

Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume V: The Los Angeles Report

May 1999

A Report of the United States Commission on Civil Rights

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Dear Sirs:

In September 1996, the U.S. Commission on Civil Rights returned to Los Angeles in order to examine the resurgence of racial and ethnic tensions within and between local law enforcement and the communities it serves. Having conducted a hearing in Los Angeles in 1993, the Commission felt compelled to return to the city in light of two events that shook the Los Angeles area and critically tested the already strained relationship between the city's minority communities and law enforcement.

The first event involved Detective Mark Fuhrman of the Los Angeles Police Department (LAPD) and the murder trial of O.J. Simpson. During the trial, the public heard the tape-recorded interviews of Detective Fuhrman describing discriminatory, abusive and illegal acts that he and other LAPD officers committed. This disclosure reopened wounds in the community and confirmed for many residents their experiences with police misconduct and brutality. The disclosure of the tapes led to both internal and external investigations into the alleged incidents of excessive force and evidence tampering.

The second incident occurred on April 1, 1996, when two sheriff's deputies from the Riverside County Sheriff's Department were captured on videotape beating two suspected undocumented immigrants. An audiotape from this incident indicates that the beating followed the Mexican nationals' failure to respond to the deputies' commands in English to get out of the truck and raise their hands. This event revived serious questions about the use of excessive force, law enforcement's relationship with Los Angeles' immigrant communities, and the interaction between local law enforcement and the Immigration and Naturalization Service and the Border Patrol.

Both the Fuhrman tapes and the Riverside incident, as well as the lingering controversy surrounding the Rodney King beating, prompted the Commission to conduct a second hearing in Los Angeles as part of its multiyear study of *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. During the hearing, several key areas were explored by the Commission as part of its ongoing effort to identify and analyze issues that may have a contributory or causal effect on racial and ethnic tensions in our Nation. In particular, the Commission focused on the extent to which the LAPD and the Los Angeles County Sheriff's Department (LASD) have been able to address the previously-noted problems within their departments and the steps they have taken to better serve their jurisdiction's diverse population.

The Commission's report finds that Los Angeles has received more immigrants than any other city in the United States during the past several decades. As a result, Los Angeles has become a city of immigrants: roughly 1 in 10 Los Angeles County residents immigrated to the United States after 1985, and roughly 17 percent arrived after 1980. In response to these changing demographics, the Commission recommends that the LAPD and the LASD continue to emphasize and improve programs that affect the relationship between law enforcement and minority and immigrant communities, as well as racial and ethnic tensions generally, in

Los Angeles. Among others, these include programs concerning community policing, cultural awareness, language training for department personnel, translator services, bilingual recruiting and incentive pay, and the ready availability of complaint and commendation forms in a reasonable number of the more prominent non-English languages spoken in the Los Angeles area.

Although the LAPD has begun to implement some reforms, negative perceptions remain and incidents of the department's application of excessive force towards people of color continue to occur in Los Angeles. As a result, lingering racial and ethnic tensions between minorities and law enforcement authorities remain. The Commission recommends additional training for LAPD officers in conflict resolution and mediation.

Gender bias has been, and continues to be, a significant problem within the LAPD as it is in other law enforcement agencies. Commissions, task forces, consultants, and police leadership have acknowledged problems of gender bias within the LAPD. Internal LAPD studies reveal that significant numbers of women within the department feel that sex discrimination and harassment are major problems facing the LAPD. Given the clearly recognized problem of gender bias within the department, the Commission recommends that the LAPD take firm and decisive action to eradicate the gender bias that exists within the department. To that end, the LAPD must ensure fairness and equity in hiring, discipline, promotions and training. The LAPD must also foster an environment that is inclusive and open to those of varying racial and ethnic backgrounds.

The report contains numerous other findings and recommendations to assist the LAPD and LASD in improving relations within and between local law enforcement and the community. The Commission calls upon Congress to allocate adequate resources to fund the Department of Justice's mandate to collect and publish statistics and information regarding excessive force by law enforcement officers. Congress is also requested to approve the allocation of specific resources to fund investigations into systemic police misconduct. The Commission believes that the implementation of this report's recommendations will enable both local and federal law enforcement agencies to meet the dire needs of America's communities.

Respectfully,
For the Commissioners,



Mary Frances Berry
Chairperson

Acknowledgments

The hearing was organized and the report written under the supervision of General Counsel Stephanie Y. Moore. Prehearing research, investigation, and planning were conducted by project team leader Erik Brown and attorney advisors M. Conner Ball,* Marlissa Briggett,* Sicilia Chinn, and Deborah Reid and social scientist Eileen E. Rudert. Assistance in hearing preparation was also provided by Deputy General Counsel Edward A. Hailes, Jr., and attorney advisor Lillian Moyano Yob.* The report was drafted by project team leader Erik Brown and attorney advisors M. Conner Ball, Marlissa Briggett, Sicilia Chinn, and Deborah Reid. Legal sufficiency review was conducted by attorney advisors Lynn Dickinson, Peter Reilly, and Miguel Sapp.* Editorial policy review was performed by John Dulles, Farella Robinson, and Fernando A. Serpa. The report was prepared for publication by Dawn Sweet under the supervision of Carol-Lee Hurley.

