In the summer of 2012 the Dallas Police Department experienced another in a series of officer-involved shootings, which represented an increase over previous years. A July 24th shooting was particularly controversial because the person shot and killed was unarmed. Two weeks later, in response to community protests, the police chief issued an Eight-Point Plan for New Policies and Strategic Directives.

The Eight-Point Plan included formalizing a relationship with the FBI for concurrent investigations of all officer-involved shootings, a more comprehensive policy for officers reporting resistance to officer incidents, revising the foot pursuit policy to reduce risks to officers and preventing escalating use of force, and most important a plan to “research Best Practices” “from around the nation.”

Several aspects of the Eight-Point Plan are notable. First, it represented a quick and proactive response to an immediate community controversy. Second, it went beyond the immediate issue of officer-involved shootings and addressed other issues. Third, it recognized that incidents such as a fatal
shooting of an unarmed person are often the result of failures of policies, training, and supervision that need to be corrected. Fourth, it included an explicit commitment to learn from other best practices in law enforcement.

**The COPS Office/Las Vegas Police Collaborative Report**

In late 2012 the COPS Office of the U.S. Justice Department published a Collaborative Report on use of force by the Las Vegas Metropolitan Police Department (LVMPD). Coming in the wake of continuing controversies over officer-involved shootings, the report represented a joint effort between a new Critical Response Technical Assistance Program in the U.S. Justice Department, a private consulting firm, and the LVMPD. The 154-page report covered a wide range of policies, incident reporting procedures, and training and supervision issues related to the use of both lethal and less lethal force.²

The Collaborative Report recommended changes to the LVMPD’s use of force policy, including adding “a mission statement that emphasizes the sanctity of human life,” an emphasis on deescalating officer-citizen encounters, tighter restrictions on conducted energy devices (CEDs; known by the trademarked name “Tasers”), a broader review of shooting incidents, and improvements in the consistency, quality, and quantity of training on various issues.”³ It concluded with a detailed work plan for a continuing collaborative process through which the COPS Office would assist the LVMPD in implementing the recommendations, including a set of goals and timetables for specific tasks.

**The New Orleans Consent Decree**

In July 2012 the Justice Department and the New Orleans Police Department entered into a consent decree requiring sweeping accountability-related reforms in the police department. The consent decree was similar to the more than 15 such settlements negotiated by the Justice Department. The reforms included improving the department’s use of force policies (including firearms, canines, CED devices, and vehicle pursuits), the development of a crisis intervention team for handling mental health cases, and new policies governing stops, searches, arrests, and custodial interrogation.⁴

The New Orleans consent decree closely resembled similar settlements between the Justice Department and local and state law enforcement agencies regarding a “pattern or practice” of violations of the constitutional
rights of people. It went beyond previous settlements in two respects, however. First, it included a section devoted to gender bias, requiring new police policies related to the investigation of sexual assault cases and the handling of domestic violence incidents. Second, it included formal requirements designed to ensure greater community input into the implementation of the consent decree and into the police department once the decree was eventually lifted.

The Meaning of the Three Examples

The three examples above illustrate several themes regarding the pursuit of accountability in police departments with problems related to use of force, racial bias, community relations, and other issues.

The Dallas Eight-Point Plan represents what is arguably the ideal situation. Faced with a series of problematic incidents, the police chief responded quickly with a proactive program to address these and other issues. It was an entirely voluntary effort, initiated by the chief. Historically, on accountability issues such as shootings, allegations of excessive physical force, or racial discrimination, police departments responded with denial or half-hearted promises to investigate the issue. In the new police accountability, police departments will respond proactively, become self-monitoring, and develop into “learning organizations” where they seek to learn from problems and mistakes that occur and develop appropriate corrective responses.5

The Collaborative Report on the Las Vegas Metropolitan Police represents an innovative joint effort between a police department and a branch of the U.S. Justice Department, whose mission it is to assist agencies that are having problems establish appropriate accountability measures. Many police departments, some would even say most, are not in a position to undertake a thorough review of their existing policies and procedures. They are not equipped because a genuine commitment to accountability involves an organizational culture of accountability. This culture includes a willingness to ask probing, critical questions about incidents that might be embarrassing to the department and to colleagues and friends. It also includes a familiarity with various accountability procedures—an early intervention system, for example, and how it can be used to its fullest. In the transition to genuine accountability, assistance from outside experts is a valuable and possibly even necessary process.

A good analogy is the annual physical exam that we regard as a sound health practice: We
consult an outside expert who will identify existing or potential problems and recommend corrective action.

It should be noted that the Las Vegas collaborative effort was not entirely voluntary. A local newspaper had published a five-part series of articles on shooting incidents by LVMPD officers, the local ACLU had demanded a series of policy changes, and the Critical Response Technical Assistance Program stepped forward to offer its help. Faced with a series of local controversies over officer-involved shootings, the LVMPD responded appropriately by accepting the Justice Department’s assistance.6

The consent decree over the New Orleans Police Department represents what should be the last resort regarding police accountability: a lawsuit by the U.S. Justice Department seeking sweeping reforms. Unfortunately, many police departments have proven to have a long history of violations of peoples’ rights, of an inability to correct their own problems, and in some cases a situation of serious organizational dysfunction. While many people argue that Justice Department “pattern or practice” oversteps the bounds of federal authority, is expensive, and unnecessarily polarizes the issue of police accountability locally, advocates argue that it is a necessary remedy for deeply troubled law enforcement agencies.7 The reports of independent court-appointed monitors in several cases found that the departments had been transformed in a positive direction. The monitor for the New Jersey State Police consent decree concluded in its final report that the agency had “become self-monitoring and self-correcting to a degree not often observed in American law enforcement.”8 The monitor for the Washington, D.C., police department reached a similarly optimistic conclusion in its final report.9 Whether these gains will hold over the long term is an open question at this point. Sustaining reforms, in all areas of policing, is a major challenge.10

Even more important, at a 2012 conference on federal pattern or practice litigation sponsored by the Police Executive Research Forum, several police chiefs who had been through the consent decree experience explained how in the end it improved their departments. Charles H. Ramsey, former chief of the Washington, D.C., police department and current commissioner in Philadelphia, said that “The end result was very positive. Shootings dropped by 80 percent and have remained low. And it gave us credibility with the public.” Two other officials said that because of the consent decree-mandated reforms policing improved and they were no longer paying out tens of thousands of dollars in civil suit damages as they had been beforehand.11
This book argues that the Dallas Eight-Point Plan represents the pursuit of police accountability at its best. If all police departments acted quickly and proactively to controversial incidents the need for litigation would be greatly reduced. The plan included many of the core ingredients of the new police accountability. The Las Vegas collaborative effort represents a promising middle ground, in which the Justice Department provides necessary expertise and technical assistance.

