

INTERVIEW

California Attorney General Bill Lockyer was first elected in November 1998 and then re-elected for a second term in 2002. As head of the California Department of Justice, Mr. Lockyer created the Civil Rights Unit and was the first California Attorney General to launch a civil investigation focused on police accountability of a local law enforcement agency in the state. He is a past president of the National Association of Attorneys General and served for more than two decades as a legislator in the California State Assembly and Senate. A graduate of the University of California, Berkeley, Attorney General Lockyer earned his law degree from McGeorge School of Law in Sacramento while serving in the State Senate. He also holds a teaching credential from California State University, Hayward. Mr. Lockyer has two children. His wife, Nadia, is a civil rights and public education attorney. **PARC** recently spoke with the Attorney General in his office in Los Angeles about his work, particularly in the area of law enforcement.



PARC: Could you describe your professional experience that led up to you becoming California's Attorney General?

BL: Well, I was a roofer. Does that count? I was a school teacher and then spent 25 years in the California State Legislature in the Assembly and the Senate. After that, I became the California Attorney General.

PARC: Could you tell our readers about the California Department of Justice and your responsibilities as Attorney General? What is the nature of your working relationship with the governor, the legislature, and other state governing bodies?

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BL: There are three big sections of the Office of Attorney General. First, it is the largest law firm in the state, with about 1,100 lawyers working in every area of the law and with different people. To give you an example, of the more than 100 lawyers doing environmental work, about half of those will be working with an agency where we're the counsel—say, water resources, the governor's office, or the health department. The other half is doing independent work that, in effect, is for the people rather than for a state agency.

The second is made up of our law enforcement assets—police work essentially, in areas such as narcotics, sexual abuse, child pornography, and abduction. That section also includes our forensic labs where DNA work is done.

Our third section is electronics. This deals with background checks for new teachers and gun purchasers, Megan's Law, and the running of a license plate before or after a traffic stop to determine whether a car is stolen or whether there is a warrant out on the driver. We maintain that electronic communication system between the state and local law enforcement. We move two and a half million messages a day in the system.

There are other matters we handle, such as firearms enforcement and healthcare fraud. The list goes on and on, but the three sections I mentioned are the big pieces to the California Department of Justice.

PARC: *The California Attorney General is often referred to as the state's "top cop."* Could you elaborate on your office's coordinating role within law enforcement?

BL: We're active in trying to get the law implemented correctly and to write new laws. As such, we are advocates for legislation on some of these matters. The law enforcement work we do is essentially a partnership. We work together in task forces that focus on various issues. Local law enforcement tends to

either be independently elected, like sheriffs, or working for independently elected city councils and mayors, so it's important that we try to work with local departments in a collaborative way. Command-and-control methods would not be effective. Although as Attorney General I'm arguably given authority to directly supervise every sheriff and district attorney in the state, it would be unproductive and potentially harmful to public safety efforts for me to assert such dominance. Law enforcement is much more effective and successful when we work collaboratively. My office can help achieve the best results for public safety by providing quality services and leadership so that local law enforcement agencies can do their jobs even better.

PARC: *Do you partner with federal agencies in the law enforcement realm?*

BL: We have a long history of working together or at least making every attempt to do so, and sometimes this is frustrating, frankly. Whether the issue is homeland security, major fraud, or narcotics investigations, we partner with U.S. Attorneys, the FBI, and other federal agencies. They are very commonly in our task forces, which frequently have federal, state, and local participating agencies.

PARC: *Have your office's priorities changed in the time since you were first elected in 1998? What challenges do police in California now face, and how is your office responding to them?*

BL: First of all, some of our legal work is different, with the enforcement of laws that sometimes were not so well enforced before. We didn't have a civil rights office, but I created one. We had a timid environmental office, and it's now very aggressive. We created the Office of Immigrant Assistance to deal with the special needs of the 27 percent of Californians who are foreign born and are frequently the victims of consumer fraud, immigration consultant fraud, and other rip-offs. Some of this new work has a law enforcement aspect to it.

In the law enforcement domain, there has been more of a need to work on anti-terrorism efforts post 9-11. In that respect, [former California Governor] Gray Davis and I created an intelligence collection center almost immediately after 9-11. The center doesn't have an operations role; it really just coordinates local law enforcement and federal agencies so that we are all sharing information and talking about the same problems and threats. The eyes and ears of law enforcement, generally, are the 90,000 local deputy sheriffs, police officers, highway patrol officers, and others. We hope to get information from them as well as to coordinate with the federal agencies.

