review boards with independent investigatory authority seem to have the power to make recommendations to the Chief on disposition and discipline.

Although empowering civilian review boards to investigate police misconduct has gained ground in the last ten years, there remains genuine disagreement among advocates for police reform about the wisdom of a wholesale displacement of law enforcement's internal investigatory apparatus in favor of outside review panels of lay persons, particularly where the power to adjudicate and impose discipline is taken away from the department in whole or in part.

Those who advocate in favor such displacement argue that self-policing will necessarily and unavoidably produces a biased result; that even reasonable, honest, and well-intentioned police investigators simply cannot overcome the pressures from all sides that come to bear on internal investigations of an officer-involved shooting, a death in the jail, or a serious use of force on the street. The pressure can come from superiors within the police organization who do not want an embarrassing incident or who fear the credibility and authority of the police will be undermined if a use of force is held out of policy. Pressure from the police union, which may be inclined to defend even bad officers to the hilt, can make an independent, dispassionate investigation more difficult. A Mayor or City Council may not want to hear bad news about the police department and encourage suppression of it. Fellow officers may not want to see one of their peers held up to withering scrutiny. It is useful to take an officer-involved shooting as an example

of what can happen when internal affairs or homicide investigators give in to those pressures.

In the US, a police officer may lawfully use deadly force if the officer has probable cause to believe that the suspect poses a threat of death or serious physical harm either to the officer or others. When the police investigate one of their own officers who has been involved in a shooting, bias may show up in a number of different ways: The investigation may be half-hearted – not all relevant witnesses are interviewed, and only minimal efforts are made to locate witnesses who might give testimony unfavorable to the officer. Interviews of the officer himself may be tainted: Investigators may simply pitch soft-ball, open-ended questions to the officer, allowing the officer to give a narrative answer that is not given rigorous cross-examination. More troubling still, investigators at times use leading questions which seem to signal to the officer what he is supposed to say in order to get off the hook: "You were in fear for your life, weren't you?" "You thought your partner was about to be shot, correct?" "You saw the suspect reach for his waistband and withdraw a black, shiny object you thought was a gun, right?"

A significant number of shootings reviewed by monitors, the federal Civil Rights Division of the Justice Department, and Inspectors General have been, in one law enforcement agency's parlance, "awful but lawful" — lawful in the sense that they may not have been instances of intentional, criminal wrongdoing; but awful in that they involved recklessness or grossly negligent conduct, tactics, or strategy. Assuming that the officer had received proper training, shootings of that kind should routinely be held to

be out of policy. But all too often, the pressures that come to bear on the investigation mean that they are not.

There is a natural, predictable, human impulse involved: No law enforcement officer can examine an officer-involved shooting without at some level saying, "There but for the grace of God go I." The trauma of having to kill another person, even if very few police officers have to face it, is nonetheless so great that for American police officers in general, it is difficult for one police officer to question another's decision that he had to do so. Who is to say that if faced with the same situation, one would not have pulled the trigger? The empathy one police officer has for another is entirely understandable. But it cannot be allowed to go so far as to cloud judgment or reach unjust results.

Complicating the issue is the tendency of the police, faced with either an Internal Affairs investigation or an outside investigation by a civilian authority, to close ranks behind what has been called the "blue wall" and enforce a code of silence by intimidating any officer who shows any willingness to cooperate with investigators or point the finger at a fellow officer. A case that recently arose in New York City makes that point. A New York City police officer, while driving his patrol car, struck and killed a pregnant 24 year old woman, her 16 year old sister, and her son, who was 4. The woman's unborn child died hours after being delivered by Caesarean section. The New York City police officer had been on a 12-hour drinking binge that began outside the station house and continued at a strip club that was off limits to officers in the precinct. During the trial of the officer, who was convicted of manslaughter, it came to light that fellow NYPD officers suppressed vital evidence and tried to cover up that the officer had been drinking.