The Plan of This Book

This book examines the continuing developments in police accountability. The three examples discussed so far are just a few of the many new developments in the field, and the book will examine many others. As we will explain, the most important new approaches discussed in this book have certain common elements that reappear in different programs. Chapter One defines what we mean by police accountability and provides a brief introduction to the key elements of the new world of police accountability. Chapter Two provides a brief review of the most important traditional approaches to accountability, pointing out their respective strong points and weaknesses. The remaining chapters examine specific aspects of the new police accountability.

The Challenge of Police Accountability

Policing in America: Images and Reality

Police misconduct remains a serious problem in American society. Even after decades of protests, litigation, and reform, controversies continue over excessive use of force, unjustified fatal shootings, racial and ethnic bias, and other forms of mistreatment of citizens. Indelible images of police actions are seared into the American memory. Even though it is almost 25 years in the past, the March 3, 1991, beating of Rodney King by Los Angeles Police Department officers, and the trial and riots that followed, remains a well-known event in American police history. Other abuses of police power, involving shootings or excessive use of physical force, regularly appear on the national news media.

Incidents of police misconduct dominate the public image of the police, and distort public perception of the current state of American policing. Ron Weitzer’s study of the aftermath of the Rodney King
incident documents how highly publicized incidents of misconduct adversely affect public opinion about a local police department. Such unusual events, or what can be called “celebrated cases,” do not fully reflect where American policing is today. They obscure important changes that occur quietly, including many important reforms. Celebrated cases are a general problem in American criminal justice. Public opinion is heavily influenced by the case of the offender recently released on bail who promptly commits a rape or armed robbery, the defendant charged with armed robbery plea bargains the case down to a misdemeanor, and similar cases.

Celebrated cases of police misconduct might easily lead a reasonable person—that is, someone well informed about civic events but with no special expertise in policing—to conclude that there has been little progress in American policing since the strife-torn decade of urban riots in the 1960s. That reasonable person might conclude that racial and ethnic discrimination, excessive force, and unjustified shootings are as prevalent as they were 50 years ago. He or she might then conclude that the many police reform efforts of the past half century have accomplished nothing. These efforts include the well-known Supreme Court decisions on unconstitutional police practices (e.g., *Mapp v. Ohio*, *Miranda v. Arizona*); the spread of community policing and problem-oriented policing; new restrictions on police use of deadly force, high speed pursuits, and other critical incidents; the growth of significant representation of African American, Hispanic, and female police officers; the spread of citizen oversight of the police; and dramatic improvements in police officer educational levels and training programs. Did all of these reforms produce no significant or lasting improvements in American policing?

The answer is no. There been many important improvements in policing since the 1960s and they have had positive effects on day-to-day policing, as we will describe in detail in Chapter Two. In the 1960s, African Americans were barely represented on big-city police departments, police officers were given no meaningful guidance on when to use deadly force, officers routinely treated domestic violence assaults as though they were not a crime, and the concepts of community policing and problem-oriented policing were unheard of. The problem, of course, is that despite these positive developments, many problems remain. David Bayley has called the last decades of the twentieth century the most innovative period in police history.
accountability represents an effort to build on past reforms and develop new strategies and programs to ensure the highest level of professionalism in American policing.

**A Definition of Police Accountability**

It is a basic principle of a democratic society that the police are answerable to the public. That is the core meaning of police accountability. Only in totalitarian dictatorships can law enforcement agencies do whatever the supreme leader wants, with the public and individual citizens having no avenues of redress. Achieving meaningful accountability in a democracy is extremely difficult, however. Democracy is a messy process. The famous British Prime Minister Winston Churchill once said that “Democracy is the worst form of government, except for all those other forms that have been tried from time to time.” Achieving police accountability is an enormous challenge, in part because democracy is a challenge, but also because of the special nature of policing, which poses numerous problems.

Police accountability is a broad and multifaceted phenomenon. On one level it refers to holding law enforcement agencies accountable for the services they deliver: crime control, order maintenance, and miscellaneous services to people and communities. The community policing movement has been a major effort to reorient what police departments do, and to develop closer relations with the communities they serve. At the same time, accountability also refers to holding individual officers accountable for how they treat individual citizens, particularly with regard to the use of force, equal treatment of all groups, and respect for the dignity of individuals. In important respects, the agency-level and officer-level dimensions of accountability merge. Effective crime control and order maintenance depend on what individual officers do on the street. Officers who stop people because of the color of their skin rather than probable cause that they have committed a crime are not concentrating on crime. Officer misconduct, meanwhile, undermines effective police crime control. As we explain in more detail below, if people do not trust the police because of their misconduct, they will be less willing to report crimes, provide evidence of neighborhood problems, or even decline to identify offenders.

Law enforcement agencies are ultimately accountable through the political process, by which elected officials translate the will of the people into public policy. Mayors, city council members, county commissioners,
governors, state legislatures, presidents, and Congress exercise control and oversight of the law enforcement agencies under their control through budgets and appointments. Mayors appoint police chiefs, governors appoint the heads of state police agencies, and the president appoints the attorney general and the director of the FBI. At the same time, however, the police are also accountable to the law and should conform to established standards of lawfulness in all of their operations. The courts are the principal mechanism for holding the police accountable to the law.

One of the principal challenges of democracy is that public attitudes about the police and crime have often had a very bad impact on police practices. Public pressure to control crime has often encouraged or at least tolerated illegal searches and coercive confessions. Majority white opinion has encouraged or tolerated racial bias in policing. People do not mind the police stopping people in their neighborhood who look “different” or “dangerous,” just as long as they themselves are not stopped. The worst historical example of majority rule and the misuse of police power was the era of segregation in the South, where the police and the entire criminal justice system helped to maintain a racial caste system. The courts have attempted to curb such abuses by applying constitutional standards of due process and equal protection. In his classic study of policing, *Justice Without Trial*, Jerome Skolnick argued that police officers and departments are under pressure to produce results with regard to crime fighting. This pressure leads officers to cut corners or do whatever seems “necessary” to produce arrests, evidence, and convictions. In a noted statement of the conflict between competing demands on the police, Herbert Packer defined it as a clash between crime control and due process perspectives on the criminal process. The debate over this choice of priorities continues to rage, in public debate, in law reviews, and in the courts.