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Chapter 1

Introduction

Section I: Overview

Local Law Enforcement and Minority Communities

The highly publicized beating of Rodney King by Los Angeles Police Department (LAPD) officers in March 1991 and the riots in Los Angeles following the acquittal of the officers graphically demonstrated the increasingly wide gulf and growing antagonism between law enforcement agencies and minority communities in the Los Angeles area. In response to the Rodney King beating, an independent commission headed by Warren Christopher was formed to "examine any aspect of the law enforcement structure in Los Angeles that might cause or contribute to the problem of excessive force."¹ A similar commission led by special counsel James Kolts was appointed to conduct a review of the Los Angeles Sheriff's Department (LASD) in the wake of a number of shootings of minorities by LASD deputies. The Kolts Commission was directed to examine "the policies, practices, and procedures of the Sheriff's Department, including recruitment, training, job performance and evaluation, record keeping and management practices, as they relate to allegations of excessive force, the community sensitivity of deputies and the Department's citizen complaint procedure."²

The Christopher Commission report on the LAPD found serious deficiencies in the department, including a significant number of officers who repetitively misuse force, inadequate supervisory and management attention to the misuse of force, racism and bias within the department, an organizational culture that emphasizes crime control over crime prevention, deficient handling

of citizen complaints, and a lack of accountability on the part of the chief.³ The commission made numerous recommendations for improvement in the areas of recruitment, training, monitoring, discipline, and complaint processing. Like the Christopher Commission, the Kolts Commission discovered a department with too many officers who resorted to the use of excessive force, an inadequate disciplinary system, deficient supervision, and inattention to the needs and desires of the community.⁴ The commission recommended reforms in citizen complaint processing, improvements in the disciplinary system, implementation of an early warning system to monitor use of force, increased recruitment to diversify the force, and modifications in the canine policy.

The U.S. Commission on Civil Rights held a hearing in Los Angeles in June 1993 as part of a series of hearings in the project *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. In addition to issues of economic opportunity and discrimination in the media, the Commission examined efforts to eliminate use of excessive force by the LAPD and the LASD. During the hearing, the Commission heard from representatives of the LAPD and the LASD regarding their implementation of the recommendations of the Christopher and Kolts Commission reports. Many witnesses testified that some progress had been made. Much had not been accomplished, however, due to the lack of financial and staffing resources and the need for additional time to evaluate the effectiveness of some recommendations.

Since this Commission's 1993 hearing, public reports indicated that reform efforts were proceeding at the LAPD, particularly in the areas of reduced excessive force complaints, increased diversity in hiring, and implementation of community policing programs; but reforms in signifi-

¹ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. ii (hereafter cited as *Christopher Commission Report*).

² James G. Kolts & Staff, *The Los Angeles County Sheriff's Department: A Report by Special Counsel James G. Kolts & Staff* (Los Angeles, 1992), p. 1 (hereafter cited as *Kolts Commission Report*).

³ *Christopher Commission Report*, p. vii-xxiii.

⁴ *Kolts Commission Report*, p. 4.

cant areas still had not been executed. As of spring 1996, the department had yet to install a sophisticated computerized tracking system for problem officers; excessive force continued to be punished too leniently; and, the amount of civil judgments against the city had not been reduced.⁵ The LASD has generally received better marks for its reform efforts, including a significant reduction in civil judgment awards and complaints of excessive force, and its implementation of a computer monitoring system. As of March 1996, the LASD, however, had made little progress in increasing diversity among its ranks, and women and minorities remained severely underrepresented.⁶

In the midst of these reform efforts, two events shook the Los Angeles area and critically tested the already strained relationship between the city's minority communities and law enforcement. The first involved Detective Mark Fuhrman and the murder trial of O.J. Simpson. During the trial, the defense introduced into evidence tape-recorded interviews of Detective Fuhrman by an aspiring screenwriter. On these tapes, Detective Fuhrman related alleged accounts of discriminatory, abusive, and illegal conduct by himself and other officers of the LAPD. Detective Fuhrman made derogatory comments about minorities and women, and alleged that he and/or other officers routinely singled out African Americans for arrest, planted evidence to convict innocent persons, lied in court to win convictions, and/or used excessive force against suspects.⁷

The Fuhrman tapes reopened wounds in the community, raised new questions about the extent of police brutality in the LAPD, and confirmed for many minority residents of Los Angeles their experiences with police misconduct and brutality. Disclosure of the tapes led to heightened tensions and the threat of civil disobedience. Numerous calls were made for efforts to uncover and end racism and sexism in the department.⁸ The tapes prompted, both internal

and external investigations into the alleged incidents of excessive force and evidence tampering.