There have also been some technological changes—Megan's Law, DNA, forensics—that have improved our response to law enforcement priorities.

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PARC: *You mentioned post 9-11. Have federal funding priorities shifted over time? If so, how has that affected California, specifically?*

BL: There had been a more significant federal commitment

during Bush I and Clinton to federal funding and support for officers on the beat. That's largely dried up under Bush II. We scrambled and were able to make up some of those lost monies, but the proposed budget for the next year contemplates very significant cutbacks in federal funding of a variety of pots of money that end up in state and local law enforcement. So that will probably necessitate some sort of scaling back of some of our state and local law enforcement responsibilities. I don't think anybody has yet figured out what exactly will be scaled back, but there will be a smaller pot of money. For a while, federal funding was reallocated for antiterrorism where it might have previously gone into organized crime work and other matters. Now the aggregate amount of funding is being cut.

PARC: *Does your office get complaints from Muslims or those from Middle-Eastern countries alleging that their rights have been violated by the police, post-9/11?*

BL: Actually, the complaints we receive are more often hate crimes that occurred against individuals who appear to be from the Middle East. These complaints involve civilians abusing Muslims, Sikhs, and others. We get more of these complaints about abuses by other citizens than about abuses by police officers.

We did have one little tension point, and still do, with federal agencies. We follow the state constitutional rule that we can't do surveillance or investigate without reasonable suspicion. That's not always true with federal agencies. We have a different approach, and as a result there have been a few complaints about police practices in this area.

PARC: *In relation to federal enforcement efforts, there's a debate going on about immigration law enforcement and local police, and how involved local departments should be, with the impact that their policies might have on community relations. Does your office have a view on the issue of local police enforcing federal immigration laws?*

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As a separate note on differences in federal and local law enforcement, a tension point we've had with the federal government has been over marijuana laws. I co-sponsored Proposition 215, which allowed for the medical use of marijuana. After a U.S. Supreme Court ruling against such use of marijuana, I put out bulletins to law enforcement that said that we still have our law—it wasn't invalidated by the court ruling. The court simply said that the federal narcotics law is valid and not unconstitutional as interference in interstate commerce. We've also advised local law enforcement not to make arrests just based on federal law. It makes

more sense for officers to see a concurrent state law violation before making an arrest. They are not obligated to arrest people for federal violations. They have discretion and may do so, but they are not required.

PARC: *What do you see as improvements or troubling trends in the realm of police accountability? What has your office done in response to any such concerns? What would you like to see done for improving accountability?*

BL: My impressions are—and certainly experts think—that California has one of the more professional and better trained cadres of law enforcement in the country. We do have robust examples of community policing strategies happening in California, perhaps more than in a lot of other states. There is an emphasis on training for contemporary problems.

One issue we got involved with in a systemic and comprehensive way was reform of SWAT team practices, which tend to be very different, especially between large and

small agencies. There has been a report, and we've made some efforts to set standards for SWAT training.

When I look at polls of citizen attitudes about law enforcement, I still see an extraordinary level of distrust, especially among minority residents of California. There's clearly a lot of work to be done to try to bridge that gap of distrust. My general view about it is that law enforcement public safety efforts succeed when there is community and citizen involvement in trying to fight crime. If the police are regarded negatively, there's less cooperation, and it's harder to get the job done. There is a tangible benefit for public safety when there is a strong relationship between the police and the community. We need to build these relationships right. Almost every jurisdiction in this state is a good place for police to build better community relations. Every jurisdiction in California serves a diverse constituency—although some may be more diverse than others, you can't find

a city or county here that does not have a broad array of residents who need and expect quality law enforcement services. Establishing and maintaining good community relations is an ongoing project that requires constant diligence and effort, and so every jurisdiction in the state should continuously strive for better relationships with their residents.

PARC: *Have you seen any places in the state where you think the public's distrust of police has been whittled away?*

BL: Well, a lot of places are trying to improve relations, and I see that all over the state. An example of where my office was more directly involved in restoring community trust would be Riverside. On December 28, 1998, the week before I was sworn in, Tyisha Miller was killed by Riverside police officers in what was a controversial shooting. The incident resulted in a joint inquiry by the Riverside County District Attorney and my office to see if criminal charges should be filed. We both determined that there wasn't criminal culpability on the part of the officers but that the Riverside Police Department had very severe problems that needed to be addressed. We spent more than a year investigating the department and then held several months of negotiations with Riverside city leaders and the city attorney on a set of reforms.

