

JUSTICE STRATEGIES



The More Things Change, the More they Stay the Same:

*an excerpt from Justice Strategies'
forthcoming report on police accountability.*



*"to protect
and to serve"*

POLICE

Judith A. Greene
Patricia Allard

ACKNOWLEDGEMENTS

Justice Strategies owes a great debt of gratitude to many people who were generous in sharing information, data and insights about policing in Los Angeles with us. These include Peter Bebring, Gary Blasi, Merrick Bobb, Alexander Bustamonte, Gerry Chalef, Craig Gilmore, Hamid Kahn, Lyle Knight, Ana Muniz, Alex Sanchez, Connie White, and Pete White. We are especially grateful to Kim McGill, whose years of experience, brilliant analysis and tireless efforts to hold police accountable to community residents in both Los Angeles and New York City has been an invaluable resource for Justice Strategies. For more than a decade we have been enriched and inspired by her leadership.

INTRODUCTION



The More Things Change, The More They Remain the Same

Police accountability is not a goal that can be won once and for all. Police policy reforms are not items on a check-off list that can guarantee changed practice on the streets. The effort to reform policing is a dynamic process, a struggle that must be sustained with vigilance, and constantly reinforced with action.

Powerful and direct involvement by grassroots leaders from communities of color is the most critical factor. A second essential requirement is transparency on the part of the police. Without these key elements, written policy statements on racial profiling and use of force, “early warning systems,” outside monitors, inspector generals, independent boards and appointed commissions will accomplish little over the long run.

Effective police reform means reform from the bottom up – not just reforming the way police executives talk about police misconduct as they respond to public concerns. The heart of the matter is whether there is real community involvement or simply the appearance of community involvement. And beyond the community, what is the role of the police themselves? It takes an attitude of “let’s roll up our sleeves and get this done” on *both* sides.

In Cincinnati the killing of an unarmed black teenager, Timothy Thomas, by a white cop sparked three days of full-blown civil rebellion in 2001 and brought the harsh glare of international media to focus the attention of the city’s elite on the seriousness of the problem of police brutality. When more established leadership in the African American community held back on the sidelines, younger, more radical Black United Front leaders found themselves in center court. They did not hesitate to run with the ball. They convinced a federal judge to order that the settlement process include a formal collaborative process that provided them with a seat at the table, along with the police union and city hall. The negotiations produced an agreement between all the parties that went far beyond the DOJ consent decree, and it was enforced by the federal court, involving community leaders in every step of implementation over the next decade.

In Seattle, there was no single catalytic event such as the uprising in Cincinnati – no devastating civic trauma – to bring all sectors of the city to a realization that “enough is enough.” But many years of steady pressure and protests by a remarkable coalition of leaders from all sectors of Seattle’s nonwhite communities nonetheless brought matters to a head. A task force on police accountability organized by Seattle’s three-decade old Minority Executive Director’s Coalition worked closely with the ACLU to demand a DOJ investigation of racial profiling and excessive use of force. While the task force was not involved directly in negotiations between DOJ and the mayor’s office, their demands were reflected in the consent decree, with establishment of a Community Police Commission, to shape new policies and monitor their implementation. The CPC includes nine members representing Seattle’s diverse communities, and two police union representatives.

In Los Angeles, decades of racially biased, brutal, militarized policing brought international disgrace to the Los Angeles Police Department. From the shootings of unarmed members of the Nation of Islam in 1962, through the framing of Black Panther Party leader Geronimo Pratt, Chief Daryl Gates' deployment of a 14-ton armored tank in "Operation Hammer" raids, the brutal on-camera beating of Rodney King, to the corrupt and deadly rampaging CRASH anti-gang enforcement squad based in the LAPD's Rampart Division in the late 1990s, the LAPD was a symbol of ruthless, unbridled police misconduct. Finally, in November 2000, an investigation of the LAPD by the US Department of Justice culminated in a consent decree, leading to an eight-year effort to reform the Department under the watchful eye of a federal court monitor.

Opinions about the degree to which the reforms have actually changed police practices on the streets of Los Angeles vary widely. Public officials, police executives – and some civil rights attorneys as well – praise LAPD brass for making dramatic improvements in the performance of patrol officers on the street. Yet many activists and organizers in heavily-policed neighborhoods in the city report that little has really changed. Incidents of excessive – sometimes deadly – force continue to trigger news headlines, and evidence abounds that by at least one critical performance measure – racial profiling and other types of biased policing – police misconduct on the streets is on the increase.

This chapter report from our in-depth study of strategies for police accountability (forthcoming in a few week's time) illustrates this wide divergence of opinion, and suggests that the relative lack of empowered, sustained grassroots leadership in every aspect of reform efforts may be a key missing link in the effort to reform the LAPD.

THE LAPD STORY:



The More Things Change, The More They Remain the Same

Over the last four decades, the Los Angeles Police Department (LAPD) has undergone several reforms to address its shortcomings, as well as to address the needs of the diverse communities it is intended to serve. Some of these reforms appear to have wrought substantive and sustained impacts. Yet, unlike the policing reform efforts observed in Cincinnati and Seattle, key police policy and practice reforms have failed to adequately incorporate the perspectives of those in LA communities most directly affected by these policies and practices. As a consequence, some communities the LAPD is mandated to serve and protect continue to experience harsh and biased policing.

POLICING “BROKEN WINDOWS” ON SKID ROW

The face of Skid Row changed very dramatically. In the late 1970s, 21% of the population was black and 67% was white. What changed was a huge influx of younger, primarily African American men, almost all from South L.A. and other parts of L.A. This was not, as the mythology of the time had it, that people were coming to L.A. from other places looking for surf and sun. It was mostly just young people who fell out of the system here, people associated with deindustrialization, loss of jobs for people who had nothing to sell but their muscle power. The recession just squeezed out the most vulnerable people at that point.¹

In the late 1970s, L.A. experienced a dramatic economic change. Globalization and deindustrialization led to severe underemployment and unemployment among the African American community. The shutting down of rubber and steel plants resulted in the loss of Blue-collar jobs, which had been a primary source of employment for members of the Black community. Due to the meagre educational foundation offered to working-class African Americans, the emerging service sector proved to be unattainable for this population. Consequently, African American workers did not fare as well as others in the changing economy of the late 1970s, 1980s and 1990s.²

Along with the loss of economic opportunity for the working-class – disproportionately affecting African Americans – California also experienced a shift in social priorities. Severe cutbacks to social services with a significant increase in law enforcement and correctional expenditures resulted in an increased criminalization of the poor. This shift coincided with the commencement of the war on drugs that justified the arrest of massive numbers of low-income Black and Brown people, who had already been stigmatized as “undesirable.”

¹ Gary Blasi. “Skid Row in Transition,” in *Downtown Blues: A Skid Row Reader*, ed. Christina Heatherton. Los Angeles: The Los Angeles Community Action Network 2011.

² David Wagner and Pete White. “Why the Silence? Homelessness and Race ” in *Freedom Now! Struggles for the Human Right to Housing in LA and Beyond*, eds. Jordan T. Camp and Christina Heatherton. Los Angeles: Freedom Now Books 2012.

And so they were basically just surplus human beings. They were not so much drawn to Skid Row as they were pushed out of where they came from because it was impossible to survive there.³

At the outset of this economic change, law enforcement officials showed very little interest in policing drug activity or other low level criminal activity. Yet, the formation of the Central City East Association led to an increase in police crackdowns in Skid Row in the late 1980s; business interests directed policing priorities in the Skid Row community.

Clean Up Time!

The influx of the wholesale import business began to emerge in Skid Row because rents were cheap. Business owners organized together and began to complain to the city about quality-of-life matters (e.g. urination on Skid Row streets), which were deemed to undermine business. The business association's concern eventually led Chief Daryl Gates to aggressively crackdown on the homeless population. He proclaimed that homeless people who did not agree to leave the streets of Skid Row would face arrest. The LAPD started to harass homeless people: trashing people's belongings and arresting people for sleeping on the street. However, during this same time period little attention was paid to arresting people for drug sales in Skid Row.⁴

In 2002, William Bratton was appointed Chief of Police for the City of Los Angeles. Bratton had been internationally lauded for cracking down on crime and cleaning up the streets of New York City. He took up the charge of tackling the homelessness problem in L.A., including in Skid Row. Bratton's experience in New York City had honed his media skills to a fine edge. During his tenure at the LAPD, he placed enormous emphasis on framing the issue of homelessness and police action targeting this issue in ways that would be palatable to the public. Bratton explained the role of the LAPD in the Safe Cities Initiative (SCI), launched in October 2006, as follows:

The condition of being homeless in and of itself is not a crime. Los Angeles police officers will focus their activities on behavior, not the condition of being homeless... The criminal element, which preys upon the homeless and mentally ill, will be targeted, arrested and prosecuted to the fullest extent of the law. But we will never arrest our way out of this problem, nor do we intend to.⁵

But the framing of the City's Skid Row strategy had actually begun earlier. In the years leading to the launch of the SCI, city officials and the press liaisons from different city agencies had laid the groundwork, placing great emphasis on appearances and public relations. During the latter part of 2003 a committee, that had been assembled to frame the SCI, formulated a public relations approach that sought to frame the Skid Row "problem" as one of lawlessness rather than homelessness. It is clear from the minutes of the committee's meetings – disclosed through a

³ Blasi.

⁴ Ibid.

⁵ Office of the Mayor "City Launches Initiative to Reduce Crime on Skid Row: 50 More Police Officers Deployed to Area," Press Release, September 24, 2006.

public information request made by Professor Gary Blasi and the UCLA School of Law's Fact Investigation Clinic – that the lawlessness in question targeted inevitable behaviors of survival engaged in by homeless people.

Indeed, one of the more remarkable aspects of the minutes of the initial planning meetings for the Safer City Initiative in Skid Row is that the *only* “lawlessness” discussed in any of these meetings involved the crimes that arise directly out of homelessness in the absence of available shelter or facilities, like sleeping or “camping” on the sidewalk [or conducting biological functions in locations other than bathrooms]. Although it would figure prominently in the public relations effort that accompanied the Safer Cities Initiative in Skid Row, in the meetings of August, September, October, and November, 2003, there was in the minutes of these meetings not a single mention of any “crime” that does not necessarily accompany homelessness when there is a lack of shelter or other facilities: nothing about drug sales, nothing about violence perpetrated against homeless people. Nothing.⁶

While Chief Bratton's message to the public was that the condition of being homeless is not a crime, it is undeniable that the SCI's original intent, and the one that flourished as the guidepost of the SCI, was to criminalize behaviors of necessity engaged in by homeless people. As demonstrated in the next section, “[t]he criminal element, which preys upon the homeless and mentally ill” was never intended to be the real target of the SCI.