The second incident occurred on April 1, 1996, when two sheriff's deputies from the Riverside County Sheriff's Department were captured on videotape beating two suspected undocumented immigrants. The beating followed a high speed chase after a truck fled from a checkpoint at the border. The videotape shows the deputies beating a man and a woman after other occupants ran from the truck. An audiotape indicates that the beating followed the Mexican nationals' failure to respond to the deputies commands in English to get out of the truck and raise their hands. The audiotape also reveals that one of the law enforcement officers remarked, "bunch of wetbacks, huh?"⁹

Tensions in Los Angeles flared once again after the Riverside incident. It revived serious questions about the use of excessive force, law enforcement's relationship with Los Angeles' immigrant communities, and the interaction between local law enforcement and the Immigration and Naturalization Service (INS) and the Border Patrol. The incident had come on the heels of increased complaints of law enforcement's treatment of Latino and other immigrant groups. In October 1995, for example, a group from Los Angeles County's Mexican American Bar Association traveled to the Department of Justice (DOJ) headquarters to protest the deaths of 15 Latinos since 1987, each of which involved Los Angeles area police and sheriffs.¹⁰ The DOJ had been alerted previously to allegations of police misconduct and use of excessive force involving the Riverside Sheriff's Department.¹¹ The incident also coincided with the deaths of several suspected undocumented immigrants in vehicle accidents following pursuit by the Border Patrol, and intensified the debate over immigra-

⁵ Jim Newton, "LAPD Reforms Fall Far Short, Study Charges," *Los Angeles Times*, May 31, 1996, p. A-1.

⁶ Jim Newton, "Success of Reforms Varies at LAPD, Sheriff's Department," *Los Angeles Times*, Mar. 10, 1996, p. A-1.

⁷ Fox Butterfield, "Behind the Badge: A Special Report," *New York Times*, Mar. 2, 1996, p. A-1.

⁸ Hugo Martin, "Panel Proposed to Help LAPD Identify Racist Recruits," *Los Angeles Times*, Nov. 9, 1995, p. B-10;

Bill Boyarsky, "The O.J. Simpson Murder Trial: Warnings of Unrest Bring Angry Reaction," *Los Angeles Times*, Sept. 13, 1995, p. A-20; Frank del Olmo, "A Postscript, (No) Thanks to Fuhrman," *Los Angeles Times*, Sept. 4, 1995, p. B-5.

⁹ Jim Newton, "Audiotape of Beating Sparks New Inquiry," *Los Angeles Times*, Apr. 10, 1996, p. A-3.

¹⁰ Pierre Thomas, "Police Brutality: An Issue Rekindled," *The Washington Post*, Dec. 6, 1995, p. A-1.

¹¹ Abigail Goldman, Eric Malnic, and Henry Weinstein, "Beatings Spur U.S. Investigation and a National Debate," *Los Angeles Times*, Apr. 3, 1996, p. A-1.

tion and border control.¹² Thus, Latino leaders, civil rights groups, and Mexican authorities expressed outrage. Heated exchanges occurred between supporters of the deputies and those protesting the beating, and racial overtones clouded the events, with reported comments such as “these wetbacks got what they deserved.”¹³

Both the Furhman tapes and the Riverside incident, as well as the controversy surrounding the Rodney King beating, emphasize the need to review the reform efforts of the LAPD and LASD and each department’s efforts to improve its relationship with the varied racial and ethnic communities in Los Angeles. Complicating the tasks of both departments is the increasingly diverse demographic makeup of Los Angeles.

The Changing Demographics of the Los Angeles Region

California has been a trendsetter for the Nation in a variety of ways for the past three decades. Los Angeles’ rapid and profound ethnic transformation is one of the more significant examples of this phenomenon. As the editors of *Ethnic Los Angeles* have observed, “nowhere can one detect the shape of emerging America better than in L.A., where newcomers to the United States have transformed the country’s second largest metropolis...and have set the region on a new course sure to be followed by other urban areas.”¹⁴ The LAPD and LASD face a significant challenge in learning to serve and communicate adequately with the growing ethnic minority communities in Los Angeles.

Los Angeles’ Mexican population precedes the Anglo presence. Founded in 1781 as a Mexican pueblo, Los Angeles was populated by persons of Indian, Spanish, and African ancestry and others until the United States took possession of the

present-day Southwest in 1848. Although the Treaty of Guadalupe Hidalgo guaranteed the rights of Mexicans in the ceded territory, Mexicans rapidly lost their property interests and slipped into a segregated and scorned working class as Anglos outnumbered them and economically and politically dominated the area.¹⁵

From this period through most of its modern existence, Los Angeles attracted newcomers who were mainly white and native born. In 1920, near the end of a great immigration wave, only 17 percent of Angelenos were foreign born, compared with 35 percent of the population of New York. Despite its proximity to Mexico and the ebb and flow of Mexican migration between 1920 and 1965, immigrant Los Angeles remained relatively inconspicuous. More important during these years was the large-scale arrival of African Americans, attracted by the region’s then relatively hospitable race relations climate and its burgeoning economy.¹⁶

Then, things began to change. Driven by internal migration to southern California and especially by heavy immigration, the population of the Los Angeles region¹⁷ increased 87 percent from approximately 7,752,000 in 1960 to 14,531,000 in 1990. The population of Los Angeles County increased 47 percent during this period from approximately 6,039,000 to 8,863,000¹⁸ and reached 9,054,000 by 1994.¹⁹ The population of the city of Los Angeles increased 17.6 percent

¹² Tony Perry, Josh Meyer, and Henry Weinstein, “7 Die as Truck Evading Border Agents Crashes,” *Los Angeles Times*, Apr. 7, 1996, p. A-1; Tony Perry, “2 Killed as Van, Border Patrol Vehicle Collide,” *Los Angeles Times*, Apr. 27, 1996, p. A-1.