A writer in the New York Times commented that "the killing of a pregnant woman and two family members was . . . an unspeakable horror. But the investigation is focusing on whether any [NYPD] officers closed ranks" to help the drunk officer. Similarly, in the Abner Louima case, where a black man was tortured in a station house when a broken broom handle was shoved up his rectum, the police union was ultimately shown to have conspired with certain of the police officers involved to frustrate an investigation.

Thus, many police reform advocates conclude that police organizations are hopelessly insular, endlessly self-referential, and mistrustful of outsiders. Accordingly, these reformers argue, the power of law enforcement to investigate and self-police must be taken away and given to a review board.

On the other hand, there are those reform advocates who argue that the power to adjudicate wrongdoing and impose discipline nonetheless belongs at least presumptively to the law enforcement agency in question. Otherwise, they argue, senior executives in the law enforcement agency cannot personally be held accountable for dealing with police misconduct and held to a high standard. It will be too easy for the senior executives to blame the civilian review board for its decisions and thereby skirt personal accountability or responsibility. The self-protective habits of the police will, they argue, never change unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct. It is one thing to achieve a fair result in a given investigation; it is far more powerful, these reformers contend, to change police culture in general by requiring strict accountability.

Yet even those police reformers who question the wisdom of displacing a police department's power to investigate internal misconduct do not contend that self-policing is

an inalienable right. Rather, all police reformers agree that the ability to police oneself is a rare privilege afforded only to certain highly trained and disciplined professionals — be it university faculty, lawyers, doctors, or certified public accountants. The privilege comes with heavy obligations to demonstrate upon demand in any individual case, or in general, that the results reached by self-policing are fair and reasonable based on thorough and dispassionate investigation. If that burden cannot be met, then the privilege is no longer merited and should be taken away, or the power to investigate must be shared with civilian overseers.

In Brazil, for example, a strong case can be made that the civilian overseers, or ouvidores, should be granted broad investigatory power. They should have open and unfettered access to civilian and military police files, records, and data. They should be able to hire experienced, well-qualified investigators to examine instances of lethal or non-lethal force. They should have the ability to summon and question the officers involved. Where, as in Rio de Janeiro, the police seem to be intransigent and unwilling to conduct fair and open investigations, civilian oversight with investigatory power may be a necessary response. Legislation giving the ouvidores ample investigatory power should be considered. So too should laws that open up the files and records of Brazilian law enforcement to outside scrutiny. The OIR and OPA models discussed above may make even more sense: Perhaps the corregedorias should be put under the authority of the ouvidor who, with his or her staff, would take charge of and direct important investigations of lethal and non-lethal force deployed by Brazilian police.

In countries or jurisdictions where the police have been more amenable to voluntary reform efforts, the displacement of investigatory and disciplinary authority may

be an unnecessary and avoidable step. Everywhere, however, the privilege of the police to self-regulate also comes with an obligation to open the books and records fully to responsible public representatives, including review boards, ouvidores, and Inspectors General. If not, the privilege again is no longer merited.

There is increasingly broad agreement that whether or not the police retain the power to investigate themselves, law enforcement's business in general is the public's business and must therefore be an open and transparent process. In some instances, law enforcement agencies voluntarily agree to allow monitors unprecedented access to internal records. As a result, detailed information about use of force is made public that heretofore had never seen the light of day.

IV. Compulsory Monitoring and Reform.

Where a law enforcement agency refuses voluntarily to give access to monitors, resists a civilian review board or other outside investigatory body, and persists in using excessive force, there are federal remedies in the United States to open up those recalcitrant departments and achieve reform. In the last five years, the federal government in the US has been active in forcing police departments to be more open and to undertake significant reform under compulsory monitoring. Attached to this paper as Exhibit B is a recent federal court order setting forth agreements the federal government reached with the City of Los Angeles concerning reform of the LAPD. The document details the degree to which the federal government is requiring the LAPD to undergo reform and curtail excessive force. The federal order also requires the LAPD to collect detailed information on use of force and make it available to the public, the Police

Commission, the Inspector General, and the monitor appointed to review and report on the LAPD's implementation of the federal order's requirements.