### Accountability and Police Legitimacy

The most important new perspective on policing is the concept of legitimacy. The concept holds that the police have legitimacy when they enjoy the understanding, trust, and support of the people they serve. Legitimacy goes far beyond the old concept of police-community relations (PCR), which focused narrowly on police relations with racial minority communities. PCR programs were never very successful in part because they were always separate from basic police operations of patrol
and criminal investigation, and as a result did not address day-in, day-out police conduct on the streets. Critics labeled PCR programs an exercise in public relations, an effort to change public attitudes without changing police actions that shape those attitudes.31

Legitimacy takes a comprehensive view of policing, looking at individual officer conduct, police departments as organizations, and relations with the entire community. The concept of legitimacy is rooted in the academic discipline of procedural justice, which studies how people respond to the way they are treated in a particular situation and not just the outcome of that event (a traffic ticket, for example).32 The sense of legitimacy increases the more people feel they were treated with dignity and respect, were not singled out for mistreatment, and had an opportunity to express their voice in the event.

A traffic stop illustrates how procedural justice operates. A driver is more likely to accept the legitimacy of the stop if the officer is respectful, explains the reason for the stop, and answers his or her questions. Positive feelings about the process are likely to neutralize or trump any bad feelings the person has about the outcome, a traffic ticket. If on the other hand the officer is rude, does not explain anything, and refuses to allow the driver to say anything, the driver is likely to be angry at the officer and the department. Those negative feelings will probably accentuate any negative feelings arising from a traffic ticket.

Examples from other areas of life illustrate the distinction between the process and the outcome. A student’s grade on a test or paper represents the outcome. The process involves whether the teacher provided comments on what was wrong or missing, and was willing to spend some time with the student explaining a low grade. Returning something to a retail store is another good example. The outcome is whether the company accepts the return. The process is whether the clerk was friendly or rude, and accepted or questioned the customer’s explanation. With respect to health care, a certain amount of public discontent is based not on the actual care provided but instead on not being able to speak to a medical professional or having to wait for a long time in the doctor’s office.

Procedural justice research has found that people who trust the legal system are more likely to obey the law, cooperate with authorities, and accept the results of any proceeding (a ticket, a guilty verdict, and so on). The implications of procedural justice for policing are enormous. If people feel they are treated with respect and dignity they are more likely to regard the police as legitimate and as a consequence be more likely to trust and cooperate with police officers. For the police, that means people will be more likely to
obey the law, call the police for help when they have a problem, report crimes and neighborhood problems they know about, be witnesses in criminal cases, and be more respectful and cooperative in encounters with officers on the street. Research years ago found that the most important factor in the police clearing crimes is whether there is a witness who can provide relevant information about the crime.\textsuperscript{33} In short, legitimacy can enhance the effectiveness of the police in routine crime-fighting. The community policing movement grew out of the recognition that the police depended heavily on citizen cooperation, which has been called the “co-production” of police services, and that police departments had become insular bureaucracies that had lost touch with people in their communities.\textsuperscript{34}

**Legitimacy and the New Police Accountability**

All of the policies and practices of the new world of police accountability have direct implications for police legitimacy. Police misconduct undermines respect and the belief that the police are legitimate. Simple rudeness or not answering a person’s questions about a traffic stop undermines respect for the officer and ultimately the legitimacy of the police department itself. Peoples’ views about the police can come from a personal experience, something they hear from someone else, or news media accounts. Every accountability-related program discussed in this book addresses police conduct that is likely to undermine public trust and the sense of legitimacy.

At a 2012 Police Executive Research Forum (PERF) conference on police use of force and de-escalation, an Arlington (Texas) police chief said that “We want this topic [legitimacy] to be on the forefront of our officers’ minds. They need to ask themselves: What have I done today, in this encounter, on this traffic stop, on this call, to earn the right to police this community?” All of the policies and procedures of the new accountability discussed in this book are directed toward that end.\textsuperscript{35} The following section examines the basic strategies and tactics of the new police accountability, each one of which has direct implications for accountability.

**Strategies and Tactics of the New Police Accountability**

This book focuses on the strategies and tactics of the new police accountability. As a result, it does not cover many traditional practices of professional police management that are still sound and need to be
strengthened. These include the efficient organization of the department; the rational allocation of resources based on priorities and workload; rational principles of command, control, and supervision; a policy and procedure manual; preservice training of all officers; periodic personnel evaluations; investigation of alleged misconduct; and the appropriate discipline where appropriate. All of these principles were well established by the early 1960s, largely through the work of O. W. Wilson. They are still sound principles—as far as they go.

And that is the problem. They do not go far enough. The crises of racial conflict, high crime rates, and loss of public confidence that began in the 1960s dramatized the inadequacy of the existing standards and practices of traditional police professionalism. The policies and practices of the new police accountability developed out of a perceived need to give closer scrutiny to routine officer-citizen contacts and to provide more meaningful controls to ensure lawful and respectful policing, and as a result to enhance police legitimacy.

New approaches to controlling police officer conduct arose in the late 1960s and early 1970s. Police departments for the first time developed meaningful controls over the use of deadly force, the response to domestic violence incidents, and high-speed pursuits. Citizen oversight agencies spread across the country, with nearly all big cities having some form of external oversight by the 1990s. Community-oriented policing (COP) and problem-oriented policing (POP) arose as new ways of thinking about the role and mission of the police, asking fundamental questions about what do the police do and how they should organize their efforts to achieve their goals.

The new police accountability represents a continuation of these earlier efforts, but seeks to extend and strengthen them. The change reflects a deeper understanding of the challenge of guiding and controlling the on-the-street behavior of police officers. If we want to reduce officer use of excessive force it is not sufficient simply to have a written policy indicating what actions are approved and not approved. The new world of accountability is heavily data driven. An early intervention system relies on timely and detailed data on officer performance so that commanders can identify problematic officer actions and broader patterns of conduct that need to be addressed. (COMPSTAT and hot spots policing, which we do not cover in this book, are obviously data-driven programs.) Finally, the main argument of this book is that the various accountability measures represent a comprehensive package of policies and procedures that
interact and depend on each other. An early intervention system, for example, depends on timely and accurate data on critical incidents and citizen complaints. Without them, the system cannot present a complete picture of officer performance.