I take some pride in the new policing model that was created. There have been half a dozen federal efforts in the last nine years to address patterns of discrimination and misconduct. With its consent decree, Los Angeles is one of several places under federal oversight. Riverside was different in this respect. It was the first time in history that a state attorney general had secured a consent decree under state law to reform a local police department. More significantly, we used a different approach. It was our conviction that the U.S. Department of Justice's very complicated, phonebook-size consent decrees invite conflict and tension between the parties. And so we wanted to figure out how to partner with the

community and make it feel responsible for implementation of the reforms. As a result, the consent decree was very brief—about a dozen pages. It set out goals and timetables, but then the community leaders had to figure out how to make it work. They are much more active participants in getting to the established goals. At least in that instance, our Riverside model seems to have been a good approach, measured by complaints from the public, liability, and lawsuits filed—tangible sorts of evidence we can use to measure the effectiveness of reform.

My office conducted an outreach effort. We spent about two weeks in the community, speaking to dozens of community groups. As for the police department itself, it had huge numbers of vacancies before the reforms. After our investigation and the start of the consent decree's implementation, there were many, many more officer applicants, for a variety of reasons. I think one of the reasons is that some recruits want to work in departments that are really addressing policing issues.

PARC: *Was there any coordination or communication between your office and the federal government as you undertook your investigation of the Riverside Police Department?*

BL: We regularly talked with U.S. Justice Department lawyers about what evidence we had accumulated, what conclusions we had made, and what kind of efforts would be necessary to make progress in Riverside.

PARC: *Do you see the Riverside approach making sense in other places?*

BL: It's certainly very labor intensive. While I can imagine situations where perhaps a consent decree would be useful, I am reluctant to use that method for fiscal reasons. When there is a need for one, I think getting locals involved in and having ownership of reforms helps, especially when the federal

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government comes to investigate. If outsiders come to tell you, “This is what you have to do,” you resent the reforms, if they feel imposed.

PARC: *It seems like litigation is something that people turn as a way to pursue police reforms. Besides litigation, what other avenues do you pursue to promote improvements in policing policies and practices?*

BL: As a general matter of fights avoided or fights won, lawsuits are almost the slowest way I know to settle disputes. I always recommend alternatives if possible, though sometimes you don’t have any choice.

My office will often go and serve as a consultant to local police departments that may have a problem with the community or some aspect of policing. I will offer our expertise and our lawyers, monitors, and the people we’ve worked with, for example, in Riverside.

One of things I did after Riverside was to hold a conference in Sacramento with local law enforcement command staffs, with people who had some experience dealing with policing problems providing seminars and training. The

conference was very well attended, with about 300 participants. It showed that a lot of people in law enforcement had an interest in thinking and planning ahead and anticipating problems before they occur.

PARC: *In 1999, you issued a policy concerning state review of citizen complaints against police departments and their employees when complainants had exhausted local review processes. Could you elaborate on this policy and how it has been put into practice?*

BL: We get several hundred complaints a year about law enforcement. In almost every one of them, we find that people have not exhausted whatever local remedies there may be. The first thing we do is try to steer them to the correct local person or process. On occasion, we receive some referrals from oversight bodies, grand juries, citizen review agencies, and police commissions. Typically, however, the

complaints are from individuals about a single incident; they’re not connected in a way that suggests a pattern or practice, which is what we need to get more actively involved in investigating a complaint. We often refer complainants to their district attorney to see if that office has an interest in prosecuting. On some occasions, people come back to us and say, “We think the D.A. didn’t do his due diligence.” Under this policy, my office has an obligation then to go and check to see whether the district attorney’s work was sufficient. If it was not, this may cause us to go ahead and investigate independently.

PARC: *Does your office have any opinion about civilian oversight agencies?*

BL: Sometimes they are very effective and needed mechanisms. It really depends on the local circumstance, and I defer to local decision making on

whether or not a certain type of civilian oversight mechanism makes sense for a community. I think they can be very useful tools, though they vary in how they are structured and what their authority is.

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PARC: *Would you see any utility in a statewide report that tried to tally information from all the different law enforcement agencies on misconduct allegations, criminal prosecutions, civil suits, etc?*

BL: It would be valuable to be able to collect that, though it might be methodologically difficult to get the same information from different entities. We keep track, for example, of hate crimes—how many complaints were filed and what happened to them. Was there a prosecution? Did it go to a jury? What did the jury do? We find that even in that little small niche, it’s frequently hard to get the same information from different jurisdictions.

We do maintain records of in-custody complaints of death or serious injury. That information is kept and is public information.