The Purpose of the SCI

[T]he passage of the Safer Cities Initiative (SCI) in September 2006 was promoted as a means to reduce crime in Downtown Los Angeles. Behind the rhetoric however, SCI provided the Los Angeles Police Department (LAPD) with expanded powers to arrest, harass and brutalize Black Skid Row residents, effectively intensifying the process of forced removal.⁷

From the beginning the SCI was presented by city officials as a public safety program that would increase law enforcement presence on the streets of Skid Row to tackle serious crime while simultaneously providing social services and alternatives to incarceration to the homeless population. What Skid Row residents experienced, however, was gentrification 101: law enforcement occupation of Skid Row, police harassment and criminalization of poor, Black and Brown residents, forcing many to flee their community to make room for middle class and affluent people.

It was evident to residents and community organizations on Skid Row that the SCI was in large part an effort to halt the civil rights advancement the community had made through legal and policy channels. In the years and months leading up to September 2006 (the launch of SCI), the

⁶ Professor Gary Blasi and the UCLA School of Law Fact Investigation Clinic, *Policing Our Way Out of Homelessness?: The First Year of the Safer Cities Initiative on Skid Row*, Los Angeles: University of Southern California and UCLA, September 24, 2007.

⁷ Damien Schnyder. “Voices of the Collective.” in *Downtown Blues*

community had won several legal settlements, and policies passed that halted the speculative dumping and selling of Residential Hotels, effectively halting the removal of Skid Row residents through eviction and displacement. In addition, in April 2006, the United States Court of Appeals for the Ninth Circuit found the city ordinance 41.18(d) – that prohibited sitting or sleeping on streets or sidewalks – unconstitutional as applied to the streets of Los Angeles because it amounted to cruel and unusual punishment due to a severe housing and shelter bed shortage in L.A. Rather than appealing the lower court’s decision, the City entered into an informal agreement – the ordinance would only be enforceable during the daytime.⁸

SCI in Action

It is no surprise that Skid Row residents have described the SCI as a LAPD occupation. In the first three years of the initiative at least 50 police officers were charged with roaming a 15-50 square block radius of Skid Row (most of law enforcement efforts were concentrated in a 15-20 block area), “thus earning Skid Row the distinction of having the highest sustained concentration of cops in the world outside of Baghdad...”⁹ During this time period, over 36,000 citations were issued and 27,000 arrests were made in a community of about 15,000 people. These citations and arrests were mostly for quality-of-life infractions – jay-walking, sitting or sleeping on the sidewalk, public urination, and dropping cigarette ashes on the sidewalk – leading to detaining, ticketing, searching and arresting homeless and other very poor Skid Row residents. These infractions were inevitable given the lack of public benches, garbage bins and adequately timed street-crossings. Furthermore, “[t]he promised expansion of outreach and services has paled by comparison [to the law and order enforcement]. While just the 50 officers assigned to the SCI Task Force have cost approximately \$5 million, the “Streets or Services” program that was to have provided an option to those facing arrest for the crime of sleeping on the sidewalk was funded with \$100,000, and even that came out of the discretionary budget of the City Attorney rather than as part of any allocation for the Skid Row SCI.”¹⁰

The intent behind the SCI was, at the very least, questionable. For instance, it is questionable whether the issuance of 13,000 tickets for jaywalking in Skid Row could increase public safety. Researchers from the UCLA School of Law speculated during site visits that the objective was more to force people into leaving the Skid Row community:

Many areas of the City, for example, have “count down” pedestrian signals that provide some warning before the “don’t walk” signal appears. By our observations, there is not a single signal of this type in Skid Row, to say nothing of the audible and other signals of the kind one finds in many other cities with a more pedestrian friendly culture. Absent some real effort in this regard – in addition to writing thousands of citations destined to lead to arrest warrants – the City risks confirming the suspicion that the real aim of even this aspect of SCI is to make the area sufficiently risky and unpleasant for poor and homeless people that they will leave the area.¹¹

⁸ Blasi, *Policing Our Way Out of Homelessness?*

⁹ Robin D.B. Kelly. “Ground Zero,” in *Downtown Blues*

¹⁰ Blasi, *Policing Our Way Out of Homelessness?*, p. 22.

¹¹ Blasi, *Policing Our Way Out of Homelessness?*

Another example among several quality-of-life infractions for which thousands of citations were issued to Skid Row residents, and in some cases, resulting in jail time, are citations for littering on the street. Among the littering citations, countless of them were issued for dropping cigarette ashes. Once again, researchers from UCLA School of Law observed that there were no public trashcans in the Skid Row area, forcing the research team to carry their trash out with them. Again, the strategy to deal with littering in Skid Row was highly questionable. Rather than placing eleven trash cans in the area, as was suggested to address littering, the expensive machine of the criminal justice system set in motion: law enforcement officers issuing tickets, courts and lawyers processing the infractions, and jail time for unpaid tickets.¹²

Notwithstanding Chief Bratton public relation's statements, it is evident that the SCI in action aimed to criminalize the unavoidable quality-of-life activities disproportionately committed by homeless people. The SCI on Skid Row is a quintessential example of "broken windows" policing.

The Skid Row Community fights back

Community Watch members represent the frontline of defense in the war on the poor.¹³

Throughout these trying times, Skid Row residents – with support from the Los Angeles Community Action Network (LA CAN) – organized some incredibly successful efforts to protect their housing and civil rights. Setting up legal clinics, organizing city-wide campaigns, coordinating state-wide legal actions, and filing law suits in Federal Courts, Skid Row residents have shown the power of collective initiative in safeguarding their community and asserting their fundamental civil and human rights. LA CAN's leadership has helped focus the community's efforts around two central themes – the housing market and the criminal justice system – which the city has relentlessly used jointly to displace residents and advance its gentrification plans.

In partnership with the Legal Aid Foundation of Los Angeles, in 2004, LA CAN established a community lawyering clinic to advance and protect the tenant rights of Skid Row residents. The community lawyering model aims to have residents, organizers and lawyers work together as peers to address community problems identified by low-income community members. Through on-going cross-training between LA CAN and Legal Aid, trained LA CAN members run a weekly legal clinic that tackles issues concerning tenant rights violations, illegal evictions, and other displacement matters.

Launched in November of 2005, L.A. CAN's CommunityWatch campaign armed residents with video cameras to document civil and human rights violations committed not only by the LAPD, but also by private security guards hired by the Business Improvement District (BID):

¹² Ibid.

¹³ Robin D.G. Kelley.

One of their many fact-finding missions determined that the city, as part of SCI, actually shortened the crossing time at the light on the intersection of Sixth and St. Julian in order to generate more jaywalking tickets! I can testify that it is impossible to cross the street before the light changes without running, so imagine how difficult it is for an elderly or disabled person?¹⁴

The CommunityWatch campaign has aided countless residents in winning civil and criminal court battles against wrongful prosecution, protecting their civil and human rights. Furthermore, the campaign's documentation efforts provided evidence that led to several court injunctions against LAPD to cease the pattern and practice of illegal stops, illegal searches and illegally confiscating property. And finally, the campaign also provided well-documented defenses for thousands of residents against quality of life citations.

In 2006, LA CAN organized Alexandria Hotel tenants in an effort to preserve affordable residential housing and prevent displacement. Following an initial victory, securing redevelopment funds aimed at preserving affordable tenancy, tenants of the 12-story hotel experienced deteriorating conditions: no hot water; a non-functioning elevator in a 12-story building; as well as illegal management practices. Tenants continued to organize filing a federal lawsuit to hold the redevelopment agency accountable, winning a settlement agreement, which restored healthy and safe building conditions, compensated harmed tenants, and ensured the right of return for those illegally evicted.

In 2007 the ACLU of Southern California won a Federal Court ruling that LAPD searches of Skid Row residents on probation or parole without evidence that they had committed a crime were unconstitutional. U.S. District Judge Dean D. Pregerson charged that the LAPD had a policy "of searching skid row residents without knowledge of any search conditions imposed."¹⁵

Yet the practice of policing ordinary, non-criminal behavior on Skid Row persists to this day. In early February 2013, the Los Angeles Community Action Network (LA CAN) reported that the normally high police presence on Skid Row surged to record numbers. During the monthly "Skid Row Safety Walk," organized by LA CAN to promote residents' awareness and engagement in local health and safety programs, some two dozen squad cars and more than 50 LAPD officers flooded the area, with dozens of residents being stopped and handcuffed while officers rifled through their personal possessions.¹⁶

LOS ANGELES: A MODEL OF "SURVEIL AND CONTROL" POLICING

As seen with the quality of life citations, the LAPD policing practices have taken on a pattern and practice of criminalization of poverty, transforming people's day-to-day behavior, some of which are purely survival activities, into criminal behavior. Similarly, certain day-to-day behaviors are now

¹⁴ Ibid.

¹⁵ Cara Mia DiMassa and Richard Winton, "LAPD skid row searches found unconstitutional. *Los Angeles Times*, April 25, 2007

¹⁶ Los Angeles Community Action Network. "Over 25 squad cars and 50 LAPD officers deployed in Skid Row last night – does this make the community safer?" Posted on February 8, 2013. Online at <http://cangress.org/over-25-squad-cars-and-50-lapd-officers-deployed-in-skid-row-last-night-does-this-make-the-community-safer/>

Predictive Policing: The “New” Model?

The arrival of intelligence-led policing (ILP) can be traced to a single event: the 9/11 terrorist attacks on the United States. In the days after the attacks, it became readily apparent that the law enforcement community represented the front line and would play a significant role in the war on terrorism. Homeland security increasingly has become hometown security. Policing changed profoundly with that event in ways that will continue to shape the profession for years... The predictive-policing model envisioned by the Los Angeles Police Department and Police Chief William J. Bratton builds on and enhances the promise of ILP.⁶ With new technology, new business processes, and new algorithms, predictive policing is based on directed, information-based patrol; rapid response supported by fact-based prepositioning of assets; and proactive, intelligence-based tactics, strategy, and policy.¹⁷

Building on intelligence-led policing, then Police Chief of the LAPD William Bratton, his police department, and researchers at UCLA, paved the way for predictive policing. The LAPD deems itself able to predict when and where crimes will occur. Predictive policing is quite simple: collect mounds of data with an emphasis on the time, distribution, and geography of past criminal activity; enter the information collected into a database; and identify patterns of criminal activity. With that information in hand, law enforcement agencies say they can determine where to increase police resources, creating a stronger deterrent, and nipping crime in the bud.

At daily police briefings, high-risk areas in the city are identified, consequently, justifying increased police presence in those areas. According to Chief Beck, “the ability to anticipate or predicate crime provides unique opportunities to prevent, deter, thwart, mitigate, and respond to crime more effectively, ultimately changing public safety outcomes and the associated *quality of life* [emphasis added] for many communities.”¹⁸

Needless to say, predictive policing raises grave concerns about placing “some neighborhoods under permanent armed patrol and create biases among officer.” Andrew Adams, professor of information ethics and deputy director of the Center of Business Information Ethics Japan’s Meiji University warns that the entire topic of policing and information is a “minefield.” There’s a tendency, he says, “for political judgment to become intermingled with the data. He says there must be enough transparency that people in the community can trust that it is being used honestly.