¹³ “L.A. Chooses Sides: Cops vs. Aliens,” *U.S. News & World Report*, Apr. 15, 1996, p. 10; Tom Gorman, “Don’t Condemn, Gates Tells Rally for Deputies,” *Los Angeles Times*, Apr. 16, 1996, p. A-1.

¹⁴ Roger Waldinger and Mehdi Bozorgmehr, “The Making of a Multicultural Metropolis,” in *Ethnic Los Angeles*, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 4 (hereafter cited as Waldinger and Bozorgmehr, “Multicultural Metropolis”).

¹⁵ Vilma Ortiz, “The Mexican-Origin Population: Permanent Working Class or Emerging Middle Class?” in *Ethnic Los Angeles*, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 250.

¹⁶ Waldinger and Bozorgmehr, “Multicultural Metropolis,” p. 8.

¹⁷ The Los Angeles region consists of Los Angeles County, Ventura County, Orange County, and parts of San Bernardino and Riverside Counties. This area makes up the Census Bureau’s Los Angeles Consolidated Metropolitan Statistical Area (CMSA). *Ibid.*, pp. 5 & n.2, 6.

¹⁸ Georges Sabagh and Mehdi Bozorgmehr, “Population Change: Immigration and Ethnic Transformation,” in *Ethnic Los Angeles*, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 82, Table 3.1 “Growth of Los Angeles and Other Major Metropolitan Areas, 1960–1990” (citing data from the U.S. Bureau of the Census) (hereafter cited as Sabagh and Bozorgmehr, “Immigration and Ethnic Transformation”). The Los Angeles Primary Metropolitan Statistical Area (PMSA) consists of Los Angeles County. *Ibid.*

¹⁹ U.S. Bureau of the Census, *USA Counties 1994: Los Angeles: General Profile* <<http://www.census.gov/statab/USA96/06/037.txt>>.

from 1980 to 1992, from approximately 2,969,000 to 3,490,000 according to U.S. Census Bureau data.²⁰ The Los Angeles region has continued to grow, although at a slower 5.5 percent rate of increase, reaching 15.3 million in 1994.²¹ Moreover, the official population projections prepared by the California Department of Finance estimate that the population of the Los Angeles region will increase to nearly 24 million in the year 2020, surpassing New York as the Nation's largest metropolitan region.²²

The contribution of immigration to Los Angeles' dramatic growth is made clear by the significant increase in the proportion of foreign-born residents in the Los Angeles region from 8 percent in 1960 to 27 percent in 1990, adding 3.3 million immigrants in the process. Between 1970 and 1990 the percentage of foreign-born residents in Los Angeles County increased from 11 percent to approximately 33 percent, or 2,895,000 people.²³ In the city of Los Angeles 38.4 percent of the population in 1992 was foreign born.²⁴ For the United States as a whole, 8.7 percent of the population in 1994 was foreign born. From a high of 14.7 percent in 1910, the proportion of foreign born in the United States declined to a low of 4.8 percent in 1970, from which it has steadily increased. California and Los Angeles have absorbed a significant share of immigrants to the United States. California is home to 7.7 million foreign-born persons—more than one-third of all immigrants to the United States and nearly one-quarter of all California residents.²⁵

²⁰ U.S. Bureau of the Census, Table 3, *Cities With 200,000 or More Population Ranked* <<http://www.census.gov/statab/cdb/cdb301.txt> & [cdb302.txt](http://www.census.gov/statab/cdb/cdb302.txt)>, "Population Growth Rate 1980–1992."

²¹ Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," p. 83 (citing U.S. Bureau of the Census, *Estimates of the Resident Population of States and Counties and Percent Change 4/1/90 to 7/94* (Press release CB94–204, issued 1/18/95)).

²² Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," pp. 83, 102.

²³ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 14; 1990 U.S. Census Data: Database C90STF3A, *Los Angeles County* <<http://venus.census.gov/cdrom/lookup/854921846>>, Table, "Place of Birth" (hereafter cited as 1990 U.S. Census Data, *Los Angeles County*).

²⁴ Scott Minerbrook and Jim Impoco, "A Trial of Two Cities," *U.S. News & World Report*, May 29, 1995, p. 29 (hereafter cited as Minerbrook and Impoco, "Two Cities").

²⁵ U.S. Bureau of the Census, *The Foreign-Born Population: 1994* <http://www.census.gov/po...foreign/foreign_rpt.html>

Recent data on metropolitan areas preferred by immigrants as their intended place of residence indicate that Los Angeles continues to be a magnet for immigrants in the 1990s. Of the nearly 1 million immigrants admitted to the United States in fiscal year 1992, 130,000 identified Los Angeles as their intended place of residence, and another 60,000 selected the California counties of Orange, Ventura, Riverside, and San Bernadino.²⁶ Los Angeles also attracts a large number of undocumented immigrants, "probably more than any other place in the United States," due in substantial part to its proximity to the Mexican border.²⁷ The Los Angeles region accounted for one-third of all the estimated undocumented immigrants in the United States during the 1980 census.²⁸ In 1990, of the 1.8 million who applied for permanent resident status under the Immigration Reform and Control Act of 1986²⁹ (IRCA), 35 percent resided in Los Angeles County. In the Los Angeles region as a whole there were over 750,000 applicants for legalization.³⁰ Despite the large number of amnesty applications, which temporarily reduced the number of undocumented immigrants living in Los Angeles, the undocumented population continued to grow in the late 1980s and early 1990s.³¹ As of January 1992, it was estimated that there were as many as 1.5 million

