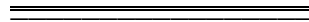


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Consent Decrees



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



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ABSTRACT

After several high profile incidents of police misconduct like the Rodney King beating and others, the federal government received public pressure from local communities demanding oversight and police reform of local, county, and state law enforcement agencies that are unable to police themselves. According to Kupferberg (2008), "this led to the 1994 passage of the Violent Crime Control and Law Enforcement Act. Section 14141 of this Act allows the U.S. Attorney General to bring an action for equitable relief against police department for unconstitutional "patterns or practices of misconduct" (p.130). While the Act has its critics on both side of the political aisle, there is no doubt that consent decrees have been a powerful tool in forcing substantial police reform in police departments that have refused to change their method of policing and self-accountability.

Consent decrees has led to the integration of contemporary data-driven information management systems that allow police supervisors to identify potential problem police officers, increased reality based training for police officers, and updated and modernized police policies and procedures involving use of force incidents and complaints. They have also led to better community outreach and engagement. Those reforms enacted by consent decrees have been successful, and the Department of Justice should continue to use consent decrees as the primary paradigm to reform those law enforcement agencies that, due to a "pattern or practice" of police misconduct, have loss the trust and confidence of the public they serve.

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INTRODUCTION

The foundation of successful policing in the 21st century requires that law enforcement agencies throughout the United States earn the trust, respect, faith, and confidence of the community they are entrusted to protect and serve. Like any other profession, police misconduct is not new to law enforcement, but due to social media, evolving technology and instant news, the misconduct of a small percentage of law enforcement officers has resulted in some communities questioning the legitimacy of police departments across the country. In order for a society to function with law and order, state authorities must earn the noncompulsory cooperation of the community they serve. Those in positions of authority can earn legitimacy by communicating with community members about their similarities, differences, and working in harmony to address those areas in which those in authority have abused their power or fallen short of societal expectations (Patel, 2016).

While a majority of police departments have earned the trust and confidence of the public they serve, history has shown that some police departments have engaged in egregious misconduct that has shaken the conscience of the very communities they are trusted to protect and serve. In 1978, Mexican American Larry Ortega Lozano sustained ninety-two injuries while incarcerated in the county jail. His death was later determined to be accidental, but several lapses in policies and procedures were identified as contributing factors that led to his death. The following year, three Houston police officers were sentenced to light prison sentences for beating and throwing a handcuffed prisoner by the name of Joe Campos into Buffalo Bayou and causing his death (Levenson, 2001). During the 1990s, the Pittsburgh and Steubenville Police

Department were each accused of engaging in excessive force, improper searches and seizures, and filing false reports and charges. The New York City Police Department, during the same time period, experienced some of its own worst scandals when a 30-year old Haitian immigrant was arrested and sodomized by a police officer using a broomstick at the police station. Shortly after, NYPD police officers shot and killed an unarmed black male by the name of Amadou Diallo inside his home and Diallo was later found to have been shot 41 times by police (Kim, 2002).

One of the most unforgettable home videos ever taken of police misconduct and precipitated the demand for federal intervention into police misconduct occurred on March 1991, when three Los Angeles police officers were recorded beating a black motorist by the name of Rodney King while supervisors and other officers watched and did nothing to intervene (Stone, Fogleson, & Cole, 2009). Traditionally, the federal government had taken a hands off approach in addressing police misconduct and has often relied on less invasive measures to advance police reform. Traditionally the federal government has relied on the courts to exclude evidence obtained illegally by police officers and citizens are afforded the opportunity to bring private suit against police officers under 42 U.S.C. § 1983. Additionally, federal prosecutors have been given the discretion to bring criminal charges against police officers who engage in misconduct and citizen review boards or commissions had been formed to monitor and regulate police behavior (Rushin, 2014).

The public perception of the police failing to self-regulate their behavior and prevent further police misconduct was further reinforced by constant attention headlining new stories of police corruption and incidents involving minorities on the

evening news. As noted in the *Transparency: A New Role for Police Consent Decrees* article, “this led to the 1994 passage of the Violent Crime Control and Law Enforcement Act. Section 14141 of this Act allows the U.S. Attorney General to bring an action for equitable relief against police departments for unconstitutional patterns or practices of conduct” (Kupferberg, 2008, p. 130). The criteria for the Justice Department to establish a claim under the Violent Crime Control and Law Enforcement Act. Section 14141, the government must prove the public entity or the defendant has engaged in a ‘pattern or practice’ that deprives persons of their rights and privileges afforded under the United States Constitution (Livingston, 1999).