“There are concerns that predictive policing can create a shield of objectivity... if the technique is used to put individuals under surveillance, it could touch on privacy, civil liberty, and due process issues.”¹⁹

coming to fall into a new law enforcement method of policing crime speculatively – namely, “predictive policing” – legitimizing intrusive and secretive police surveillance and, possibly, leading to “justified” police harassment or, even questioning and detention.

Special Order 1

Introduced as Special Order 11 in 2008 by former LAPD Chief William Bratton (revised by Chief Beck in 2012 as Special Order 1) the LAPD’s Suspicious Activity Reporting (SAR) program legitimizes spying on individuals in Los Angeles when law enforcement officers deem certain non-criminal activities suspicious. Special Order 1 requires LAPD officers to file Suspicious Activity Reports (SARs) on observed or reported behaviors or activities that might have links to terrorism or crime.

Special Order 1 labels a long list of ordinary daily activities as “suspicious behaviors” such as: using cameras in public, shooting video, using binoculars, drawing diagrams, taking notes, walking into an office and asking for hours of operation. These activities are

¹⁷ Charlie Beck and Colleen McCue, “Predictive Policing: What Can We Learn from Wal-Mart and Amazon about Fighting Crime in a Recession?” *Police Chief Magazine*, November 2009.

¹⁸ Ibid.

¹⁹ Samuel Greengard, “Policing the Future,” *Communications of the ACM*, Vol. 55, No. 3, p.20 March 2012.

LAPD Chief Charlie Beck assures us that predictive policing does not target individuals but rather communities; consequently, he promises this new model of policing will only serve to increase public safety:

The analytic methods used in the predictive-policing model do not identify specific individuals. Rather, they surface particular times and locations predicted to be associated with an increased likelihood for crime. Identifying and characterizing the nature of the anticipated incident or threat increase the ability to create information-based approaches to prevention, thwarting, resource allocation, response, training, and policy. These fact-based approaches promise to increase citizen and officer safety alike.²⁰

assumed to be acts of engaging in “pre-operational surveillance.” As such, the assumption is that pre-operational surveillance acts could lead to future terrorism or other criminal action, justifying the investigation or racial profiling of people who are engaging in ordinary and non-criminal daily activities.

Special Order 1 opens the door to a new type of crime control based on speculative and predictive policing by lowering the legal threshold of reasonable suspicion for “Stop and Frisk” to new thresholds of “observed behavior” and “reasonable indication.” Law enforcement can do away with the requirement of specific facts and an articulable cause, and just rely on hunches to begin investigating individuals.

With these new thresholds comes unfettered ability to gather an unlimited amount of information on people who are engaging in innocent non-criminal activity. This information is then shared through a national information network of Fusion Centers, where every local, state and federal law enforcement agencies as well as their private contractors can track innocent civilians arbitrarily deemed suspicious. This, in turn, increases people’s vulnerability to law enforcement scrutiny, racial profiling and, in some cases, relentless harassment.

Anti-terrorism Origin of Special Order 1

The origin of these special orders stems from the post-911 hysteria, which centered on the belief that 911 occurred due to a breakdown in information sharing between key law enforcement and national security agencies. In 2004, Congress legislated Homeland Security and other agencies (including local law enforcement agencies) to create a cohesive information sharing network, resulting in all local law enforcement agencies having to file Suspicious Activity Reports (SARs) on any observed or reported behaviors or activities that might have links to terrorism. These reports would be sent and compiled in a central location called Fusion Centers; one of the 74 Fusion Centers is in LA County. LAPD designed Special Order 1 as a model program for the nation’s National Suspicious Activity Reporting Initiative.

Community concerns about Special Order 1 have given rise to a new coalition, the “Campaign to Rescind Special Order 1,” calling attention to potential abuses of the SAR program. Hamid Khan, the lead organizer of the campaign, charges that Special Order 1 has gone well beyond the original intent of targeting particular populations suspected of terrorism, and now targets many other individuals and groups viewed as “undesirables”:

²⁰ Charlie Beck and Coleen McCue.

For young people of color who have been labeled “urban predators,” formerly incarcerated people, and those on probation, and well as undocumented immigrants, political activists and LGBT people whose very identities are deemed “suspicious,” Special Order 1 only adds another layer of surveillance and harassment in their daily lives.²¹

Khan stresses that the gravity of the problem reaches beyond his concerns about the impact of Special Order 1 on already-vulnerable people in the community:

In the hands of the police, Special Order 1 not only eviscerates individual rights and privacy. It flips the long-held principle of “innocent until proven guilty,” to “guilty ‘til proven innocent.” It’s important to realize that the fundamental premise is that each and every person is a potential suspect. Everyone is a potential target!

The ACLU has charged that the SAR program constitutes “dumbing down suspicion.” They say that SARs open the door to racial profiling because they give police unwarranted discretion to stop people without reasonable suspicion of wrongdoing, and such unbridled discretion inevitably leads to police stepping over the line:

There is [...] evidence that some law enforcement officers are using SAR or SAR-like criteria to abuse their power. Many SAR programs describe photography of security personnel or facilities as a precursor to terrorism and a growing number of cases, such as those in Maryland, Washington, Tennessee, New Jersey, Boston, and Miami, involve police harassment, demands for identification, and even arrests of photographers for taking pictures or video documenting law enforcement officers in the performance of their duties. None of these incidents involved any reasonable links to terrorism or other threats to security. SAR criteria have also been used as a pretext for local law enforcement to check immigration status, and played a precipitating role the arrest of a political activist in Connecticut.²²

In a recent assessment of counterterrorism intelligence, the Homeland Security Policy Institute at George Washington University concluded that the SAR system has proved to be a “passive” intelligence collection system that has flooded law enforcement with “white noise” that “complicates the intelligence process and distorts resource allocation and deployment decisions.”²³

²¹ Interview with Hamid Khan in September 2012 (notes on file).

²² American Civil Liberties Union, “More about Suspicious Activity Reporting,” Posted online at <http://www.aclu.org/spy-files/more-about-suspicious-activity-reporting>

²³ Frank J Cillufo, Joseph R. Clark, Michael P. Downing and Keith D. Squires, *Counterterrorism Intelligence: Fusion Center Perspectives*, Washington, DC: George Washington University. June 2012.

A Brief History of Gang Policing in Los Angeles: Excerpts from Gangs Wars²⁴

Legendary LAPD chief William Parker – who maintained a segregated police force until 1960 – used relentlessly harsh methods in an effort to quell gang violence in Los Angeles. In his view, gang members were incorrigibles, deserving nothing more than a locked-down prison regime. He characterized the city’s barrio residents as just one step removed from “the wild tribes of Mexico.” During the civil rights era, black gangs and black nationalist groups fused in Parker’s mind into a single menace of communist inspired black power.

As though to confirm Chief Parker’s paranoia, hostilities between South Central gangs seemed to evaporate in August 1965 as members joined Watts residents in battle against the LAPD and the National Guard during five days of sustained civil disturbance. The cessation of most gang hostilities continued more or less for the next half decade, as many prominent gang leaders took up roles in liberation movement organizations. But after the Los Angeles chapter of the Black Panther Party was dismantled by the combined efforts of the FBI and the LAPD, old gang hostilities reemerged.

Latino gangs in East Los Angeles were a focus of gang suppression policing in the 1970s. In *The City of Quartz*, his far-reaching study of the impact of globalization on the political economy and community culture in Los Angeles, Mike Davis writes that it was a “major community counter-offensive” led by priests, parents, and veteran gang members that brought the number of gang homicides down from 34 in 1978 to none at all in 1988. Meanwhile, an epidemic of “gangbanging” spread rapidly in South Los Angeles, coinciding with the rapid rise of the crack cocaine market. Davis says that as bad as it was, the outbreak of youth violence never came close to resembling the phantasmagoric images portrayed by law enforcement with inflated statistics and supercharged rhetoric...

In 1987 the Gang Related Active Trafficker Suppression program (GRATS) mounted nine sweeps over a period of two months, netting more than 1,500 arrests. Yet the violence continued, so Chief Gates—fearing a threat by county supervisors to call out the National Guard—threw the sweep machine into high gear, initiating HAMMER-style super sweeps.

During an August 1988²⁵ raid by HAMMER troops on a group of Dalton Avenue apartment buildings, rampaging cops smashed apartment walls with sledgehammers and spray-painted “LAPD Rules” on those left intact. They wreaked such extensive damage to property and possessions that the Red Cross offered residents disaster relief and temporary shelter. The raid yielded no arrests of gang members and no weapons. Residents were later awarded \$3 million by the courts to compensate them for the damages inflicted during the Dalton Avenue police riot. By 1990 HAMMER had pounded more than 50,000 arrestees.²⁶

Gang Injunctions

But speculative and predictive tools for suppression and control of people deemed suspicious or labelled dangerous is by no means a new theme of policing LAPD style. Gang injunctions emerged in the late 1980s in Los Angeles as a law enforcement tool to contain gang activity. A gang injunction prohibits normally non-criminal behaviours and activities when performed by people alleged to be gang members within a specific geographic zone.

A gang injunction is a civil court order that declares the gang a public nuisance. The prohibited activities and behaviors generally listed in an injunction are ordinary, non-criminal behaviors, including wearing particular colored clothing, making certain hand signals, having a cell phone in one’s possession, approaching vehicles in a certain manner, congregating with two or more people in certain public locations, etc. A San Jose injunction prohibited “standing, sitting, walking, driving, gathering, or appearing anywhere in public view” with a suspected gang member. Alleged gang members were also prohibited from

²⁴ Judy Greene and Kevin Pranis, *Gangs Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies*, A Justice Policy Institute Report, Washing, D.C., July 2007, pp. 25-27.

²⁵ Mike Davis, *City of quartz* (new edition). New York: Verso. 2006.

²⁶ Ibid.

“approaching vehicles, engaging in conversation or otherwise communicating with the occupants of any vehicle.”²⁷

Other prohibited activities such as the sale or transport of illegal drugs are in and of themselves violations of criminal law and do not need to be included in a civil injunction. Gang injunctions typically include a list of named individuals, but may also include “John or Jane Does” – people not yet identified by name.

Violating a gang injunction can lead to criminal prosecution for a misdemeanor – violation of contempt of court – punishable by up to six months in jail and/or a \$1,000 fine.²⁸ Furthermore, since gang injunctions are issued without an expiration date they are permanent.

Gang injunctions have become popular legal tools in Southern California to not only limit people’s movements but also to limit with whom they can associate. The Office of the City Attorney of Los Angeles reports that as of July 2011 there were 44 injunctions covering 72 gangs in the City of Los Angeles.²⁹ Some injunctions cover a geographic area of one neighborhood block while others cover several square miles. Injunctions generally require, as one of their many prohibitions, that alleged gang members not associate with other gang members. Needless to say such requirements not only interfere with family relations, they can also undermine familial support and cohesion.