PARC: *Is there a way that you identify model police practices to share with law enforcement agencies that are experiencing problems?*

BL: There is a very robust conversation within the law enforcement community about what works. Riverside is not unlike Los Angeles or other jurisdictions. The ideas for improving accountability and professionalism are similar and fairly simple, for example: better screen your hires with psychological testing; better train department personnel; use more non-lethal weapons; have more community outreach; and install video cameras in patrol cars. It's not a mystery the kinds of procedures and practices that work. I typically see different law enforcement executives sharing this information and trying to do these things.

PARC: *On the issue of Tasers, what could be done to help law enforcement agencies trying to use them appropriately and safely?*

BL: Well, there is training, of course. We had a troubling incident in a local jurisdiction where an officer reached for his Taser but instead pulled his gun and killed the person. That would presumably be a training problem or possibly an issue relating to how dissimilar a stun gun and firearm are in terms of sizes and how easily they can be confused. The dilemma, of course, is that if departments rely on firearms then there are going to be a lot of complaints about excessive use of force. Hopefully the Taser or some other non-lethal weapon will allow an officer to do his or her job safely and without severe injury to a subject.

PARC: *Could you discuss the California Senate bill you recently backed concerning bullet identification? What are the bill's provisions? How do you see it affecting police work?*

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BL: Our forensic experts believe that the next big forensics breakthrough will be having the ability to recover and find the sources of bullets at a crime scene. This bill would require there to be a laser-etched number on bullets that people purchase at gun stores. When people purchase bullets, we'll record that information. At crime scenes, investigators will then be instantly able to find out where bullets came from, even if they don't know who shot them. We can find out who bought the bullet and perhaps quickly track them to find out who was involved in a particular incident.

As you would expect, the gun manufacturers and the gun lobby have loudly protested. They claim that our estimates of the bullet identification costs are understated. They refuse to work with us to try to get the right numbers, and so the numbers are the best that we could come up with. We want to make sure we get the numbers right before we go forward. This can on the table has an identification number on

it, as does every container of yogurt. Somebody is doing this pretty easily and inexpensively. But somehow with bullets, they say they can't do it.

PARC: *Now that you are approaching the end of your term, are there particular things you are proud of having done as California's Attorney General? What accomplishments of yours in the area of law enforcement make you proud?*

BL: I have gotten the California Department of Justice involved in civil rights, consumer protection, the environment, anti-trust, healthcare fraud, and elderly abuse. We actively enforce laws and reforms in these areas.

In the law enforcement domain, when I was elected six years ago, what I found was that the Justice Department had been collecting DNA samples from convicted felons for a decade. But the samples were

all in a refrigerator and not digitized in a way that people could compare them to DNA from new crime scenes. When I first took office, law enforcement was catching about one suspect a year, using DNA. During May 2005, that number was 125. It has been a very effective program for solving crimes, closing old cases that have been dormant for years, and proving people innocent. Frequently, a lot of investigative resources would be deployed towards a wrong suspect that can now be redeployed at a proper target through the use of DNA. In that way, my office's program makes for a more efficient use of resources and gets innocent people out of the system.

In terms of electronic technology, one of our accomplishments was getting Megan's Law on the Internet. You used to have to go to a police station to look at the file of ex-sex offenders who live in a neighborhood. That information is now on the Internet. We wanted it up by July 1 of this year and within a certain budget. We actually had it up under budget and by December 15 of last year. That may be unique for government. Since mid-December, 2004, there have been 165 million page hits. Of course, some people look at multiple sites—schools, parks, and where kids play—but 165 million page hits is still a very impressive number.

There are also a variety of areas where I've tried to contribute to improved police accountability and services to the public. As I mentioned earlier, my office developed a best practices report on SWAT Team tactics that we provided to every law enforcement jurisdiction in the state. My hope is that by adopting the recommendations in the report we can prevent senseless injuries and, potentially, deaths for innocent bystanders and peace officers alike. In September of 2003, I issued a report ("Criminal Intelligence Systems: A California Perspective") that gives law enforcement clear guidelines on permissible and impermissible investigation and intelligence gathering techniques. I have also made my Civil Rights attorneys and special agents available to local law enforcement agencies that want help in developing improved, and constitutionally sound, investigation and intelligence gathering protocols. Similarly, my office provides mediation services to law enforcement agencies and community activists who want to improve their communication and relationships.

PARC: Thank you for allowing us this opportunity to interview you.

BL: You're welcome. It was my pleasure.