Over the last several decades, the Department of Justice has reached agreements with over 20 law enforcement agencies in the form of memoranda of understanding or consent decrees to reform police departments that have been plagued with public mistrust, lack of confidence and misconduct (Ross & Parke, 2009). Those reforms enacted by consent decrees have been successful, and the Department of Justice should continue to use consent decrees as the primary paradigm to reform those law enforcement agencies that, due to a “pattern or practice” of police misconduct, have lost the trust and confidence of the public they serve. Consent decrees ensure accountability by mandating that police departments adopt new data systems that track performance and misconduct.

Modernized policies and procedures enacted in troubled police departments have been found to reduce use of force incidents (Schatmeier, 2013). Consent decrees highlight how important training is when dealing with the public and additional training for supervisors ensures that supervisors know how to supervise and understand their

new role. Finally, consent decrees have led to better community outreach and engagement, which builds and maintains trust and communication underserved communities.

POSITION

The Department of Justice should continue to use consent decrees as the primary paradigm to address public mistrust, lack of confidence, and misconduct by local and state law enforcement agencies because consent decrees ensure accountability by mandating that police department adopt new data systems that track police officer performance and misconduct. Consent decrees mandate that police departments invest in contemporary data-driven information management systems in order to obtain real-time information data about police officers and supervisors activities; in order to establish accountability measures. Common elements found in modern record management systems are use of force modules, open and transparent citizen complaint systems, early intervention system to identify problem police officers and collection of traffic stops and racial profiling data (Walker, 2003).

According to Livingston (1999), "The aspiration of police managers should be to identify those officers who engaged in problematic behavior before this behavior has resulted in clear violations of law or policy. Supervisors can then assist officers in changing their practices. Simple mistakes should routinely evoke coaching, consideration of options, training, and other such control options" (p.838). Research conducted by criminal justice scholars concluded that in most police departments, a small number of police officers account for most of the use of force incidents or citizen complaints. To effectively identify those officers, consent decrees mandate that police

departments implement an early intervention warning system into their data management systems to help serve as risk managers for the police departments and provide an early warning system for police supervisors to help them identify and modify at-risk behavior (Ross & Parke, 2009; Livingston, 1999).

Effective early warning systems consist of three components: *identification* of those officers whose behavior is problematic, *intervention* includes the steps to correct the problem, and *follow up* with officers that have been subject to intervention. Supervisors are tasked with generating daily or weekly performance reports of those police officers they supervise using different categories such as use of force incidents, citizen complaints, vehicle pursuits, fleet accidents, and civil litigation. If the system flags a police officer, the supervisor is then required to intervene and speak with the police officer in a formal or informal manner about the area of concern. Repeat follow up is then conducted for a period of time with the police officer, along with counseling and documentation (Alpert & Walker, 2000). Walker (2003) noted, "The one evaluation of EI systems to date, a study of three big city police departments that was published by National Institute for Justice, found that the EI system were effective in reducing citizen complaints, use-of-force incidents and redefine the role of first-line supervisors by providing them with the data to address potential problem officers" (p. 31).

The Department of Justice should continue to use consent decrees as the primary paradigm to address public mistrust, lack of confidence, and misconduct by local and state law enforcement agencies because consent decrees ensure new policies and procedures are enacted in trouble police departments to reduce use of force incidents. According to Walker (2006), "The first accountability procedure to be

considered involves the direction and control officer use of police authority through formal agency policies. This approach, generically known as administrative rulemaking, is a basic feature of modern police management, if not all public and private sector organizations” (p.5). Consent decrees usually mandate that use of force policies and procedures regulate substantive policy on when a police officer may or may not use force and details the different levels of force and specifies when certain use of force may be permissible. Additionally, consent decrees require that police officers notify a supervisor when any type of use of force incident occurs and establishes procedures on how to document and investigate the use of force incident (Rushin, 2014).