The Office of the City Attorney of Los Angeles presents gang injunctions as a necessary legal tool to protect communities from the menace of gangs.

Gang injunctions are effective legal tools that enable communities to take back their streets and public places from the gangs and gang members that terrorize them. When employed as part of a comprehensive strategy, gang injunctions contribute to the stabilization of communities and reduce urban blight and gang-related crimes. Where a gang injunction is used as part of a strategy that includes the efforts and expertise of other governmental agencies and community organizations, the positive effect on the overall well being of a neighborhood can be dramatic.³⁰

However, in her examination of the first gang injunction instituted in L.A. in 1987 against the Playboy Gangster Crips in the Cadillac-Corning neighbourhood, Ana Muniz argues that injunctions were created to maintain geographic racial and class separation and control.

Despite the sanitization of race in gang injunction policy, fear of black men and stereotypes about black families were central to the rationale of the injunction. Race is central in the evidence that was presented to attain the injunction. However, the injunction itself has no references to race. An examination of the production process

²⁷ Loren Siegel, “Gangs and the law,” in *Gangs and society: Alternative perspectives*, ed. Louis Kontos, David Brotherton, and Luis Barrios. New York: Columbia University Press. 2003.

²⁸ Ibid.

²⁹ Office of the City Attorney of Los Angeles, *Important Facts to Know About Gang Injunctions*, [undated], viewed on February, 9, 2013 at http://atty.lacity.org/stellent/groups/electedofficials/@atty_contributor/documents/contributor_web_content/lacityp_019399.pdf.

³⁰ Office of the City Attorney of Los Angeles, *Gang Injunctions: How and Why They Work*, The City Attorney’s Report, July 2009, viewed on February 4, 2013 at http://atty.lacity.org/stellent/groups/electedofficials/@atty_contributor/documents/contributor_web_content/lacityp_006877.pdf, p.16.

reveals that the injunction's innovation was based on racial containment in Cadillac-Corning. The injunction was meticulously designed to control the movement of black youth by criminalizing activities and behavior that is unremarkable and legal in other jurisdictions. The injunction shored up racial boundaries.³¹

Injunctions are now being issued that compel ordinary citizens to aid law enforcement police their own communities. For instance, in a press release dated October 18, 2012, the Office of the City Attorney indicated that it was seeking an injunction to tackle gang activity at a South L.A. apartment complex. Interestingly enough, in the press release it was quite apparent that the injunction requested would mandate property owners to pro-actively help stop gang activity on their property.

Conditions sought by the City Attorney include an injunction prohibiting the owners from allowing gang members to sell drugs or commit other crimes at the property. The City Attorney is also seeking mandatory improvements to the property including installation of a controlled entry gate; improved lighting; video surveillance; tenant screening procedures and extensive background checks; the hiring of licensed security guards; and prohibiting known gang members from accessing the property.³²

Whether gang injunctions are intended to ensure public safety or maintain racial boundaries, it is certain that these injunctions are predicated on notions that ordinary non-criminal day-to-day activities and behaviour of people deemed problematic can justify curtailing their civil and human rights, their freedom of movement, their freedom of association, and – for up to six months – their freedom altogether.

Questionable Effectiveness of Gang Injunctions

For many years, policy makers and law enforcement have insisted that gang injunctions are effective tools for crime reduction and increased public safety. Yet, very little systematic research has been provided to support those claims. For instance, “[a] typical gang injunction implemented in Inglewood, California, is ‘cited as a success in the practitioner literature.’ But Cheryl Maxson found “little support for a positive effect” when they examined crime patterns before and after the injunction.”³³

In some cases where a gang injunction appears to have an impact on crime reduction, the impact itself is extremely ephemeral – not lasting more than a year. A Los Angeles gang injunction effectiveness study conducted by the Los Angeles Grand Jury between 2003 and 2004 “concluded that gang injunctions result in reductions in “Part 1” crimes, which include serious offenses such as homicide, rape, robbery, burglary, larceny, and car theft, in the first year after their implementation at a rate of 5.5 to 8.8 percent. It also found reductions in total crimes at a rate of 3.4 percent to 7.1

³¹ Ana Muniz, “On a Bike with a Pager? You’re going to Jail! Racial Criminalization of the Mundane in Gang Injunctions,” Paper on file with authors.

³² Office of the City Attorney, “Injunction Sought Against Rampant Gang Activity At South Los Angeles Apartment Complex, Press Release, October 18, 2012.

³³ Cheryl Maxson, Karen Hennigan, and David Sloane, “For the sake of the neighborhood?: Civil gang injunctions as a gang intervention tool in Southern California,” in *Policing gangs and youth violence*, ed. Scott H. Decker. Belmont, CA: Wadsworth. 2003.

percent in this one-year period. After the first year a gang injunction was issued in a community, there were no statistically significant changes in crime compared to the time period before the injunction. In other words, the reductions in reported crimes did not last past the first year.”³⁴

Even more disturbing, other studies have reported that following the implementation of gang injunctions, violent crime spiked. A study by the ACLU of Southern California, which analyzed LAPD crime statistics within communities surrounding the location in which the injunction had been applied, found that

The Blythe Street injunction did not result in a reduction of violent crime or drug trafficking. It also concluded that the injunction contributed to increased crime and drug trafficking in an area immediately adjacent to the area affected by the injunction. In comparison to the rest of Los Angeles, crime statistics in the reporting districts surrounding the Blythe Street injunction reflected "significantly more pronounced increases in [violent crime and drug trafficking-related crime] categories than city wide totals for the same offenses.”³⁵

Given the doubtful effectiveness that gang injunctions have to reduce crime and increase public safety, and the havoc these supposed crime control tools reap on the lives of individuals and well being of communities, law enforcement and policy makers would do well to re-evaluate the sensibility of utilizing this public safety tool. Until more conclusive and scientifically sound evidence can be provided, Los Angeles taxpayers deserve to have their money invested in more reliable crime control initiatives.

The Cal-Gang Database

The Cal-Gang database appears to be another predictive tool for gang enforcement. Local law enforcement officers gather information about community residents, generally youth of color, that is then entered in a state-wide database that identifies them as “known gang members.” This determination is highly speculative, yet it enables law enforcement anywhere in the state of California to target these individuals as suspect and justifies intrusive surveillance of their activities.

³⁴ Beth Caldwell, Criminalizing Day-to-Day Life: A Socio-Legal Critique of Gang Injunctions, *American Journal of Criminal Law*, Vol. 37:3.

³⁵ *Ibid.*

“RealSearch” – A Model for Community Driven Research

The Youth Justice Coalition (YJC) is a grassroots organization based in Los Angeles that uses direct action organizing, advocacy, political education, transformative justice and activist arts to mobilize “system-involved” youth and their families to bring about change:

The Youth Justice Coalition (YJC) is working to build a youth, family and prisoner-led movement to challenge race, gender and class inequality in Los Angeles County’s and California’s juvenile injustice systems. Our goal is to dismantle policies and institutions that have ensured the massive lock-up of people of color; widespread police violence, corruption and distrust between police and communities; disregard of youth and communities’ Constitutional and human rights; the construction of a vicious school-to-jail track; and the build-up of the world’s largest network of juvenile halls, jails and prisons.³⁶

One of the tools YJC effectively uses is its RealSearch Action Research Center. YJC youth work with their family members, grassroots organizers and other community members in participatory action research. Using this method, YJC can document the impact of counterproductive policies and practices, and advocate for the kinds of concrete changes that will truly matter to community residents.

In one of its most recent research reports, *Tracked and Trapped: Youth of Color, Gang Databases and Gang Injunctions*,³⁷ YJC’s community driven research has documented how gang injunctions and gang databases impact Los Angeles youth, showing how “the total lack of state and local transparency and accountability in regards to the implementation of gang suppression” damages communities and weakens their social capital. This report, along with other YJC RealSearch projects, engages community residents directly, and communicates the essence of the problems they face and the solutions necessary to rectify ill-conceived laws, policies and practices.

The passage of the Street Terrorism Enforcement and Prevention Act (STEP Act) in 1988 enabled the later creation of the Cal Gang database. Under the STEP Act, law enforcement officers can label someone as a gang member if the person meets at least three of the following criteria:

- a. Admits gang membership or association.
- b. Is observed to associate on a regular basis with “known” gang members.
- c. Has tattoos indicating gang membership.
- d. Wears gang clothing, symbols, etc., to identify with a specific gang.
- e. Is in a photograph with known gang members and/or using gang-related hand signs.
- f. Name is on a gang document, hit list, or gang-related graffiti.
- g. Is identified as a gang member by a “reliable” source.
- h. Is arrested in the company of identified gang members or associates.
- i. Corresponds with known gang members or writes and/or receives correspondence about gang activities.
- j. Writes about gangs (graffiti) on walls, books, paper, etc.³⁸

³⁶ http://www.youth4justice.org/about-the-yjc/history?doing_wp_cron=1359769110.359217882156372070312511

³⁷ Youth Justice Coalition, *Tracked and Trapped: Youth of Color, Gang Databases and Gang Injunctions*, Posted online at <http://www.youth4justice.org/ammo-tools-tactics/yjc-reports>

³⁸ California Penal Code § 186.21

YJC is particularly concerned by the procedures used with the Cal-Gang database to document and track youths of color in California. For instance, the LAPD argues that as no criminal convictions or prosecutions are necessarily triggered from having one's name entered into the Cal Gang database, those individuals listed in this database need not be notified or offered the opportunity to challenge their labelling as suspected gang members. Yet Cal-Gang dramatically expands the criminalization of individuals and communities, as it is routinely used to determine:

- a. Who is served with a gang injunction
- b. Who is prosecuted in court for gang related activity – even though the crime is often not done for the benefit of a gang
- c. Who is given a gang enhancement (additional time in prison), and
- d. Which communities will be targeted for saturation policing, vehicle check points and increased – often secret – surveillance through security cameras, Internet-based or GPS monitoring³⁹

Furthermore, the Youth Justice Coalition's report raises disturbing concerns regarding LAPD claims that Cal-Gang is a secret file not accessible to the public. They have documented that "the information collected has been shared with employers, landlords, Public Housing and Section 8 officials, and school administrators, often closing the door to important opportunities, and leading to evictions, and exclusions from needed public benefits and services.

As society evolves, law enforcement must develop new crime control techniques in order to ensure that crime rates remain low and that public safety is maintained. The public expects policy makers and law enforcement officials to implement sound policing policies and practices. But the history of "innovative" policing in Los Angeles – from gang injunctions and the Cal-Gang system, to the Safe Communities Initiative and Special Order 1 – does not bode well for those who wait eagerly for reforms that can bring effective crime control while not damaging social capital and cohesion in communities where people have to struggle from day to day simply to survive.