Use of Force and Critical Incident Policies

The first element of the new police accountability involves written policies governing all critical incidents, not just use of force, accompanied by the requirement that police officers file official reports for each incident. A critical incident is defined as any police action that poses a risk to the life, liberty, or dignity of a citizen. Additionally, these reports are automatically reviewed by supervisors to ensure that the officer complied with departmental policies. As we will explain in detail in Chapter Two, the movement to control critical incidents began with the use of deadly force and then slowly spread to cover other incidents such as the use of physical force, high-speed vehicle pursuits, the response to domestic violence incidents, and more. Critical incident policies are discussed in detail in Chapter Three.

This book argues that there is no fixed limit to the type and number of incidents that ideally should be covered. One of the important elements of the new police accountability is that police departments, and indeed the entire law enforcement profession, should engage in a continuous process of self-monitoring, with departments becoming “learning organizations.” The result of this process is that we do not know what problems will come to the attention of the public and/or police managers in the future and might lead to new understanding of what constitutes a critical incident.

One of the problems facing American policing, however, is the lack of national standards for critical incident policies. Austin (Texas) Police Chief Art Acevedo told a 2012 Police Executive Research Forum conference that “we have 18,000 police departments with 18,000 set of policies and 18,000 ways of doing business. We should come together and develop model policies. It’s a matter of holding people accountable for their actions and having some consensus on model policies.” The lack of national standards is also true with regard to accountability. Professional associations such as PERF and the IACP (International Association of Chiefs of Police) develop model policies and sponsor discussions of accountability issues, but there is no single repository of the emerging best practices in the field. In part this is because of the fluid state of the field, with new practices continuing to develop.
Open and Accessible Citizen Complaint Procedures

An open and accessible citizen complaint process is a necessary part of a police accountability system. The citizen complaint process gives citizens a right to voice their grievances about how they were treated. Complaints against the police represent a basic First Amendment right: the right to petition government for a redress of grievances. The right to file a complaint, moreover, embodies the principle of voice that is central to the concept of procedural justice. People are more likely to regard an organization as legitimate if they have an opportunity to express their point of view and feel they have contributed to the ultimate outcome. Finally, complaints are an important, though admittedly incomplete, indicator of police officer conduct. Even though few people who feel they have a grievance actually file complaints, and even though most complaints are not sustained, they serve a useful management purpose.

Traditionally, police departments regarded citizen complaints as virtually hostile acts, to be fended off if at all possible. The 1967 President’s Crime Commission report and the 1968 Kerner Commission report both found that many departments did not have a formal complaint process and in those departments citizens were often discouraged from filing complaints, given misinformation about the process, or in some cases were threatened with arrest.

In the new accountability, however, citizen complaints are regarded as an important form of management information: They are indicators of possible performance problems that need to be corrected. An officer who receives a higher number of complaints than peer officers, even where all of them are not sustained, may have some performance problems that need addressing. An early intervention system (see the following section) is the accountability mechanism for identifying patterns of complaints and placing those complaints in the context of an officer’s overall performance so that commanders can determine what problems need to be addressed. Citizen complaints are discussed in detail in Chapter Four.

Early Intervention Systems

Early intervention systems (EISs) are widely regarded as the cornerstones of the new police accountability. An EIS involves a computerized database on officer performance for the purpose of identifying officers with performance problems that need to be corrected. The database may include as many as 25 or as few as 5 performance indicators. EISs are the
linchpins of an accountability system because they utilize critical incident reports on uses of force and citizen complaints, which we have already discussed. An EIS imposes new burdens on a police department. Critical incident reports need to be complete and accurate and entered into the EIS in a timely fashion. The same is true of citizen complaints. The key component of an EIS is pattern analysis. Supervisors review EIS data to look for patterns in an officer’s conduct: a higher than average number of use of force incidents or citizen complaints. A pattern of incidents does not mean that the officer is guilty of an infraction or violation of department rules. It simply means that supervisors need to conduct a full review of the officer’s performance to determine the underlying causes and decide whether intervention is needed.

The intervention phase of an EIS might involve merely counseling an officer about his or her performance, referral to professional counseling for substance abuse or anger management, or special training, for example, in tactics for conducting a traffic stop. Formal intervention is not recorded as a disciplinary action. EISs are designed to be early in terms of identifying officer performance problems and correcting them before they result in a serious use of force incident, lawsuit against the department, or other serious problem. EISs are extremely complicated and are discussed in detail in Chapter Five. Pattern analysis, a key part of an EIS, is also increasingly adopted in other accountability measures.

**External and Internal Review**

The fourth police accountability strategy involves both external and internal review of officer conduct. The police traditionally resisted any form of external oversight, including both citizen complaint review agencies and the Supreme Court. The new police accountability, however, recognizes the value of regular input to a police department from outside experts.

The police auditor has emerged as the most effective form of external citizen oversight. Unlike civilian complaint review boards, which review individual citizen complaints, police auditors have authority to investigate any and every issue within a law enforcement agency. Police auditors have been particularly successful in examining patterns and practices of police conduct: use of force incidents, civil suits against the department, and systemic failures to discipline officers. Police auditors are discussed in detail in Chapter Six.
The traditional dichotomy between internal and external review of the police has begun to dissolve as internal review has expanded considerably in recent years. Police internal review now goes far beyond an immediate supervisor reviewing officer critical incident reports. As we will discuss in Chapter Two, the 1972 NYPD deadly force policy initiated this development with a Firearms Discharge Review Board that examined officer firearms discharge reports. Some variation of that form of review is almost standard now in large police departments. The newest form of internal review involves a procedure for examining both individual incident reports and patterns over time for the purpose of identifying issues related to policy, training, and supervision that need to be improved.

A Framework for Accountability: PTSR

As we have argued, the various elements of the new police accountability represent a package, a set of policies and programs that work together and reinforce each other. Failure to develop one of those elements weakens the other parts. Put simply, it is not sufficient to develop state-of-the-art written policies on use of force and other critical incidents if, for example, they are not reinforced by training, or if there is no early intervention system to track officer performance and identify officers with problematic performance, or if there is no meaningful discipline of officers who violate a policy. To understand the interrelatedness of the various elements of the new police accountability it is useful to think of them in terms of the acronym PTSR, which stands for Policy, Training, Supervision, and Review.