(summary of report P20–486 available from the Census Bureau's Population Division). After California's 7.7 million foreign-born residents, New York ranks second with 2.9 million and Florida third with 2.1 million. Three other States have over 1 million foreign-born residents: Texas, Illinois, and New Jersey. *Ibid.*

²⁶ Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," pp. 86, 105 n.16 (citing U.S. Immigration and Naturalization Service, *1992 Statistical Yearbook* (Washington, DC: Government Printing Office, 1993), p. 64). These figures include both adjustments to permanent residence and admissions in fiscal year 1992.

²⁷ *Ibid.*, p. 86.

²⁸ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 14.

²⁹ Pub. L. No. 99–603, 100 Stat. 3359 (codified in scattered sections of 7, 8, 20, 29, & 42 U.S.C.).

³⁰ Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," p. 86 (citing U.S. Immigration and Naturalization Service, *1990 Statistical Yearbook* (Washington, DC: Government Printing Office, 1991), p. 95).

³¹ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 14.

people who either received amnesty or were still unauthorized residents in Los Angeles.³²

This new wave of massive legal immigration to the United States began with passage of the Hart-Cellar Act³³ in 1965. The 1965 reform significantly altered the immigration system with a few bold strokes. First, it abolished the old country-of-origin quotas, which allotted a small number of admissions to southern and eastern Europe and still smaller quotas to Asia and Third World countries in general. Second, it established two primary criteria for admission to the United States: family ties to citizens or permanent residents or possession of scarce and needed skills. Third, it increased the total numbers of immigrants to be admitted to the United States. Proponents of the Hart-Cellar Act reforms intended for the act to keep immigration to modest proportions. They also calculated that the principal beneficiaries would be southern and eastern Europeans, groups that had been the principal targets of the nativist legislation of the 1920s. But for various reasons, the numbers of immigrants quickly spiraled; 7.3 million immigrants arrived in the United States during the 1980s, an influx second only to the peak of 8.8 million newcomers who arrived between 1900 and 1910. The main beneficiaries of the act proved to be a second, unexpected twist, as newcomers who took advantage of the liberalized system primarily came from Asia, Latin America, and the Caribbean.³⁴

³² Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," p. 86 (citing Manuel Moreno et. al, *Impact of Undocumented Persons and Other Immigrants on Costs, Revenues and Services in Los Angeles County* (Unpublished Report, Los Angeles County Urban Research Section, 1992), p. 25)). Estimates of the number of undocumented immigrants in the U.S. have varied widely, ranging from 2 to 12 million. Demographers have recently, however, devised a methodology for "counting the uncountable," which has produced estimates on which most immigration researchers can agree. This methodology estimates an undocumented population of 2 to 4 million in the U.S. as of 1980, of whom over half had come from Mexico. Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 11 (citing Robert Warren and Jeffrey Passel, "A Count of the Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census," *Demography*, vol. 24 (1987), pp. 375-93).

³³ Immigration and Nationality Act Amendments of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.).

³⁴ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 9. See generally, David Reimers, *Still the Golden Door: The*

Plainly, Los Angeles has always been a migrant town. But in a very short period, it has changed from a magnet for internal migrants to one for international migrants. Angelenos of Mexican birth constitute the longest-established of the region's immigrant groups. But even among the Mexican born, half came to the United States between 1980 and 1990. Other newcomer groups are equally, if not more heavily tilted toward the recently arrived; 53 percent of the region's Middle Easterners, 59 percent of its Asians, and 70 percent of its Central Americans moved to the U.S. during the 1980s.³⁵ Los Angeles received more immigrants than any other city in the United States during the past several decades. As a result, Los Angeles has become a city of immigrants: roughly 1 in 10 Los Angeles County residents immigrated to the United States after 1985, and roughly 17 percent arrived after 1980.³⁶ Notwithstanding improved methodology for "counting the uncountable,"³⁷ even these figures may underestimate the total immigrant population in Los Angeles, because immigration statistics, as well as census counts of the population, cannot estimate the undocumented immigrant population as accurately as they can the documented newcomers.

Heavy immigration from the Third World, especially Latin America and Asia, during the 1970s and 1980s has also significantly changed the racial and ethnic composition of Los Angeles. Los Angeles now has more people of Mexican, Central American, Asian, and Middle Eastern origin than any other metropolitan area in the United States.³⁸ Demographically speaking, this influx has led some to refer to Los Angeles as the "capital of the Third World."³⁹ Actually, 1990 census data show that neither the city of Los

Third World Comes to America (New York: Columbia University Press, 1985).

³⁵ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 22.

³⁶ 1990 U.S. Census Data, *Los Angeles County*, Table "Year of Entry."

³⁷ Waldinger and Bozorgmehr, "Multicultural Metropolis," p. 11 (citing Robert Warren and Jeffrey Passel, "A Count of the Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census," *Demography*, vol. 24 (1987), pp. 375-93).