Crime control tools that rely on saturation patrol, mass arrests, speculative labelling and predictive targeting amount to not much more than social control with a blunt instrument. They give an appearance of protecting the public, while ignoring the social deficits and structural problems that give rise to criminal behaviour. Moreover, policy makers have a tendency to rebrand old public safety strategies as "innovation" in an effort to reassure the public that something is being done to protect them. As discovered in this section and will be explored in the next section, repackaging the old does not necessarily lead to effective change.

³⁹ YJC, *Tracked and Trapped*.

BUSINESS AS USUAL, WRAPPED WITH A BOW

Things have not changed much on the ground, but the language used did change.⁴⁰

LAPD's Long History of Misconduct Finally Stirs Federal Action

A brief review of LAPD history will shed some light on the daunting challenges faced by reformers when, in 2001, the city signed a federally-mandated consent decree that required sweeping reforms.

While LAPD misconduct dates back to its inception, technological advancement is in large part responsible for finally compelling law enforcement reform in Los Angeles. In March 1991, fourteen years before the launch of YouTube, the vicious beating by three LAPD officers of Rodney King, an African American construction worker, was caught on a home-video camera by a bystander. The video showed that a sergeant and other police officers looked on while the beating continued. The videotaped beating not only quickly made its way into the homes of millions of Americans. It “went viral,” capturing people’s attention around the world.

Within a month of the beating, the then-Mayor of Los Angeles, Tom Bradley, appointed former the U.S. Secretary of State, Warren Christopher to head an independent commission charged with investigating the LAPD use of force policies and practices. The Christopher Commission’s report vividly detailed the pervasive problem of excessive force routinely used by LAPD officers against the public. Further, the Commission charged that “the problem of excessive force is exacerbated by racism and bias... The failure to control these officers is a management issue that is at the heart of the problem.”⁴¹

Four LAPD officers were charged in state court, but when they were acquitted, the city of Los Angeles erupted into six days of rioting. Fifty-three people were killed, and thousands were injured. Once again, technology enabled the world to see how the United States managed this racial crisis. On the third night of the riots, President George H.W. Bush addressed the country on national television. He took matters a step further, directing the Attorney General to send lawyers from the Justice Department’s Civil Rights Division to Los Angeles.

But these lawyers’ ability to act was limited. The Justice Department did not acquire the power to file suit against the City or the LAPD to stop systemic misconduct until the 1994 Crime Bill was enacted by Congress. All the Justice Department could do before then was to seek criminal indictments against the individual police officers for violating Rodney King’s civil rights. And that is what they did, winning convictions against two of the four officers, including the supervising sergeant, in April 1993. Meanwhile, the aftermath of the Rodney King beating cost Chief Daryl Gates his job.

⁴⁰ Interview with Pete White, September 19, 2012 (notes on file)

⁴¹ “Report of the Independent Commission on the Los Angeles Police Department, 1991

After the Department of Justice was endowed with the legal muscle to take a state or local government to federal court on the grounds that their police force was engaging in a pattern-and-practice of police misconduct, the Civil Rights Division could seek civil, injunctive relief in such cases.

While the Justice Department was still conducting an investigation to determine if and how it should use its new legal tool in Los Angeles, the spotlight on brutal, corrupt policing moved on to illuminate the barbarous tactics of the anti-gang unit of the LAPD's Rampart Division. In 1999, Rampart Division officer Rafael Pérez, facing a charge of stealing eight pounds of cocaine from an evidence locker, revealed that he and 70 of his co-officers had engaged in widespread acts of misconduct against Los Angelenos, including shootings, beatings, framing cases against some 100 people, and perjury, in what the *Los Angeles Times* termed an "organized criminal subculture" within the LAPD.

Finally in May 2000, the Justice Department announced it had amassed sufficient evidence of police misconduct to establish a pattern-and-practice case against the LAPD, but the City did not indicate a willingness to voluntarily hammer out a settlement until September, when the Rampart Scandal had reached such magnitude that the mayor and his police chief were forced to agree to a consent decree. Once signed, the Federal District Court appointed a monitor to oversee the implementation of the agreed upon series of management, supervisory, procedural reforms in the LAPD.

A research team from Harvard's Kennedy School of Government lead by Christopher Stone performed an assessment, requested by then Chief of Police William Bratton, of the implementation process and its impact on daily operations of the LAPD. In *Policing Los Angeles Under Consent Decree: The Dynamics of Change at the LAPD*, the researchers lay out the ambitious reforms required under the consent decree:

The decree describes, in nearly two hundred numbered paragraphs, dozens of changes that the City committed to make in the way the LAPD operates. Some promised changes were huge:

- creating a new data system that tracks the performance of every sworn officer and alerts supervisors to signs that individual officers are headed for trouble
- creating new definitions, new rules, and new management systems governing the use of force by police officers
- creating new systems for tracking police stops of motor vehicles and pedestrians, breaking down the patterns by race and ethnicity, by the reasons for the stops, and by the results of the stops in terms of crime detected
- creating new management procedures in the LAPD's anti-gang unit and its other special divisions, tightening the management of "confidential informants" and otherwise increasing checks against possible corruption.

Other reforms that the City agreed to make were less comprehensive, but the result was a mass of changes so complicated that simply monitoring the City's compliance has cost tens of millions of dollars.⁴²

The Harvard assessment team concluded that the changes in the LAPD brought about through the consent decree not only resulted in a reduction in use of force, but it also led to a decline in crime:

As police-community relations improved, even in the poorest neighborhoods, so did public safety. The results in Los Angeles suggest that consent decrees can succeed and that the Justice Department can use its new power effectively at least in some circumstances.

The LAPD's Community Profile

The LAPD is very sophisticated in how they use the media.⁴³

The hiring of Chief William Bratton in 2002 was a very strategic move by the City of Los Angeles. Following decades of disastrous police-community relations, Bratton-style public relations was exactly what the LAPD needed to shore up its managerial structure and credibility for taking up the challenges of implementing the negotiated consent decree.

When Bratton first arrived in L.A., he made his rounds to diverse communities and, with his no nonsense, old-school attitude, won the confidence of many police reform advocates and most of the City's Black religious leaders. Bratton transformed the LAPD's community profile by reframing the LAPD's mandate with assurances that the LAPD's mission is to protect communities of color.

With respect to use of force, intimidation without leaving tell-tale marks was soon the new order of business for the LAPD. For instance, in June 2004, Stanley Miller was beaten with a LAPD officer's metal flashlight, leaving minimal, yet visible marks. News video caught the LAPD officer's action on camera, sparking a firestorm of media criticism. Bratton not only called for disciplinary action against the officers involved, but he also mandated the change of all metal police issued flashlights to rubber ones; thus, limiting the possibility of visible injuries in future incidents.

The case prompted Bratton to revise the LAPD's policy on using flashlights. And Thursday, at a city Budget and Finance Committee hearing, Bratton asked for the city to pay \$500,000 for new, lighter rubber flashlights that will do less damage than the metal ones currently in use.⁴⁴

⁴² Christopher Stone, Todd Foglesong and Christine M. Cole, *Policing Los Angeles Under Consent Decree: The Dynamics of Change at the LAPD*, Cambridge, MA: Harvard Kennedy School of Government. May 2009.

⁴³ Interview with Gary Blasi, September 21, 2012 (notes on file)

⁴⁴ Jason Kandel and Rick Orlov, "Six Cops Face Penalties Chief Ends 10-Month Probe In Flashlight Beating Of Ex-Con," *Daily News Los Angeles*, April 29, 2005.

Law enforcement is changing but not really addressing change. Cops are aware of changes, but work to elude detection. ‘Better to be tried by 12 rather than being carried by six.’ There is still undercover racism in LAPD. Fundamental bias persists because cops feel under siege.⁴⁵

Under Bratton’s stewardship, LAPD brass worked hard at establishing connections with grassroots advocates in communities of color. Kim McGill, executive director of the Youth Justice Coalition, describes how they fanned out into the neighborhoods that her organization serves:

LAPD brass – especially African American brass – set up regular meetings with our community, and when some of the residents who attended the meetings then reported criminal activity, they were paid a personal visit from their local police captain. Many hearts were won. But it did not take long for the actions (and often the inaction) of patrol officers to sour relationships for a lot of folks, leading them back again to resistance.⁴⁶

McGill says that police executives in other cities should not look to the LAPD as a standard for police reform:

Los Angeles is not a model of success. The city is the number one incarcerator, and the number one in spending on prisons. We still suffer the legacy of militarized policing that dates back to Chief Gates.

Activists working in communities of color where daily harassment and indiscriminate brute force still occur express consternation about the many challenges faced in holding the LAPD accountable for misconduct. Pete White, executive director of LA CAN, questions how much confidence people can place in independent oversight alone to address the deeply entrenched racial issues that underlie police misconduct in Los Angeles. “The OIG, the Police Commission and the LAPD sometimes present a united front even if they are intended to be independent entities.”⁴⁷

From where he sits in the heart of Skid Row, White says that oversight must be buttressed by community action. “We believe in a three-pronged approach: community organizing, advocacy for better policies, and litigation.” Further, he questions the very definition of “community” used by many public officials, as well as by some advocates of police reform. “Does Connie Rice [a nationally prominent civil rights lawyer who spent years litigating police misconduct cases in Los Angeles] really represent this community?” Alex Sanchez, co-founder of Homies Unidos, agrees. “Connie certifies that the LAPD has changed, but our community has not seen change.”⁴⁸

⁴⁵ Interview with Alex Salazar, former LAPD police officer, September 20, 2012 (notes on file)

⁴⁶ Interview with Kim McGill, September 21, 2012 (notes on file)

⁴⁷ Interview with Pete White, September 19, 2012 (notes on file)

⁴⁸ Interview with Alex Sanchez, September 19, 2012 (notes on file)

CHANGES IN GOVERNANCE OF THE LAPD

A public report is an incredible weapon. It damages the veneer of LAPD.⁴⁹

Police Commission & Office of Inspector General

The mayor of Los Angeles appoints a Board of Police Commissioners made up of five Los Angeles residents, who must then be confirmed by the City Council. They are each appointed to a five-year term, renewable once. Commissioners serve without pay and hold public meetings weekly. The Commission operates with the aid of an executive director and staff.

The Commission establishes broad policy for the LAPD, oversees police practices, and is responsible for hiring and firing the Chief of Police. The Police Commission plays a delicate role in the police operations of L.A. On the one hand, the Commission is expected to “hold the LAPD and its Chief accountable and in compliance with its policies, yet it also must encourage them to align their work with changing public needs and expectations.”⁵⁰

The Harvard assessment team reported that under the consent decree there has been a growing respect for the Commission. “In our observations, the Commission was able to challenge the LAPD leadership on questions of policy and performance, and to require greater attention to issues the Commission deemed essential to public confidence.”⁵¹

The creation of the Office of the Inspector General of the LAPD (OIG) was a key recommendation of the Christopher Commission. It was created in 1995, many years before the consent decree came into force. The OIG reports to the Commission, and is completely independent of the LAPD. In the beginning, the OIG was empowered to audit, investigate and oversee the Department’s internal disciplinary process. In a 1999 charter revision, its powers were expanded to include the ability to initiate and conduct investigations of the Department, unless the Board of Police Commissioners directed the OIG to cease an investigation.