These federal remedies are of recent vintage. In the wake of the Rodney King incident in Los Angeles, the Congress of the United States passed legislation enabling the Civil Rights Division of the Department of Justice to commence investigations of state and local police alleged to be engaging in an unconstitutional or otherwise unlawful pattern or practice of excessive force. Attached also to this paper as Exhibit C is an example of the result of one such investigation in Washington DC in a findings letter prepared by the Justice Department. The findings in such investigations often prompt a city to enter into a voluntary agreement with the Justice Department for police reform.

If the city refuses to do so, and the investigation shows that the allegations of excessive force are true, a federal court is empowered by these new laws to enter an injunction compelling police reform. In most instances, the local jurisdiction enters into a settlement agreement before the federal court issues the injunction. The Los Angeles decree attached hereto is a representative example.

It requires far-reaching reform and collection of data. It requires the LAPD to build a computerized relational database of information on use of force, shootings, administrative and criminal investigations, racial profiling, and a number of other subjects bearing upon risk of police misconduct. The monitor is given full access to the database and all other information collected by the LAPD. The monitor has sweeping powers and access and can report to the federal court if the monitor believes that the LAPD is not complying in good faith with the decree.

The intent of these federal investigations and decrees is to make closed and mysterious internal police processes open and transparent so that police officials can be held publicly responsible and accountable for the thoroughness, correctness, reasonableness, and fairness of their decisions. The federal remedies have been employed in several US jurisdictions to date: Pittsburgh, Pennsylvania; Steubenville, Ohio; the State of New Jersey; Montgomery County, Maryland; Highland Park, Illinois; Washington, DC; Los Angeles; and, most recently, Cincinnati, Ohio. Federal investigations are pending in a number of other major US cities, including Detroit, Michigan and New Orleans, Louisiana. The federal remedies are a method of compelling police departments to submit to civilian oversight if they fail to do so voluntarily.

CONCLUSION.

These differing experiments in civilian oversight in the United States are accomplishing much good and should not be feared as an inappropriate intrusion in the life of a law enforcement agency. Particularly for ones tainted by scandal or corruption, police departments cannot, and really should not, attempt to monopolize the reform process by insisting that only path to the restoration of credibility is the trail they blaze. A better approach is to ask what independent civilian oversight and review mechanisms are necessary to inform to public opinion whether internal police accountability systems are truly functioning in a way they should. Civilian oversight should bolster and reinforce public confidence.

There are different approaches being taken in the United States with respect to civilian oversight. This paper has attempted to organize these differing approaches in a

spectrum or continuum. If law enforcement agencies are willing voluntarily to undertake reform, to cooperate, to open up their files and records, and to allow greater transparency as to internal processes and investigations, then monitoring on a voluntary basis may be adequate to assure greater integrity in internal investigations of misconduct and competent self-regulation by the police of themselves. The introduction of independent civilians into internal affairs to oversee and structure investigations is a further step that may be necessary. In some instances where the law enforcement agency in question is resistant to greater accountability and cannot or will not reduce excessive force, then more radical steps may be in order, including displacement in whole or in part of investigatory authority. If a department has demonstrated over time that it has tolerated a pattern or practice of excessive force, then federal intervention and compulsory monitoring may be required. This paper does not mean to suggest that each alternative should be exhausted before the next is attempted. Rather, it suggests that all the alternatives should be available yet only the most fitting for the particular situation be selected. In some sense, the prescription advocated here mirrors best practice in use of force by the police: Force employed by the police should be narrowly and precisely calculated to overcome the resistance of the suspect. In some instances, that amount of force may be minimal – just enough to handcuff the suspect. In other cases, where the suspect wields a gun, the force may need to be more severe. Resistance by police to accountability and responsibility for managing the risk of misconduct needs to be carefully measured and overcome by the least intrusive option that works.

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