³⁸ Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," p. 86.

³⁹ David Rieff, *Los Angeles: Capital of the Third World* (New York: Simon and Schuster, 1991).

Angeles, Los Angeles County, nor the Greater Los Angeles region now have any ethnic majority, although Hispanics seem likely to hit the 50 percent mark within the foreseeable future.⁴⁰ In the city, approximately 39.9 percent of the population is of Hispanic origin. As for the non-Hispanic population, 37.3 percent of the city's residents are white, 13 percent black, 9.2 percent Asian, 0.3 percent American Indian, and 0.3 percent "other race."⁴¹ In Los Angeles County,

⁴⁰ The U.S. Bureau of the Census uses the term Hispanic to describe those who classified themselves as "Mexican," "Puerto Rican" or "Cuban" on the census questionnaire, as well as those who indicated that they were of "other Spanish/Hispanic" origin. These are "those whose origins are from Spain, the Spanish-speaking countries of Central America or South America, or the Dominican Republic, or . . . persons identifying themselves generally as Spanish, Spanish-American, Hispanic, Hispano, Latino, and so on." U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: General Population Characteristics, California* (1990 CP-1-6) (Washington, DC: Government Printing Office, 1992), Appendix B, Definitions of Subject Characteristics, p. B-7. In California, however, Latino is preferred and "the word *Hispanic* has been barred from the Los Angeles *Times*, in keeping with the strong feelings of people in that community." Earl Shorris, *Latinos: A Biography of the People* (Avon Books: New York, 1992), pp. xvi-xvii (italicization in original). In part, this might be because Latino/Latina is Spanish and has gender, whereas Hispanic is an English word meaning "pertaining to ancient Spain." Ibid. When discussing census statistics regarding ethnicity, the term "Hispanic" will be used. In other instances, "Latino" or "Latina" will be utilized, in deference to the preference of the people of the Los Angeles region. In using these terms interchangeably in this report, no difference in meaning is implied.

⁴¹ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: General Population Characteristics, California* (1990 CP-1-6) (Washington, DC: Government Printing Office, 1992), Table 6, Race and Hispanic Origin, p. 76; Minerbrook and Impoco, "Two Cities," p. 29. The data reported for all the racial classifications—white, black, American Indian, Asian or Pacific Islander, and "other race"—exclude those who designated themselves as of Hispanic origin. Without this adjustment, statistics by race alone are misleading. A rule known as Statistical Directive 15, adopted by the Office of Management and Budget (OMB) in 1978, defines race and ethnicity as two different demographic characteristics, classifies Hispanic origin as an ethnic category, and requires Federal agencies like the Census Bureau to fit all of their racial data into the four categories white, black, American Indian, Eskimo, or Aleut, and Asian or Pacific Islander. Latinos or Hispanics are thus not allowed to choose "Hispanic" as a race. Many Hispanics designate white or black on this question, but a small number also pick American Indian or Asian. A significant number of Hispanics, however, do not consider themselves as either black, white, or any other race listed, and thus choose "other race." In 1990 about 10 million people in the U.S. chose this option and 98 percent of these people claimed Hispanic origin on the ethnicity question.

40.8 percent of the population is white non-Hispanic, 37.8 percent Hispanic, 10.6 percent black, 10.2 percent Asian or Pacific Islander, 0.3 percent American Indian, and 0.3 percent "other race non-Hispanic."⁴²

From a metropolitan area that in 1960 was over 80 percent non-Hispanic white, Los Angeles has been transformed into a city that now has a "majority minority" population.⁴³ By 1990, the area's white population had declined to just under half the region's population. Although the area's African American population grew over the two decades between 1970 and 1990, its share hovered at just above 10 percent throughout the period. Still, with 1.1 million persons, African Americans are a sizable minority in the Los Angeles region. Hispanics grew from one-tenth of the area's population in 1960 to one-third in 1990, and Asians increased from 2 to nearly 10 percent. Although they are the smallest ethnic group in the region, American Indians, with 63,000 persons, quadrupled their numbers between 1970 and 1980 and make up the largest Native American concentration in any metropolitan area in the United States. Similarly, Middle Easterners, although a small ethnic group compared with Hispanics and Asians, experienced the most rapid growth of any group, increasing nearly sixfold between 1970 and 1990 from approximately 50,000 to around 300,000.⁴⁴

If the "greater underenumeration of Hispanics could be taken into account, it would be clear

In other words, over 40 percent of the Nation's 22 million Hispanics are not willing to identify themselves as either black or white. For an extensive discussion of this phenomenon, see Gabrielle Sandor, "The 'Other' Americans," *American Demographics*, June 1994, p. 36; Monica Rhor, "Are Hispanics a Race?" *Hispanic Outlook*, Jan. 5, 1996, p. 12. The Federal Government is considering altering Statistical Directive No. 15. See Interim Notice of Review and Possible Revision of OMB's Statistical Policy Directive No. 15, 60 Fed. Reg. 44674 (1995).

⁴² 1990 U.S. Census Data, *Los Angeles County*, Table "Hispanic Origin By Race."