In the early years, the role of the OIG was quite contentious, undermining its ability to effectively oversee police practices, but the consent decree helped to solidify the Inspector General’s oversight role of the LAPD’s use of force. According to the Harvard assessment team, the OIG’s relations with the LAPD have significantly shifted since 2000:

The Inspector General today has adopted a less “adversarial” approach and the Department has, in turn, given him greater access than his predecessors enjoyed. Significantly, the Inspector General has codified this new access in “work rules” that should allow the good practice to be continued beyond his own term of office and that of Chief Bratton.⁵²

⁴⁹ Interview with Alexander Bustamante, September 21, 2012 (notes on file)

⁵⁰ Christopher Stone et.al.

⁵¹ Ibid.

⁵² Ibid.

The OIG is viewed as competently conducting its reviews of the LAPD's investigations. Yet, officers are critical of the OIG because it is viewed as micro managing rather than overseeing the LAPD. "Their role is oversight, not coaching," according to one officer interviewed by the Harvard assessment team.⁵³

The Inspector General is now required "to review every instance of the use of categorical force, witness the Department's own investigation of each incident, offer an independent evaluation of the Department's findings, and make recommendations about how the Department might improve practices."⁵⁴ The information gathered by the Inspector General in each incident is provided to the Commission, so it may make a final ruling. In addition, the Commission issues an annual report of all its decisions.

The current Inspector General, Alexander Bustamonte, stresses the importance of political independence in assuring that the duties of his office are done with rigor. "The Police Commissioners are appointed by the Mayor, but they serve staggered terms, and that affords this office a substantial degree of distance from the political arena. If I reported directly to the Mayor, or to the Board of Supervisors, my job would be more difficult."⁵⁵

Handling Complaints of Racial Profiling

Between 2001 and 2012, every allegation of racial profiling by patrol officers was dismissed by the LAPD.⁵⁶

Bill Bratton was appointed Chief of Police in Los Angeles in October 2002. Arrest data compiled by the Federal Bureau of investigation demonstrate that introduction of his trademark COMPSTAT system promoted an emphasis on "broken windows" policing in Los Angeles. Increased enforcement under Bratton's rule was characterized by a sharp increase in discretionary arrests for minor crime. According to FBI data, there were 84,605 arrests of adults in Los Angeles in 2002. By 2010 that total increased to 86,976. The number of arrests of adults for serious "index" crimes actually declined by 20 percent, while the number of arrests of adults for less serious crimes increased by 12 percent.⁵⁷

Bratton's "broken windows" philosophy appears to have created a space for NYPD-style "Stop and Frisk" patrol tactics. A study of changes in the LAPD after Bratton took control tracked the increases in discretionary pedestrian and motor vehicle stops by patrol officers. The number of discretionary stops grew by 49 percent between 2002 and 2008. While motor vehicle stops

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Bustamonte. Merrick Bobb (also interviewed on September 21, 2012) strongly supported the Inspector General's view on this important point.

⁵⁶ Joel Rubin. "Officer engaged in racial profiling, LAPD probe finds."
Los Angeles Times, March 26, 2012

⁵⁷ Bureau of Justice Statistics analysis of arrest data from the FBI Uniform Crime Reporting Program. The FBI uniform crime index is composed of seven index crimes: murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny (theft), and motor vehicle theft.

increased by less than 40 percent, the number of pedestrian stops nearly doubled.⁵⁸ As in New York City, police reform advocates – from attorneys at the ACLU, to community activists on Skid Row and in South Los Angeles – charge that the increase in “broken windows” policing has aggravated the problem of racial profiling in Los Angeles.

The OIG, the Police Commission, and the LAPD are jointly responsible to receive, investigate, and review complaints. Since 2007, the handling of complaints of racial profiling has received particular attention. The Commission and the OIG have worked with the Police Department to review and reform its management of racial profiling complaints. According to the Harvard assessment team:

The Department has assumed leadership of this issue, and yet it is important to recognize how the intervention of the Commission and the Inspector General helped the Department set out on this path, reinforcing its efforts to build better systems of integrity and public confidence. By scrutinizing data on [the] complaints process, the Commission uncovered a worrisome trend in Department practices.⁵⁹

The assessment report lays out how reforms for the handling of racial profiling complaints came about. In January 2007, the OIG submitted a report to the Commission that raised red flags with respect to the handling of such complaints. The Inspector General expressed “some concern regarding the penalty imposed upon a supervisor accused of failing to take appropriate action when a subordinate made ethnic remarks,” and observed that none of the 85 allegations of racial profiling that quarter had been sustained.⁶⁰

As a result, in May 2007, the LAPD established a new set of protocols to manage racial profiling complaints. In October 2007, the Commission requested that the OIG review a sample of racial profiling complaints to assess the effectiveness of the new protocols. None of the LAPD’s investigations between May and October 2007 had resulted in a finding of racial profiling.

Consequently, the Commission’s executive director and the IAG were tasked with studying the racial profiling investigation and adjudication protocols of other jurisdictions. This in turn led to the implementation of several remedial reforms, including the development of an alternative dispute resolution mechanism. In December 2009, LAPD installed video cameras in the South Bureau to document the nature of police encounters with the public.

In October 2008, the ACLU of Southern California sent a letter to the Commission summarizing the findings of a report prepared for the ACLU by Yale Law School Professor Ian Ayres.⁶¹ The findings were based on data collected by the LAPD during a period of seven years as mandated under the consent decree. Professor Ayers examined both pedestrian and motor vehicle stops of the LAPD between July 2003 and June 2004.

⁵⁸ Christopher Stone, Todd Foglesong and Christine M. Cole. “Policing in Los Angeles Under a Consent Decree: The Dynamics of Change at the NYPD.” May 2009 Cambridge, MA: Harvard Kennedy School. The Kennedy School report cited the sharp increase in street stops as evidence that patrol officers had not engaged in “depolicing” (i.e., were not deterred from proactive police tactics) by scrutiny of their enforcement powers under the consent decree.

⁵⁹ Christopher Stone et.al.

⁶⁰ Ibid.

⁶¹ Ian Ayers, *A Study of Racially Disparate Outcomes in the Los Angeles Police Department*, October 2008. Posted online at <http://www.aclu-sc.org/issues/police-practices/racially-disparate-outcomes-in-the-los-angeles-police-department/>

The findings raised “grave concerns that African Americans and Hispanics are over-stopped, over-frisked, over-searched, and over-arrested.”⁶² After controlling for violent and property crime rates in specific LAPD reporting districts, as well as a range of other variables, the data revealed a number of highly disturbing patterns:

- Per 10,000 residents, the black stop rate is 3,400 stops higher than the white stop rate, and the Hispanic stop rate is almost 360 stops higher.
- Relative to stopped whites, stopped blacks are 127% more likely and stopped Hispanics are 43% more likely to be frisked.
- Relative to stopped whites, stopped blacks are 76% more likely and stopped Hispanics are 16% more likely to be searched.
- Relative to stopped whites, stopped blacks are 29% more likely and stopped Hispanics are 32% more likely to be arrested.

We find that frisks and searches are systematically less productive when conducted on blacks and Hispanics than when conducted on whites:

- Frisked African Americans are 42.3% less likely to be found with a weapon than frisked whites and that frisked Hispanics are 31.8% less likely to have a weapon than frisked non-Hispanic whites.
- Consensual searches of blacks are 37.0% less likely to uncover weapons, 23.7% less likely to uncover drugs and 25.4% less likely to uncover anything else.
- Consensual searches of Hispanics similarly are 32.8% less likely to uncover weapons, 34.3% less likely to uncover drugs and 12.3% less likely to uncover anything else.⁶³

Based on these findings Professor Ayres concluded that “[i]t is implausible that higher frisk and search rates are justified by higher minority criminality, when these frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband.” In addition, Professor Ayres found that an officer’s race or ethnicity had a significant impact on arrest rates:

- The black arrest disparity was 9 percentage points lower when the stopping officer was black than when the stopping officer was not black.

⁶² Letter from Peter Bibring, Staff Attorney, ACLU of Southern California to Los Angeles Board of Police Commissioners, dated October 20, 2008.

⁶³ Ian Ayres.

- The Hispanic arrest disparity was 7 percentage points lower when the stopping officer was Hispanic than when the stopping officer was a non-Hispanic white.⁶⁴

LAPD “Discipline Reports” show that since 2007, many important types of complaints against police officers have declined – indicating that in many respects the efforts to improve the quality of policing in Los Angeles have been successful (see chart on page 28). Yet despite claims that reforms promoted by Bratton and Beck have dramatically changed the LAPD, charges of racial profiling (now termed “biased” policing) have persisted to tarnish its reputation. Hundreds of officers are charged with profiling each year, most often arising from traffic or pedestrian stops. In 2010 an LAPD report on the problem acknowledged that persistence:

For purposes of clarity, data in this report is for calendar year 2009. In summary, statistical trends in biased policing investigations remain relatively unchanged. Biased policing continues to be a male white and Hispanic versus male African American phenomenon.⁶⁵

Internal investigations of such charges almost never result in a finding of guilt on the part of an officer. After years of effort to address the issue of racial profiling within the LAPD, the department continues to claim that biased motivation is nearly impossible to prove without a confession by an officer.⁶⁶

In 2009, the LAPD’s Inspector General examined the internal investigations of 20 profiling allegations. He found that six investigations were flawed, and was critical of the lack of any discipline imposed in many cases.⁶⁷

That same year the consent decree was scheduled for termination. Attorneys at the ACLU went to court to ask for an extension. Peter Bibring, a senior staff attorney at the ACLU, says that for him the sticking point was racial profiling. “We argued that there was a very substantial lack of compliance due to failure by the LAPD to adequately address racial profiling.”

The Federal Court Monitor’s oversight of the LAPD was ended, non-the-less. In his final report, Michael Cherkasky, the LAPD’s independent monitor, praised the LAPD for the progress that had been made under the consent decree:

We are pleased to report that the LAPD has substantially complied with the requirements of the Consent Decree. We believe the changes institutionalized during the past eight years have made the LAPD better: at fighting crime, at reaching out to the community, in training its officers, in its use of force, in internal and external oversight, and in effectively and objectively evaluating each of the sworn members of LAPD.

⁶⁴ Ibid.

⁶⁵ LAPD. “Biased Policing Update: Quarterly Report,” January 15, 2010.