Policy

As we discussed earlier, accountability requires that departments have clear and specific policies on all critical incidents involving the life, liberty, and safety of people. Future policy development points in several directions. First, all law enforcement agencies should have state-of-the-art policies on all critical incidents. Second, the process of policy development should be recognized as an open-ended one. Not too many years ago, for example, foot pursuits were not covered by policies designed to reduce the risks to officers and citizens. Today, however, foot pursuits are recognized as potentially very dangerous, and are increasingly covered by department policies. We cannot foresee what aspects of police-citizen
interaction will also be needed to be covered by policies in the future. Third, there needs to be a continuing process of refining and clarifying existing policies. The Collaborative Reform report on Las Vegas found the department’s policy on deadly force to be generally sound, but it nonetheless made a series of recommendations for improvement. Fourth, policies need to be made consistent throughout a department’s policy manual to ensure, for example, that the less lethal force policy is not contradicted or muddied by citing it incorrectly in another policy statement. Finally, policies need to be continually reviewed and revised (see the final section on “Review”).

Training

Training, it hardly needs to be said, is a basic element of modern police administration, and it represents one of the major achievements of the police professionalization movement in the twentieth century. Training, moreover, must be a continuous and comprehensive effort, including pre-service academy training, mandatory annual in-service training, roll call training, and special ad hoc training for certain officers. The importance of inservice and other forms of refresher training was highlighted by Art Acevedo, chief of the Austin (Texas) Police Department, who believes that “the vast majority of improper uses of force, especially deadly force, are a direct or indirect result of officers abandoning the tactics that we spent a lot of time and money training them on.”

The new police accountability has added important new dimensions to police training. One development involves having training unit officers respond to critical incidents in the field. Jerry Dyer, chief of the Fresno (California) Police Department, told a 2012 Police Executive Research Forum conference that “Our training unit responds to every officer-involved shooting. They’re part of the initial walkthrough, and they’re part of the review that we conduct on every officer-involved shooting. The training commander also reviews use of force reports completed by a supervisor. So they know what types of incidents are occurring out there, and they’re better equipped to put together the types of training that we need.”

A 1980s training experiment in the Miami-Dade Police Department, called the Violence Reduction Project, provided a group of officers with a three-day training program that consisted of lectures, videotapes, and role playing on reducing conflict in encounters with citizens. Officers receiving the training were subsequently observed to use force significantly less
often than a control group of officers. The success of the project suggests that in the new police accountability it is possible to identify recurring police-citizen encounter problems and then design a training program that specifically addresses those problems.

A second important new dimension of training is highlighted by the 2012 Collaborative Reform Process report on the Las Vegas Metropolitan Police Department (LVMPD) (see Chapter Six). The report’s analysis of officer-involved shootings identified a number of officer tactical errors in both fatal and nonfatal officer-involved shootings. The most frequent errors involved radio communications (e.g., failure to provide updates on a rapidly evolving incident), defensive tactics, officer approach (e.g., failure to choose a tactic that would slow down an evolving incident), coordination among officers, and failure to use proper cover and concealment tactics. All of these tactical errors and the others cited in the report are susceptible to focused training efforts. Identifying them, meanwhile, involves some of the key elements of the new police accountability, including primarily systematic data collection on critical incidents and the review and analysis of patterns of incidents. No one expects that all controversial officer-involved shooting incidents will ever be eliminated, but important parts of the new accountability, if applied to training, can certainly reduce their number.

The new accountability also imposes new training burdens on police departments, particularly with regard to data analysis. Several aspects of the new accountability rely on the systematic analysis of officer performance data: early intervention systems and trend analyses of officer-involved shootings, other uses of force, and other critical incidents. With respect to COMPSTAT (for COMPuterSTATistics), an important innovation for analyzing trends in crime and disorder, Michael D. White argues that existing police training programs “often fall short” in preparing officers for such new demands. His comments are equally relevant for the data-driven aspects of the new accountability.

Supervision

The heart of policing is the on-the-street crew of one sergeant and between eight and 10 officers (the standard generally recognized in the profession). Accountability depends heavily on how a sergeant supervises those officers. Moreover, the nature of those responsibilities has changed and expanded with new accountability mechanisms such as early
intervention systems. On the street, sergeants are responsible for directly observing their officers, supporting and backing them up, monitoring their actions, and directly intervening when necessary or appropriate. When an officer violates department policy, as in using excessive force, the sergeant has a duty to report it to internal affairs for investigation. When an officer’s conduct is simply less than ideal but not a violation, the sergeant may choose to advise, counsel, or mentor that officer about proper police action. Such actions represent the best kind of “early intervention” to improve officer performance.

Robin Engel’s research on sergeants found several different supervisory styles used by sergeants. About a quarter of all the supervisors in the study adopted a “supportive” definition of their role, seeking to protect their officers against upper management. That approach is unacceptable in the new accountability. Similarly, about a quarter of the supervisors were defined as “traditional” in their role definition, emphasizing strict discipline of officers.56 As we shall see later in this book, important elements of the new accountability—particularly early intervention systems—go beyond mere discipline and emphasize supervisors and the entire department’s role in using problematic encounters with citizens as opportunities to counsel, coach, and train officers in how to be better officers.

The emergence of formal early intervention systems has significantly altered the role of sergeants. Sergeants are responsible for monitoring the data in the EIS to identify both individual incidents of possible misconduct and patterns of problematic performance. Without the officer in question triggering one of the thresholds in the EIS system, which would lead to a formal intervention, a sergeant can use the data to counsel the officer.57

Meaningful discipline of officers for violation of department policies is in many respects the crucial part of a comprehensive accountability system. Each police department has its own organizational culture (although, regrettably, we have only limited research on this subject). A key part of the culture is the “going rate,” the level of discipline that is routinely meted out for certain violations of policy. The term “going rate” comes from research on sentencing in criminal courts, and refers, for example, to the normal and expected sentence for a first-offense burglary conviction where the offender has no prior felony convictions.58 Unfortunately, we have little research on police disciplinary practices and have no good evidence on, for example, the expected punishment for a sustained rudeness complaint or a sustained excessive force complaint where there is no injury.
In departments where the going rate means that officers are rarely given meaningful discipline for misconduct, the entire accountability system begins to collapse. The formal policy on use of force, no matter how good it is by national standards, will have little meaning and impact on officers on the street if they learn by experience that no discipline will result from violating it.