⁴³ See Dale Maharidge, *The Coming White Minority: California's Eruptions and the Nation's Future* (New York: Random House, Inc., 1996) for an account of how four California citizens—white, Latino, African American, and Asian—responded to the seismic shifts in population that have occurred and will intensify in the coming years, as well as a discussion of the significant public policy issues raised by the public's reaction to substantial population change.

⁴⁴ Sabagh and Bozorgmehr, "Immigration and Ethnic Transformation," pp. 87-89.

that by 1990 there were almost as many Hispanics as non-Hispanic whites in Los Angeles County.”⁴⁵ Authors Georges Sabagh and Mehdi Bozorgmehr also note that:

shifts in age structure and differences in fertility have also contributed powerfully to the region’s changing ethnic mix. Latinos are now dominant among the region’s children and adolescents, a development that reflects their fertility rates. By contrast, non-Hispanic whites make up the bulk of the elderly population. . . if we add Asians and African Americans to Latinos, ethnic minorities made up over 60 percent of youthful Angelenos [in 1990], compared with only 30 percent in 1970.⁴⁶

Massive immigration also changed the composition of the Latino and Asian American populations. In the past virtually all Latinos in the Los Angeles region were Chicanos, or of Mexican origin. Moreover, the Mexican American population in Greater Los Angeles more than tripled between 1970 and 1990, reaching 3.7 million in 1990. Nevertheless, a large proportion of the Latino population are now Central and South American. Central Americans, mainly Salvadorans, were nearly nonexistent in 1970 but numbered more than a half million by 1990.⁴⁷ This increase is reflected in part by the large proportion of persons denoted as “other Hispanic” in the 1990 census. In Los Angeles County, 75.4 percent of the Hispanic population is Mexican, 1.4 percent Cuban, 1.2 percent Puerto Rican, and 22 percent other Hispanic.⁴⁸

Similarly, Los Angeles’ Asian American population changed considerably between 1970 and 1990, as the number of Asians increased spectacularly from around a quarter of a million to 1.3 million in 1990. In 1970 well over half of Asian Americans in Los Angeles were of Japanese ancestry. During the 1980s, however, the Japanese were the slowest growing group. Chi-

nese were the fastest growing group, while the population of Filipinos, Vietnamese, Koreans, and Asian Indians more than doubled in the 1980s.⁴⁹ By 1990, 25.7 percent of the Asian or Pacific Islander population in Los Angeles County was Chinese, 23 percent Filipino, 15.2 percent Korean, 13.6 percent Japanese, 6.6 percent Vietnamese, and 4.6 percent was Asian Indian.⁵⁰

Immigration is not the only phenomenon driving significant demographic change in the Los Angeles area. According to demographer and sociologist, William Frey, and reporter, Jonathan Tilove, analysis of the 1990 U.S. census “discloses that some of America’s largest metropolitan areas,” including Los Angeles, are experiencing a definite trend in migration within the country best described as “a new, larger form of white flight.”⁵¹ In the last half of the 1980s, in the Los Angeles, New York, Boston, Chicago, and Houston metropolitan areas, “for every 10 immigrants who arrived, 9 residents left for points elsewhere. And most of those leaving were non-Hispanic whites.”⁵² In addition to this trend of “concentrated minority immigration and distinctly white dispersal,” there is an ethnic pattern in migration within the United States. The number one destination for Asian Americans is Los Angeles; for Hispanic Americans it is Miami. Moreover, blacks, like whites, “are also leaving most of the high-immigration metropolitan areas, if not in the same numbers as whites, and their No. 1 destination is Atlanta.”⁵³ Whites are not just fleeing the cities for the suburbs; they are leaving “entire metropolitan areas and states—whole regions—for whiter destinations.” In California, this “disproportionately white

⁴⁵ Ibid., p. 87. Sabagh and Bozorgmehr note that the estimated undercount of Hispanics in the United States ranges from a 1.9 percent undercount for whites to 7.7 percent for blacks. Ibid., p. 106 n.21 (citing Frank Bean and Marta Tienda, *The Hispanic Population of the United States* (New York: Russell Sage Foundation, 1987), p. 58).

⁴⁶ Sabagh and Bozorgmehr, “Immigration and Ethnic Transformation,” p. 97.

⁴⁷ Ibid., pp. 88–89.

⁴⁸ 1990 U.S. Census Data, *Los Angeles County*, Table “Hispanic Origin.”

⁴⁹ Sabagh and Bozorgmehr, “Immigration and Ethnic Transformation,” p. 89.

⁵⁰ 1990 U.S. Census Data, *Los Angeles County*, Table “Asian or Pacific Islander.” Pacific Islanders are present in Los Angeles County but constitute a very small percentage of the Asian or Pacific Islander population: Samoan 1.3 percent; Hawaiian 0.8 percent; Guamanian 0.6 percent; Tongan 0.2 percent. Ibid.

⁵¹ William H. Frey and Jonathan Tilove, “Immigrants In, Native Whites Out,” *New York Times*, Aug. 20, 1995, Sec. 6, p. 44 (hereafter cited as Frey and Tilove, “Immigrants In, Native Whites Out”).

⁵² Ibid.