⁶⁶ Joel Rubin. “Watchdog finds flaws in LAPD’s ‘biased policing’ investigations.” *Los Angeles Times*, November 10, 2009

⁶⁷ Joel Rubin. “Watchdog finds flaws in LAPD’s ‘biased policing’ investigations.” *Los Angeles Times*, November 10, 2009

More specifically, the LAPD has become the national and international policing standard for activities that range from audits to handling of the mentally ill to many aspects of training to risk assessments of police officers and more.⁶⁸

Yet in regard to racial profiling, the monitor was not satisfied. In line with the critique put forward by the ACLU with respect to motor vehicle and pedestrian stops, Cherkasky found that despite many measures taken to improve the situation, the consent decree prohibition of “discriminatory conduct on the basis of race, color, ethnicity, national origin, gender, sexual orientation, or disability in the conduct of law enforcement activities” had not been met with substantial compliance. The issue of biased policing would need to be addressed in a continuing effort by the LAPD under a post-decree “transitional agreement.”

In February 2010, the LAPD created a Constitutional Policing Unit (CPU) within the Internal Affairs Group (IAG) dedicated solely to investigating complaints containing allegations of biased policing. The OIG reviewed the first ten cases handled by the CPU for the Police Commission. They determined that the investigations represented an improvement over previous practice, but found problems nonetheless:

Our concerns are divided as follows:

- 1) Complaint Intake/Actions of the Responding Supervisor;
- 2) CPU Investigations;
- 3) Complaint Adjudications; and
- 4) The tone and tenor of the interaction between the complainant and the involved officers.⁶⁹

In six of the cases they found questionable actions by the supervisor who initially took the complainant's report. Supervisors had made statements that could give the impression that the supervisor was less than objective, had declared that the officer's actions were proper, or had discredited the complainant.

While crediting the CPU investigators with improving the quality of investigations, they raised several concerns about the methods used. Investigators had difficulty identifying or taking sufficient steps to assess credibility or resolve inconsistencies in the justifications offered by officers for making traffic or pedestrian stops. Some complainants were asked questions “of uncertain probative value” such as whether the complainant would have similarly felt profiled if the officers were of the same race as the complainant. In several cases investigators had asked leading questions of accused officers.

⁶⁸ Office of the Independent Monitor of the Los Angeles Police Department. “Final Report.” June 11, 2009. Posted online at http://www.keypoint.us/Content/PublicReports/LAPD_FINAL-REPORT_06-11-2009.pdf

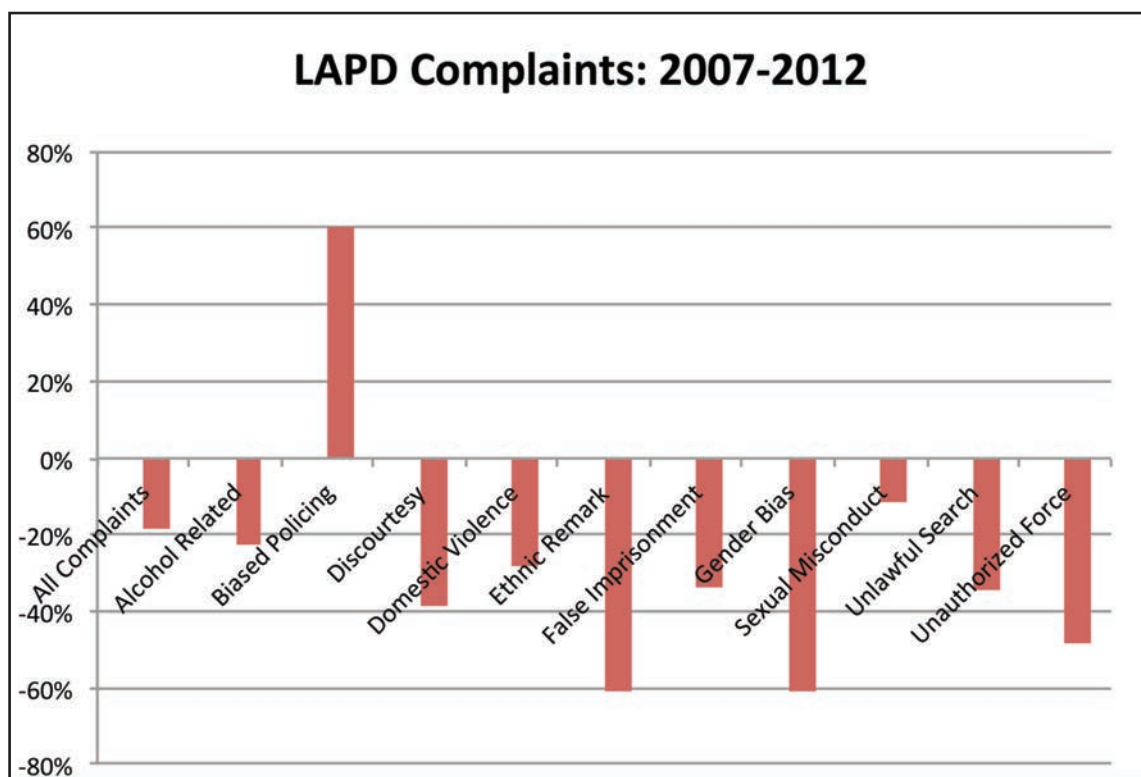
⁶⁹ Office of the Inspector General. “Supplemental Review of Biased Policing Complaint Investigations.” December 1, 2010. Posted online at http://www.oiglapd.org/Reports/BiasedPolicing_12-01-10.pdf

In a number of cases that had been adjudicated “unfounded” the reviewers noted unresolved discrepancies or insufficient methods used to determine whether there had been bias, including two cases where recordings had gaps or significant background noise that reviewers believed could not support a “definitive conclusion” that no biased remarks had been made.

In some cases, reviewers found that the “tenor and tone” of interactions between officers and complainants might have given rise to “the complainant’s perception” of biased policing. People that had been stopped had been asked if they were on probation or parole, or whether they had gang affiliations.

In November 2010, the U.S. Department of Justice sent a letter to LAPD officials warning about inadequacies in handling allegations of racial profiling. DOJ officials charged that internal investigators were just “going through the motions” without asking fundamental questions or following up on key points. They cited recorded conversations in which officers brushed aside questions about profiling, with one insisting that his job required racial profiling.⁷⁰

The LAPD had begun tracking and reporting on misconduct complaints back in 2007. Since that time, declining numbers of complaints in many important areas attest that substantial progress has been made since then. The total number of complaint allegations has dropped by 18 percent. But notwithstanding repeated efforts to reform the racial profiling/biased policing investigation protocol since 2007, allegations of biased policing has grown by a whopping 60 percent.⁷¹



⁷⁰ Joel Rubin. “Justice Department warns LAPD to take a stronger stance against racial profiling.” *Los Angeles Times*, November 14, 2010.

⁷¹ LAPD Discipline Reports 2007-2012. Posted online at http://www.lapdonline.org/special_assistant_for_constitutional_policing

Use of Force

The Harvard assessment team also examined the management of use of force incidents:

The Office of the Inspector General plays a special role in the governance of the use of force, shadowing investigators at the scene of critical incidents, conducting real-time reviews of the work of Force Investigation Division (FID), and later summarizing exhaustively the quality and outcomes of investigations in its annual reports.⁷²

OIG reviews of LAPD use of force incidents between 2005 and 2007 saw significant improvement in the investigation of alleged use of force. “In 2005 and 2006, the Office of the Inspector General identified shortcomings in nearly two-thirds of all investigations of alleged excessive force. In 2007, the Office of the Inspector General found shortcomings in less than half of the cases it sampled.”⁷³

The Harvard assessment team found that, with few exceptions, the OIG and the Chief of Police generally agree with the outcomes of use of force investigations. When disagreements occur, the Commission follows the OIG’s findings. Of the 449 use-of-force incidents that were investigated between 2005 and 2008, there were only ten cases where the OIG recommended a significantly different outcome from that of the Chief of Police.⁷⁴

The assessment team noted that the LAPD has made many efforts to integrate recommendations about use of force from oversight bodies, to improve its training programs in this regard, and to communicate use-of-force concerns with all personnel through a newsletter. In addition, the OIG has gained a more direct and involved oversight role in the investigation process. According to the Harvard Kennedy School’s assessment:

This combination of thorough investigation, tactical debriefing, adjustments to training, and reminders in the newsletter is intended to keep such uses of force to the minimum necessary, and the efforts of the Department, the Inspector General, and the Police Commission together certainly appear to have produced more careful reviews of the use of force in individual cases.⁷⁵

Recent LAPD discipline reports indicate that complaints of use of “unauthorized force” fell by 49 percent between 2007 and 2012. And yet, exceedingly troubling incidents of excessive or deadly use of force persist.

⁷² Christopher Stone et.al.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

September 2009

Woman awarded \$3.2 million in LAPD shooting

The current case stems from a September 2009 confrontation between two officers and Valerie Allen, then a 37-year-old woman who suffered from bipolar disorder. Despite treating her condition with medication, Allen had fallen into a manic episode, one of her attorneys said, and wandered city streets for hours throughout the night.

Shortly after dawn, a passerby saw Allen wearing only a shirt and talking incoherently in the city's Los Feliz neighborhood. He flagged down Officer Brent Houlihan, a veteran cop with about 15 years in the department, and his rookie partner, Nam Phan. When the officers pulled alongside Allen, she rushed up to the officers' patrol car and banged on Phan's passenger-side window before running away, according to accounts provided by the department and Allen's attorneys.

Ignoring the officers' orders to lie down, Allen climbed over an iron gate into the backyard of a nearby house, where she threatened to kill a woman who was watching from a nearby window and threw a metal cart at other neighbors, according to police. She also turned on a garden hose and sprayed water in Houlihan's direction as Phan walked through the house to get into the yard. When he appeared, Allen jumped back over the fence, according to the accounts of the shooting.

In a narrow passageway between a house and a wall, the officers confronted Allen, who was continuing to scream and talk without making sense. In testimony, [Officer] Houlihan said he told [Officer] Phan to draw his Taser, but Phan said he didn't hear the order. Instead, the young officer approached Allen. At some point, according to the police account, Allen picked up a wooden stake, struck Phan and knocked him to the ground. Saying that he feared Allen could kill or badly injure his partner, Houlihan shot Allen three times in the chest, stomach and arm.

Other officers who arrived after the shooting told investigators that despite bleeding profusely Allen continued to flail around on the ground and refused to be handcuffed. Officer Joseph Bezak fired his Taser at Allen and other officers pinned her to the ground, according to police. Allen survived her wounds. She was initially charged with assault with a deadly weapon on a police officer, but prosecutors ultimately dropped the charges against her, according to her attorney.

Joel Rubin, Los Angeles Times, October 3, 2012

December 2010

LAPD officer used Taser on handcuffed woman

A Los Angeles police officer shocked a handcuffed woman with a Taser stun gun while joking with other officers at the scene, according to interviews and law enforcement records, adding to a series of controversial use-of-force incidents at the LAPD.