After modernizing their use of force policy in 2000, the Los Angeles Police Department found that between 2001 and 2010, serious use of force like discharge of firearm, head strikes, dog bites, and other serious injuries due to force decreased by 34% and categorical use of force per arrest decreased by 33% (Stone et al., 2009). Improvements in use of force policies also improve supervisory oversight. In 1999, the Prince George Police Department was the subject of a consent decree for recording over 800 dog bites by their K-9 units over a seven-year period. Reform agreements regulated when dog bites were permissible and established that supervisors approve the use of a police dog. Prince George’s Police Chief Mark Magaw commented that while it was painful going through a consent decree, the agreements and policy reforms have made the police department better overall (Kelly, Childress, & Rich, 2015).

Policies that requires supervisors instead of police officers to complete use of force incidents add another level of quality control and review and usually results in police officers taking the time to evaluate the situation at hand and applying the

appropriate use of force. Vehicle pursuits are extremely dangerous and usually results in accidents, serious injurious and death to police officers and innocent unsuspecting bystanders. In order to avoid a “pattern or practice” of conduct that is the threshold of consent decrees, police departments have instead implemented more restrictive vehicle pursuit policies that are advanced by consent decrees. Most police department now govern how many police officers can be in the pursuit, require supervisor to monitor and respond to the pursuit, weather and road conditions are taken into whether to pursuit or don't pursuit, ramming of the suspect's vehicle is prohibited and vehicle pursuit can be terminated at any time by a police officer, supervisor, or dispatcher (Walker, 2006).

Police training over the last several decades has dramatically improved and elected officials and police leadership understands the value of training. According to Livingston (1999), “Police training has been said to serve three broad purposes: to prepare officers to act appropriately in a broad spectrum of situations; to enhance productivity and effectiveness; and to foster cooperation and unity of purpose within a department” (p.828). Recently, the Albuquerque Police Department became the subject of a consent decree because of training deficiencies that contributed to the “pattern or practice” of unreasonable use of force against persons suffering from mental illness or crisis. Additionally, the DOJ found that APD used deadly force in situation where there was no threat to life or serious injury to a police officer or subject.

One of the examples giving during a recent study was that of a 25-year-old mentally challenged subject who was sitting at a gas station eating a bag of chips and refusing to get up. A police officer and sergeant were dispatched to the scene and when they arrived on scene, a subject identified as Greg got up from the floor and kept

this hands to his side in a non-aggressive manner. The police officer then kicked Greg in the chest and the police officer and sergeant then used their taser multiple times on Greg, which resulted injuries. The DOJ review concluded found that the Albuquerque Police Department training program was extremely deficient at the academy and in-service level and that too much emphasis was being placed on force to resolve stress encounters with non-cooperative individuals or those in mental illness. The study recommended that more emphasis should be placed on de-escalation technique training (Samuels & Martinez, 2014).

As a result of the consent decree agreement between the Albuquerque Police Department and the Department of Justice, use of force training the Albuquerque Police Department has greatly improved for police officers within the police department. APD implemented a new “de-escalation” policy that outlines the different levels of resistance and force that police officers can use in certain situations. Additionally, APD incorporated 40 hours of constitutional law to steer them in the right direction when deciding to use force.

Furthermore, APD also incorporated 40 hours of mandatory crisis intervention training for all sworn police officers and the training is not only classroom based training, but all real-based scenario training. APD Officer Garza stated the following when asked about the new de-escalation and crisis intervention training, “We’ve had training in the past, but nothing I think, as far as to this caliber” (McKee, 2016, para. 41). Not only are police officers pleased with the new training but so are civil rights group such as the ACLU. Peter Simpson Executive Director of the ACLU in New Mexico stated the following of the new training, “Absolutely, those are the two things that I think we’re

most looking for would be the use, increased use of reality based scenarios, so that officers get conditioned to the kinds of reflects they should have in certain circumstances, and also an emphasis on de-escalation” (McKee, 2006).

The strength of any just society is the quality of life enjoyed by its citizens. Plato called police officers The Guardians of a perfect society that required men and women of the most impeccable character that were entrusted with the power and trust to discharge those important public duties. Consent decrees provide those powerful tools such as early warning systems, modernized policy and procedures that are consistent with today’s best practices in law enforcement, reality based training, and more effective supervision that ensures that today’s police officer maintain that impeccable character that Plato talked about in Guardians.