Review

Review, as we have already discussed, consists of a variety of policies and practices that seek to learn from particular incidents and/or patterns of incidents. An EIS is one form of review: examining an officer’s performance record to identify any pattern of problematic conduct. Another form of review that has emerged in recent years is post-incident review. It involves an administrative review of any critical incident and is entirely separate from the disciplinary review directed toward whether or not an officer violated any department policy or law. An administrative review is designed to determine whether the incident in question raises questions about the department’s policies, training, or supervision that need to be revised in order to prevent serious incidents in the future. In this respect it plays a feedback role, potentially strengthening the policy, training, and supervision aspects of the PTSR framework.

Policy review, finally, involves an examination of patterns and trends in one or more areas of police activity. It might involve a review of use of force incidents, high-speed vehicle pursuits, or other incidents over the course of several years. The purpose is to identify any patterns or trends that suggest needed changes in policies, training, and supervision. At the PERF conference on Justice Department “pattern or practice” litigation, a Los Angeles police commander said that one of the “legacies” of their consent decree experience was the “audit function,” in which they now do random samples of warrant applications, arrests, and other critical police actions. Policy review can and should also involve learning the best practices from around the country (see the Dallas Eight-Point Plan, discussed earlier). Policy review can be conducted by an external citizen oversight agency or by the department itself. The Special Counsel to the Los Angeles Sheriff’s Department has a 30-year record of policy review, with an impressive record of identifying problems related by the use of canines, civil suits against the department, use of force trends, and many other issues.
Basic Themes in the New Police Accountability

Several themes emerge from the examples of the new world of police accountability that we have discussed so far. The remainder of the book will illustrate and explain them in greater detail.

A Focus on Organizational Change

One of the most important themes in the new accountability is the focus on organizations rather than individual officers. Merrick Bobb, for 20 years the Special Counsel to the Los Angeles Sheriff’s Department, observed that the problem of officer-involved shootings was not a matter of a few bad officers but poor management practices. Law professor Barbara Armacost agrees, arguing that police reform needs to focus on “rotten barrels” rather than rotten apples. She notes the depressing cycle of scandal, reform, and subsequent scandal in Los Angeles and concludes that “reform efforts have focused too much on notorious incidents and misbehaving individuals,” and not enough on police organizations that sustain a “police culture that facilitates and rewards violent conduct.” Changing police organizations, rather than changing single policies or prosecuting individual officers, is the focus of “pattern and practice” by the Civil Rights Division of the U.S. Department of Justice.

The focus on organizational change is a significant departure from past reform efforts that focused too much on individual officers who may have used excessive force or made a racially biased arrest. The rotten apple theory persists and motivates many community activists because it has powerful emotional and political appeal. It personalizes misconduct by giving it a human face—the accused officer. Unfortunately, it is simplistic and ineffective. Organizational change, by contrast, involves complex administration procedures (e.g., use of force reporting requirements, early intervention systems) that lack emotional appeal, have no human face, and are often difficult for the ordinary person to immediately understand. The results, moreover, lie in the future rather than in the emotionally charged present.

Changing the organization also involves changing what is referred to as the organizational culture of a police department, or the police subculture. The police culture may be defined as the established ways of doing police work. Debra Livingston argues that the “conclusion drawn by many police scholars” is that “police reform will be most
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effective . . . when reform involves not simply adherence to rules in the face of punitive sanctions, but a change in the organizational values and systems to which both managers and line officers adhere."65 It is a sad commentary on the academic field of police studies that there has been so little research on the organizational culture of policing and individual police departments.

Data Collection and Analysis

The second theme is the central role of data collection and analysis. Policing is an information enterprise from the bottom of the organization to the top. Patrol officers observe and collect information about their beats so that they are able to recognize events that are out of the ordinary and possibly suspicious activity. Top management today cannot effectively run a department with systematic data on officer conduct: arrests, traffic stops, uses of force, and so on. The data also needs to be detailed, including demographic data on the people who are arrested or stopped.66

Changing a police organization requires the systematic collection and analysis of data on officer performance. Critical incident reporting, an effective citizen complaint process, and an early intervention system are the specific tools for this purpose. The larger strategy is to develop a fact-based picture of officer activity for the purpose of identifying recurring problems that merit corrective action. To cite an important example from medicine, the collection of systematic data on deaths in hospitals produced the shocking estimate that at least 40,000 people die each year in American hospitals from preventable accidents—and some experts believe that the figure is actually much higher.67 Chapter Seven discusses how risk management programs can prevent unnecessary deaths or other problems in medicine and policing.

Data collection is particularly relevant to the critical issues of use of force and racial profiling. The power of data to focus reform is described by Merrick Bobb, Special Counsel to the Los Angeles Sheriff’s Department (LASD). He concluded his report on the troubled Century Station by observing that “this chapter began with a discussion about numbers and ended with a discussion about management. This is how it should be.”68

In its investigation of the Seattle Police Department, the Justice Department faulted the department for not collecting demographic data on persons stopped on the street by precinct or district, which limited its ability to address allegations of racial bias. The DOJ report noted that “data collection is just one piece necessary to address policing practices.”69
Systematic data analysis has already pervaded American policing in other areas. One of the most celebrated reforms in policing in the past decade, in fact, is COMPSTAT, a program that collects and analyzes systematic data on patterns of crime and disorder for the purpose of focusing crime reduction efforts. At the same time, systematic data collection embraces the principles of problem-oriented policing (POP), the first cousin of community policing and in many respects a more specific road map for action. The action framework for POP involves the SARA model of scanning, analysis, response, and assessment. Scanning, in this context, means the collection of systematic data; analysis involves the review of that data and the identification of problems that need attention; response is the action a department takes with regard to a problem; and assessment is the follow-up review on the impact of the response. As we already noted with regard to training, however, the data-driven aspect of the new accountability imposes new training burdens on police departments. Few officers are proficient in systematic data analysis, and this subject has never been a part of police academy curricula. To make full use of the potential of data analysis, departments will need to revise training accordingly.

Police Departments as Learning Organizations

The third theme is that police departments need to become learning organizations. Years ago, Bill Geller asked, “Can our police and sheriffs’ departments find ways to work smarter, not just harder?” He answered his own question by arguing that police departments should “institutionalize the organizational learning process, just as our Nation’s best run companies do.” Working smarter involves being proactive regarding current or potential issues and developing data systems that document current operations, help to identify trends, and provide the basis for informed action.