The video shows Santander firing the Taser without warning and later displaying a Superman logo he wore on his chest beneath his uniform, according to the records. Off camera, another officer is heard laughing and singing.

Joel Rubin, Los Angeles Times, November 17, 2012

July 2012

After mother dies during arrest, officials reassure parents

In July, Alesia Thomas left her 3-year-old and 12-year-old children at the LAPD's Southeast Area station because she was a drug addict and felt she could not care for them, authorities said.

Officers later searched for Thomas and arrested her on suspicion of child endangerment. During the arrest, authorities confirmed that an officer stomped on her genital area and used additional force.

After officers forced Thomas into the back seat of the police car, she is seen on the video breathing shallowly; she eventually stopped breathing.

Matt Stevens, Los Angeles Times, September 7, 2012

October 2012

LAPD shot handcuffed suspect, omits key details: L.A. Now Live

At first glance, the Los Angeles Police Department officer-involved shooting seemed fairly routine.

According to a department news release, officers found a suspect hiding under an SUV, pulled him out by his ankles and opened fire after seeing a metallic object in his hands, critically wounding him.

But one crucial piece of information was left out of the release: The suspect's hands were handcuffed behind his back at the time and he was lying on his stomach.

The Times' Joel Rubin will join L.A. Now Live at 9 a.m. to discuss the incident and how the LAPD informed the media and public about the shooting. On Thursday, Police Chief Charlie Beck acknowledged that omitting the information was a mistake.

"We should have included it," he said in an interview. "We got it wrong."

"This occurred not because we were trying to hide facts," Beck wrote in a letter to The Times. "It occurred because we were overzealous in protecting the purity of the criminal and administrative investigations. We went too far."

LAPD Cmdr. Andy Smith said investigators are trying to understand the circumstances that led to an officer shooting a restrained and unarmed man. Their inquiry will focus, in part, on radio transmissions that are expected to show what the officers had been told about the situation before they confronted the suspect.

The incident marks the second time in recent months that the LAPD has withheld important and potentially unfavorable information from the public in cases involving serious use of force by officers.

In July, the department released an account of an incident in which a woman died after several officers forced her into the back seat of a police car. The news release in that case made no mention of the fact that a female officer was under investigation for berating the woman and stomping on her genitals during the encounter. Police officials confirmed those details after The Times inquired about the case.

Teresa Watanabe, Los Angeles Times, November 2, 2012

In 2012 the Office of the Inspector General (OIG) began preparing reports on use of force incidents for the Board of Police Commissioners. The first report compiled statistics covering the period 2007 through 2011.⁷⁶ The data show a recent rise in serious "categorical uses of force" (CUOF) a category which includes life-threatening incidents, e.g., officer-involved shootings, head strikes with an impact weapon, in-custody deaths, law enforcement related injury involving hospitalization, etc.

The total number of CUOF had been declining since 2007, but a steep increase in 2011 reached the highest point in five years at 115, a 35 percent increase over 2010. Most of the increase was due to incidents of officer-involved shootings (OIS), which comprised 55 percent of all CUOF. OIS incidents in 2011 increased 58 percent over 2010, while the number of shootings involving a "hit" of a person increased by 81 percent. In 41 percent of the shootings, the person died. Moreover, in-custody deaths increased in 2011 by 57 percent over 2010.

⁷⁶ Office of the Inspector General. "Quarterly Use of Force Report for the First Quarter 2012." June 27, 2012. Posted online at http://www.oiglapd.org/Reports/6-27-12_UOF-Rprt1stQ-2012.pdf

The OIG's second report on categorical use of force focused on cases of OIS that involved discharge of more than 20 rounds.⁷⁷ That report indicated an overall improvement in the area of OIS incidents, noting that by the third quarter of 2012 the number of OIS incidents had fallen "lower than that for the equivalent periods of any of the past 5 years." But the average number of shots fired per incident had significantly increased in both 2011 and 2012:

- The proportion of cases involving more than 20 rounds rose from 13 percent in 2010 and 2011 to approximately 24 percent in YTD 2012.
- The proportion of cases involving more than 60 rounds rose from no more than 3 percent for each year between 2007 and 2011 to approximately 14 percent in YTD 2012.
- The proportion of cases involving 10 rounds or less has fallen from 92 percent in 2007 to 57 percent in YTD 2012.

"Where you stand depends on where you sit."

Nelson Mandela

Notwithstanding the LAPD's efforts to curtail incidents of racial profiling and use of force, and the role of the OIG and the Commission in spurring such efforts, the data presented above help to explain why many Los Angelenos continue to fear encounters with the LAPD in their communities:

The consent decree forced a number of reforms and successfully put in place safeguards to reduce evidence theft, rings of rogue cops running criminal enterprises, financial disclosure as an early warning system and a number of other things. However, there was simply not any substantial effort or progress in stopping racial profiling.⁷⁸

Our reviews of the reports prepared by the Office of the Inspector General for the commission reinforce the impression of good cooperation and the high quality of its products. The Inspector General's reports on the use of force in particular find lapses in Department investigations, identify areas for improvements, and make reasonable recommendations for how the Commission can encourage better officer training and learning from the review of use of force incidents. These reports are taken seriously by the Department, which now requests copies before Commission meetings and at times requests opportunities to discuss their findings. The Inspector General, in short, has chosen to influence Department practices through a steady but gradual process, avoiding public criticism and relying on the sound quality of its work.⁷⁹

⁷⁷ Office of the Inspector General. "Quarterly Use of Force Report for the Second Quarter 2012." November 14, 2012. Posted online at <http://www.oiglapd.org/Reports/UOF2ndQ11-14-12.pdf>

⁷⁸ Los Angeles Community Action Network. "Racial profiling much more than a phenomenon." November 11, 2010. Online at <http://cangress.wordpress.com/2010/11/23/racial-profiling-much-more-than-a-phenomenon/>

⁷⁹ Christopher Stone et.al.

Perhaps the kinds of pernicious conduct detailed above can in part be the result of the limitations of the OIG's oversight role. Some of these limitations, identified by the Harvard assessment team, include:

- The adoption of the Inspector General's recommendations and advice is optional and its formal powers are modest.
- The Inspector General cannot recommend an out of policy finding in the use of force unless the practice substantially deviates from policy...
- The Inspector General also does not consistently check up on the implementation of recommendations made by the Commission.
- There is also little capacity with which the Inspector General can assess the long-term impact of its decisions and recommendations on Department practices...⁸⁰

Given substantial limitations on the OIG's capacity to guide the LAPD's policing practice, some may argue that the changes to the OIG's governance role that came about with the consent decree may simply be window dressing. The Harvard assessment team further noted that the OIG's power is highly contingent:

In the present arrangement, in short, the Office of the Inspector General plays as much an auxiliary role as an oversight role and it is heavily dependent on the Commission. As one member of the Office of the Inspector General put it: "We have influence on the Department only in so far as the Commission has power."⁸¹

Although the Commission, too, has substantially progressed and established greater credibility since the implementation of the consent decree, some limitations tie the Commissioners' hands also, undermining their ability to make necessary and long-lasting changes within the LAPD. It is likely that these limitations also affect the OIG's oversight role.

The Harvard assessment report revealed important limitations to the Commission's ability to effectively contribute to the improvement of the LAPD. The consent decree set forth concrete reform measures, as well as some basic metrics for gauging success. Yet discussions about more fundamental goals of policing the complex and diverse city that is Los Angeles are needed:

[E]xcept for the yard posts established by the consent decree, which it regularly reviews, the Commission has no measures or indicators of its own by which to evaluate progress in policing over time. An explicit discussion about the goals of policing in Los Angeles and measures against which the Commission might count progress might be helpful as the Commission moves beyond the era of the consent decree.

⁸⁰ Ibid.

⁸¹ Ibid.

Further, the assessment team noted that the Commission still lacks sufficiently independent investigative power and direct access to critical information:

The Commission does not yet possess independent sources of routine information about Department practices. The Inspector General's office does not conduct independent or parallel investigations, but rather exhaustively reviews the information unearthed in the course of the Department's internal reviews. As a result, Commission members sometimes rely on press reports and other sources of information by which to assess the completeness and accuracy of Department reports. There is no standard way of filling this need, but this hard working, unpaid board is probably at the limit of what [it] can do with its current sources of information. At least one senior official we spoke with suggested that the Department would probably benefit from a "genuine civilian oversight commission."⁸²

These two shortcomings in the Commission's governance tool kit raise further grave concerns for residents in Los Angeles communities that remain subject to saturation policing and the traditional LAPD enforcement tactics of street sweeps, gang injunctions, and stop-and-frisk. Without more fundamental changes in the LAPD's basic crime control strategies, the progress made since the consent decree was implemented goes only so far to improve the daily experience of many Los Angelenos, especially those of color. People who live in parts of the City that have taken the brunt of discriminatory, harsh and too often deadly policing practices understand that in some of the most critical ways, it is business as usual at the LAPD.

⁸² Ibid.

ABOUT THE AUTHORS:

PATRICIA ALLARD is Deputy Director of the Canadian HIV/AIDS Legal Network. For the past ten years she has worked in the United States advocating for criminal justice and drug policy reform — with a particular emphasis on the needs of low-income women and women of color, at the Sentencing Project and the Brennan Center for Justice at New York University Law School. As a Soros Justice Fellow, Ms. Allard developed a ‘research to action’ initiative that resulted in child welfare reform, affecting over one million children whose parents are incarcerated. Ms. Allard is the author of numerous book chapters, journal articles and national reports, including *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses and Rebuilding Families*, *Reclaiming Lives: State Obligations to Children in Foster Care and their Incarcerated Parents*.

Patricia holds a Bachelor of Arts from St. Lawrence University in Canton, New York, an LL.B. from Queen’s University in Kingston, Ontario, and an M.A. from the Centre of Criminology at the University of Toronto. She was called to the bar of Ontario in 1998.

JUDITH GREENE is a criminal justice policy analyst and a founding partner in Justice Strategies. Over the past decade she has received a Soros Senior Justice Fellowship from the Open Society Institute, served as a research associate for the RAND Corporation, as a senior research fellow at the University of Minnesota Law School, and as director of the State-Centered Program for the Edna McConnell Clark Foundation. From 1985 to 1993 she was Director of Court Programs at the Vera Institute of Justice. Ms. Greene’s articles on criminal sentencing issues, police practices, and correctional policy have appeared in numerous publications, including *The American Prospect*, *Corrections Today*, *Crime and Delinquency*, *Current Issues in Criminal Justice*, *The Federal Sentencing Reporter*, *The Index on Censorship*, *Judicature*, *The Justice Systems Journal*, *Overcrowded Times*, *Prison Legal News*, *The Rutgers Law Journal*, and *The Wake Forest Law Review*.

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