COUNTER POSITION

While there are multiple reasons of why local and state law enforcement oppose Department of Justice consent decrees to reform police departments that engage in a “pattern or practice” of police misconduct, three of the main reasons that local and state law enforcement oppose consent decrees are due to cost, morale, and de-policing that results from consent decrees. Police departments argue that consent decrees are costly and they are unable to meet the mandated reforms without additional funding from the federal government or additional funding from their governing body. The Los Angeles Police Department has estimated that their consent decree will cost \$30 to \$50 million dollars a year to implement the new mandate reforms over the next five years, and the Cincinnati Police Department is currently spending \$20 million dollars annual to ensure compliance (Ross & Parke, 2009).

A refutation to the opposition to the cost is that in the long-term it is cost effective to implement the reforms outlined by consent decrees than pay expensive litigation and settlements that arise from police misconduct. The Rampart Division scandal alone is estimated to have resulted in over \$70 million in settlements to those falsely arrested. In addition, over 70 police officers were implicated in police misconduct and eventually dismissed from the Los Angeles Police Department. The negative perception as a result of the Rodney King beating and later the Rampart Division scandal resulted in the shortage of over 800 police officers because of difficulties recruiting difficulties (Kupferberg, 2008).

Often forgotten from the mathematical formula of cost is the loss of life, public confidence, and property damage that results from police misconduct. In major police scandals, there are not only financial implications but also hidden cost. The rioting in Los Angeles after the Rodney King verdict resulted in \$1 billion worth of property damage and 51 people were killed as a result of the rioting. The police scandal resulted in the lack of confidence in the police department and in decline of affirmation in the criminal justice system (Rushin, 2014).

Another opposition to Department of Justice consent decrees to reform local and state law enforcement agencies that engage in “pattern or practice” of police misconduct is that consent decrees negatively affect police morale. According to Levenson (2001), “Common complaints of officers under consent decrees are that they are not respected as professionals and are treated as untrustworthy. The reporting requirements of most consent decrees focus on reviewing negative police performance” (p.28-29). Arthur Lurigio, a professor of psychology and criminal justice at Loyola

University stated a possible correlation between low police morale and uptick in violence and stated the following: “Loss of control and autonomy in the workplace has long been associated with lowered morale. Fewer street stops lead to fewer arrests and decrease the visible presence of police in neighborhoods, which leaves a vacuum in authority that can embolden would-be criminals and gang members” (Gorner, 2016).

A refutation to the opposition of consent decrees is that morale problems within local and state law enforcement agencies are short-term morale issues that greatly improve over the course of the consent decree. Low morale indicators can be usually measured by productivity, number of sick days used by police officers, and separation from police departments. An analysis conducted of the Pittsburgh Police Department who was subject to a consent decree, revealed that over a four-year period from 1995 to 1999, sick days decreased from 6320 sick days in 1995 to 4317 sick days in 1999. Also, sick days per officer decreased from 5.62 days a year in 1995 to 4.02 days per year in 1999. Separations from when the consent decree was signed by the Pittsburgh Police Department showed no uptick in police officers leaving the police department and crime saw substantial and sustained decline from the start of the consent decree. Traffic summons has remained the same post consent decree and driving while intoxicated arrest have increased post consent decree (Davis, Ortiz, & Henderson, 2002).

Another opposition to Department of Justice consent decrees to reform local and state law enforcement agencies that engage in “pattern or practice” of police misconduct is that consent decrees cause de-policing. Rushin (2004) noted, “The most common argument made by de-policing advocates is that structural reform litigation

decreases police aggressiveness, reduces the amount of encounters between police and citizenry, and policies and procedures mandated by SRL inhibit an officer's abilities to engage in this type of proactive, order maintenance policing" (p.1412). The Department of Justice recently concluded their investigation into the Chicago Police Department and are about to reach an agreement with the CPD to enter a consent decree. Their investigation found that traffic stops by Chicago Police Officers are down 90%, investigative stop are down in one year from 157,346 to 20,908, and 1000 fewer guns were seized in a one year time period, yet, police shootings and murders have increased by 80% (Runge, 2016).

A refutation to the opposition of consent decrees is that police officer activities increase both in quality and quantity. Rushin (2004), "Property crime rates in communities undergoing SRI, like Washington D.C., Los Angeles, Cincinnati, and Prince George's County all dropped more than the national average. Property crime rates fell by an average of 12.9% and violent crime rate fell by 36.29%" (p.1414). Los Angeles Police Department data from the five-year time period that the police department was under a consent decree saw the doubling of pedestrian and motor vehicle stops by 35% and arrest and felony charges filed with the LA District Attorney's Office increased (Stone et al., 2009).