There are many examples of police departments becoming learning organizations. At the outset of this chapter we discussed the Dallas Eight-Point Plan, where the chief planned to identify the best practices in departments around the country. The Collaboration Reform Process in Las Vegas also represented an effort to learn from both Justice Department experts and experts at the cooperating private consulting firm. Charles Ramsey, reform-minded commissioner of the Philadelphia Police Department, launched an anticorruption program saying, “a learning organization is one that has a shared vision and mission, has the means
and the willingness to learn from the experiences of its members, seeks out best practices and makes changes as required."75

A learning organization is also a proactive one. The police have always been reactive, responding in a crisis management manner to officer-involved shootings and excessive force incidents. The sheriff in Las Vegas explains that “we don’t do a good enough job of being proactive and analyzing data on situations prior to them becoming an issue."76 Proactive response to types of incidents that have the potential to provoke community crises, utilizing data-driven analyses, is the hallmark of the new police accountability.

In the development of accountability-related policies and procedures, police departments have learned from other agencies on a number of important issues. In effect, almost all departments learned from the pioneering 1972 NYPD deadly force policy. In the 1990s, many departments developed early intervention systems by adapting some or most of the systems in the Los Angeles Sheriff’s Department and the Miami-Dade Police Department. At the beginning of this chapter we described how the chief of police in Dallas, Texas, plans to examine and learn from the best practices in other departments.

There has also been an important process of cross-fertilization among different critical incident policies. The Justice Department investigation of the handling of mentally ill persons by the Portland, Oregon, police is an instructive case in point. The problems it identified involved use of force policies and the inappropriate use of conducted energy devices (CEDs) in particular. Thus, the initial issue of response to people with mental health problems directly implicates two other important issues and requires the department to develop state-of-the-art policies and practices for each one.77

From Punishment to Behavior Change

A relatively new theme in police accountability has been the recognition that the response to officer misconduct needs to shift from discipline to behavior change. As many observers pointed out, police departments were historically “punishment-centered,” emphasizing meting out discipline for any rule violation. Mere punishment, a reprimand or suspension, for example, does not necessarily result in better conduct by the officer. A deterrent effect is assumed to occur, but there are good reasons for thinking it only creates resentment and serves to reinforce negative
attitudes on the part of the officer. Darrel Stephens, the respected former police chief in Charlotte, North Carolina, and former head of PERF, points out that “alternative courses of action that would lead to behavioral change are seldom part of the sanctions imposed on officers who have had sustained misconduct charges.”

Early intervention systems are based on the principle of changing officer behavior by identifying problematic performance early and then intervening to provide some nondisciplinary corrective action. The Los Angeles Sheriff’s Department, meanwhile, has developed an education-based discipline program designed to improve officer conduct rather than just mete out discipline.

The Role of Federal Pattern or Practice Investigations

Considerable controversy surrounds federal “pattern or practice” investigations of state and local law enforcement agencies, and the consent decrees, memoranda of understanding, and investigative findings letters that have compelled departments to undertake sweeping reforms. Police chiefs and local elected officials have strenuously objected that their departments have been unfairly singled out, that there are no clear standards governing which departments will be investigated, that the costs of implementing the required reforms are too costly, and that the entire process unnecessarily polarizes the community. Civil rights activists, who in many cases requested the Justice Department to act, respond that federal intervention is the only way to achieve genuine reform in police departments that have been indifferent to long-standing complaints about excessive force and discrimination.

There is no question that federal consent decrees and memoranda of understanding are expensive. The court-appointed monitor for Seattle cost nearly $1 million for its first year (2012–13). There is also no question that federal investigations generate much conflict. The mayor of Seattle fought very hard to resist a settlement with the Justice Department. The mayor of New Orleans tried in early 2013 to withdraw from a consent decree that he had previously signed. (The federal judge rejected the city’s petition for withdrawal.)

Law professor Rachel A. Harmon is moderately skeptical about federal intervention from a very different perspective. Given the very limited resources of the Special Litigation Section, the Justice Department would only be able to investigate a very limited number of police departments.
even if its current (as of 2013) resources were doubled or quadrupled. Harmon argues that all federal remedies are severely limited (e.g., the exclusionary rule, prosecuting police officers for criminal offenses) and argues for exploring alternative remedies for ending civil rights abuses by local police departments.

The evidence, however, indicates that federal intervention has led to significant improvements in troubled police departments. Particularly important is the testimony of police executives who have experienced consent decrees or memorandums of agreement (MOAs). Charles Ramsey, who invited the DOJ to investigate the Washington, D.C., police department, later told a PERF conference on de-escalation that “the DOJ assistance made a huge difference... I don’t think we could have made the changes that we made without” their involvement. In the end, the department “was a far better department than it was” beforehand. A Los Angeles Police Department assistant chief told the conference that the experience “was costly but improved the department.” At a subsequent conference specifically on federal pattern or practice litigation, Ramsey and officials from other departments reiterated these points. Two commented that the reforms had saved them large sums of money because of reduced lawsuits and damage awards.

The contributions of the federal pattern or practice effort reach beyond the results in particular cases. In the consent decrees and MOAs, the Justice Department has defined a clear set of “best practices” for all law enforcement agencies. The three key elements of these settlements include state-of-the-art use of force policies, an early intervention system, and an open and accessible citizen complaint process. (Variations on other issues exist for particular police departments.) As police experts have long noted, there are no formal national standards for police departments in the United States. (See Chapter Two for a discussion of the CALEA accreditation standards.) In an unofficial but nonetheless forceful way, the content of the consent decrees and MOAs have begun to fill that void.

An additional comment on the content of the consent decrees and MOAs is important at this point. The various provisions were not invented by Justice Department lawyers in Washington. State-of-the-art use of force policies and early intervention systems developed within the law enforcement profession over many years, and reflected the best thinking within the profession. The Justice Department simply took the best policies on a few key issues and included them in consent decrees and MOAs.
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The Challenge Ahead

The new police accountability is an exciting development that holds great promise for the future. We should not, however, ignore the challenges that lie ahead. It would be easy to overestimate the significance or the long-term prospects of these promising efforts. After all, the cycle of reform and failure has been repeated many times in the history of the American police, and the challenge of sustaining reforms is enormous. But there are also grounds for optimism. One of the central arguments of this book is that what is particularly new about the new police accountability is a more sophisticated understanding of the nature of the problem and a new set of tools and strategies to deal with it.