In 1999, the New Jersey State Police reached an agreement with the Department of Justice in response to accusation by the DOJ that the New Jersey State Police engaged in a "pattern or practice" of racial profiling. Four years after the consent decree was implemented, motor vehicle stops increased by 34%, occupant searches nearly doubled, and arrests increased by 34%. While the percentage of minorities

stopped increased, the New Jersey State Police method of collecting data and transparency with the public increased, which resulted in improved public confidence (Kupferberg, 2008).

RECOMMENDATION

The cornerstone of successful policing and law enforcement is building and maintaining the trust with the community that they serve. When a police officer engages in police corruption, misconduct, or behaves in an unethical manner, it has the ability to do irreparable damage to the police profession. While many local and state law enforcement agencies address police misconduct in a prompt manner, there are a few local and state law enforcement that fail to implement the proper police reforms within their agency to restore the trust, faith, and confidence of the public they serve (International Association of Chiefs of Police, 2009). In order to address “pattern or practice” of police misconduct, the Department of Justice has successfully used consent decrees to reform several local and state law enforcement agencies. Therefore, the Department of Justice should continue to use consent decrees as the primary paradigm to restore and ensure that the public has confidence and trust in local and state law enforcement agencies that have engaged in police misconduct.

Consent decrees ensure accountability by mandating that police departments adopt new data systems that tracks performance and misconduct. Modernized policies and procedures enacted in troubled police departments have been found to reduce use of force incidents (Schatmeier, 2013). Consent decrees highlight how important training is when dealing with the public and additional training for supervisors ensures that supervisors know how to supervise and understand their new role. Finally, consent

decrees lead to better community outreach and engagement, which builds and maintains trust and communication underserved communities.

Three of the main reasons that local and state law enforcement oppose consent decrees are due to cost, morale, and de-policing that results from consent decrees. Police departments argue that consent decrees are costly and they are unable to meet the mandated reforms without additional funding from the federal government or additional funding from their governing body. A refutation to the cost argument is that in the long-term, it is cost effective to implement the reforms outlined by consent decrees than to pay expensive litigation and settlements that arise from police misconduct. Additionally, the property damage, loss of life, and the erosion of public confidence greatly exceeds any monetary value.

Police departments also argue that consent decrees hurt morale within the police department because police officers believe that they are not trustworthy and not respected as law enforcement professionals. Research conducted on police officers that work for police departments that have been the subject of consent decrees, refute the morale problem and argue that morale is short-term problem that greatly improves as police reforms are implemented and public confidence in the service of the police department improves (Davis, Ortiz, & Henderson, 2002). Another opposition to Department of Justice consent decrees for reforming local and state law enforcement agencies that engage in "pattern or practice" of police misconduct is that consent decrees cause de-policing. Data collected by law enforcement agencies refute that argument that consent decrees cause de-policing (Rushin, 2004). The data retrieved from five law enforcement agencies under a consent decree show that police

productivity has increase, property/people crime has fallen, and traffic stops have increased by those law enforcement agencies under a consent decree (Stone et al., 2009).

While there is no easy solution to addressing police misconduct, research has shown that consent decrees are effective and efficient in addressing “pattern or practice” of police misconduct in local and state law enforcement agencies, and the Department of Justice should continue to use consent decrees as the primary paradigm to reform police departments across the country. Consent decrees have proper checks and balances to ensure that the Department of Justice does not take arbitrary action or enforcement against local and state law enforcement. Building and maintaining trust is the foundation of successful community policing and consent decrees provide that framework to restore public trust and confidence.

While there is no doubt that consent decrees are an effective way of bringing about forced change to police departments that engage in a “pattern or practice” of police misconduct, one of the areas that current research on consent decrees does not address and should address is a funding mechanism in which the Department of Justice assists local or state police agencies with some of the financial burdens associated with consent decrees. It is recommended that the Department of Justice implement a funding system in which police departments under consent decrees that successfully and fully integrate Department of Justice reforms are eligible for a one-time maximum reimbursement rate of 25% for all cost associated with implementing reforms. This would not only silent critics of consent decrees but also demonstrate to police departments and local communities that the Department of Justice is serious about

implementing reforms that effect the community and willing to share in the cost to ensure that public trust, faith and confidence is restored our law enforcement agencies throughout the country.

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