Candor requires that we emphasize the promise of the new accountability, as distinct from an achieved reality. By the prevailing standards of social science research there is only limited evidence that the tools and strategies described in this book in fact achieve their intended goals.

Even more disturbing, the evidence used in this book to argue for the new police accountability also includes many examples in which the new tools and strategies have not been properly implemented or have been allowed to fall into disrepair through administrative neglect. This evidence represents a substantial red flag about the prospects for meaningful and lasting reform. Will the new police accountability succeed? We cannot say at this point. It is too early in this national effort to draw any definitive conclusions about success or failure. What this book does do, however, is map the landscape: to describe the new accountability mechanisms, explain in detail how they are intended to work, and carefully weigh the available evidence on successes and failures. Some years down the road, we will be able to say whether the effort succeeded, and if the book did identify the conditions of success, and if it did not at least help to tell us where we went wrong. In the meantime, more research is needed on which accountability mechanisms work and which ones work best.

Wesley Skogan cautions us about being overly optimistic about police reform. There is a long history of reforms that have failed. In a provocative article he outlines the various reasons “Why Reform Fails.” They include resistance by police managers who feel threatened by change, resistance by sergeants who also feel threatened by change to their established ways of working, resistance by rank and file officers, resistance by special units, resistance by police unions, competing demands and expectations, the inability to “measure what matters,” a failure of interagency
cooperation (where applicable), public unresponsiveness, and leadership changes. These are formidable obstacles, and they have doomed many important reforms over the decades.88 To the traditional list we can add the impact of the national financial crisis, which has constrained the budgets of all government agencies, and for the police has resulted in loss of police officers, delays in hiring new officers, cuts in specific programs such as training, and in general has forced police managers to focus on immediate needs rather than planning and innovation.89

One of the more notable examples of the failure of accountability-related reforms would be the reforms developed by New York City Police Commissioner Patrick V. Murphy in the early 1970s. In the wake of the highly publicized corruption scandal investigated by the Knapp Commission (and generally associated with the name of officer Frank Serpico), Murphy decentralized corruption control in Field Investigative Units.90 These units were designed to be closer to streets where the problems existed than the old centralized unit, and therefore presumably more effective. Yet, as subsequent scandals and the 1994 Mollen Commission report revealed, these reforms had completely collapsed and blatant corruption flourished. Even worse, the Mollen Commission found a new and even more insidious form of corruption within the NYPD, a combination of brutality and graft.91

Many cynics believe that the American police are incapable of reforming themselves and that the police subculture is resistant to all efforts to achieve accountability. Regrettably, a review of police history lends an uncomfortable amount of support to this very pessimistic view. This book argues, to the contrary, that self-sustaining commitment to accountability is indeed possible and has in fact already made some important gains. A number of law enforcement agencies across the country have made a significant commitment to accountability, and in several important respects there are efforts to build upon and strengthen critical incident policies and internal review of patterns and trends in police operations that affect the lives, liberties, and safety of the American people. The remainder of this book describes the important developments in police accountability.

Notes
1 Dallas Police Department, New Policies and Strategic Directives (August 2012).
2 James K. Stewart et al., Collaborative Reform Process: A Review of Officer Involved-Shootings in the Las Vegas Metropolitan Police Department
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3 Ibid., 6–8.


6 The background to the report is discussed in Stewart et al., Collaborative Reform Process, 9–10.


8 Public Management Resources, Monitor’s Sixteenth Report (2007), 4. But see the reservations expressed by this author about whether the reforms endured after the consent decree was lifted. Samuel Walker, “Institutionalizing Police Accountability Reforms,” Saint Louis University Public Law Review 32 (no. 1, 2012), 64.


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22 The term legitimacy is increasingly used to encompass the related issues of police compliance with the law and citizen perceptions of the police. See Wesley G. Skogan and Kathleen Frydl, eds., Fairness and Effectiveness in Policing: The Evidence (Washington, DC: National Academy Press, 2004), chap. 8, 291–326.


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40 Walker, Police Accountability, chap. 1.
42 The Madison, Wisconsin, Police Department has a policy on its process for analyzing critical incidents. The definition of critical incidents is not as specific as the one offered in this book, but the Outline for Critical Incident Analysis Review is a very useful starting point. Madison Police Department, Policy 8–100, Critical Incident Analysis.
43 Geller, “Suppose We Were Really Serious About Police Departments Becoming ‘Learning Organizations.’?”
45 Mazerolle et al., Legitimacy in Policing: A Systematic Review.
49 Stewart et al., Collaborative Reform Process: A Review of Officer-Involved Shootings in the Las Vegas Metropolitan Police Department.
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50  David A. Klinger, “Police Training as an Instrument of Accountability,”  

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Approach to De-Escalation and Minimizing Use of Force, 9.

52  Chief Jerry Dyer, Fresno, California, quoted in Police Executive Research  

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Front-Line Supervisors (Washington, DC: Department of Justice, 2006).

58  Samuel Walker, Sense and Nonsense About Crime, Drugs, and Community,  

59  James J. Fyfe, “Administrative Interventions on Police Shooting  
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60  The reports of the Special Counsel for the Los Angeles Sheriff’s  
Department are available at http://www.parc.info.

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Police Executive Research Center, 2002), 16. The reports of the Special  
Counsel are available at http://www.parc.info. Merrick Bobb, Special  
Counsel, 9th Semiannual Report (Los Angeles: Police Assessment Research  

62  Barbara Armacost, “Organizational Culture and Police Misconduct,”  

63  Ibid., 455.

64  Walker and Macdonald, “An Alternative Remedy for Police Misconduct.”

65  Debra Livingston, “Police Reform and the Department of Justice: An  

66  See, however, the provocative but skeptical discussion of the develop-  
ment and use of official police data in James F. Gilsinan, “The Numbers  
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67  National Institute of Medicine, To Err Is Human (Washington, DC:  
National Academy Press, 1999).
68 Merrick J. Bobb, Special Counsel, *15th Semiannual Report*, 34.
74 Geller, “Suppose We Were Really Serious About Police Departments Becoming ‘Learning Organizations’?”
75 Philadelphia Police Department, *Preventing Corruption Within Our Ranks: Creating a Values-Driven Organization* (Philadelphia: Philadelphia Police Department, 2010).