⁵³ Ibid.

exodus [is] mostly to neighboring states, which are among the whitest in the nation.”⁵⁴

Language Diversity in the Los Angeles Region

Significant immigration from Mexico, Asia, and Latin America has, in addition to diversifying the racial and ethnic makeup of the Los Angeles area, greatly increased the variety of languages spoken in Los Angeles. A further challenge facing the LAPD and LASD, therefore, is the ability to communicate effectively in a wide array of languages with crime victims, witnesses, suspects, and with immigrant populations in the community policing programs seen as central to accomplishment of law enforcement’s mission to “serve and protect.” As with ethnic transformation, Los Angeles’ language diversity offers a glimpse of the challenges that will likely face law enforcement in many urban communities in the coming years. William Stonich, commander of the Professional Standards and Training Division of the Los Angeles County Sheriff’s Department, testified that there are approximately 160 languages spoken in Los Angeles County.⁵⁵ The largest and most rapidly growing language groups in Los Angeles are also the fastest growing in the Nation. Spanish “stands alone in size, establishment, and institutionalization,” followed by the rapidly expanding, but still comparatively small Asian language groups.⁵⁶ Table 1.1 illustrates the recent growth of Spanish and Asian languages, whose use in the Los Angeles area roughly doubled in a decade.⁵⁷

In the city of Los Angeles, census statistics indicate that 49.9 percent of the population re-

port speaking a language other than English at home.⁵⁸ Approximately 17.5 percent of the city’s population does not speak English well.⁵⁹ In Los Angeles County, 45.4 percent of the population speak a language other than English at home.⁶⁰ Table 1.2⁶¹ shows that this is a rate well above traditionally polyglot New York (29 percent), and over three times the national average (14 percent). Moreover, 25 percent do not speak English well in Los Angeles County, a rate that is nearly twice as high as New York’s (13 percent). For the Greater Los Angeles region as a whole, 38 percent of the population speak a language other than English at home and 21 percent do not speak English well.

California, and Los Angeles in particular, not only have high rates of non-English language use, but also comprise a substantial portion of all the non-English speakers in the Nation. California has over one-quarter of the Nation’s households in which a language other than English is heard; one-third of the Nation’s Spanish speakers; and over a third of those who speak Asian languages.⁶²

In Los Angeles County, 69.4 percent of all those who speak a language other than English at home speak Spanish; 5.7 percent Chinese; 4.2 percent Tagalog; 3.4 percent Korean; 1.7 percent Japanese; 1.4 percent Vietnamese; 1.1 percent

⁵⁴ Ibid.

⁵⁵ Commander William T. Stonich, Professional Standards and Training Division, Los Angeles County Sheriff’s Department, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, Sept. 12–13, 1996, vol. 2, p. 261 (hereafter cited as *L.A. Hearing*).

⁵⁶ David E. Lopez, “Language Diversity and Assimilation,” in *Ethnic Los Angeles*, eds., Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 159 (hereafter cited as Lopez, “Language Diversity”).

⁵⁷ Lopez, “Language Diversity,” p. 142 (citing U.S. Department of Commerce, 1990 U.S. Census of Population, *Social and Economic Characteristics* (Washington, DC: Government Printing Office, 1990), p. 266).

⁵⁸ U.S. Bureau of the Census, Table 3, *Cities With 200,000 or More Population Ranked* <<http://www.census.gov/statab/ccdb/ccdb307.txt>>, “Percent of Persons Speaking Language Other Than English at Home, 1990.” Los Angeles had the fourth highest percentage of people speaking a language other than English at home among cities with 200,000 population or more, trailing only Miami, FL, with 73.3 percent, Santa Ana, CA, with 69.2 percent, and El Paso, TX, with 66.7 percent. Ibid.

⁵⁹ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics, California* (1990 CP–2–6) (Washington, DC: Government Printing Office, 1992), Table 167, “Language Spoken at Home,” p. 856. This class consists of those who report that they speak English “not at all” or “not well.” The other two allowable responses for persons speaking a non-English language at home are that they speak English “very well” or “well.”

⁶⁰ 1990 U.S. Census Data, *Los Angeles County*, Table “Language Spoken At Home.”

⁶¹ Lopez, “Language Diversity,” p. 141 (citing U.S. Department of Commerce, 1990 U.S. Census of Population, *Social and Economic Characteristics* (Washington, DC: Government Printing Office, 1990), p. 266).

⁶² Ibid.

TABLE 1.1
Language Spoken at Home in the Los Angeles Region and
Los Angeles County, 1990 (Population Aged 5 Years and Older)

Language	L.A. region	% increase since 1980	L.A. County	% increase since 1980
English only	8,209,000	+0.05	4,436,000	-7
Spanish	3,520,000	+74.0	2,555,000	+69
Chinese	257,000	+179.0	210,000	+173
Tagalog	202,000	+149.0	158,000	+136
Vietnamese	122,000	+223.0	50,000	+162
Korean	165,000	+163.0	124,000	+133
Japanese	83,000	+17.0	63,000	+10
All others	736,000	+41.0	528,000	+38

Source: U.S. Department of Commerce, Bureau of the Census, 1990 Census of the Population: Social and Economic Characteristics, California (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), table 167, Language Spoken at Home.

TABLE 1.2
Language Use in the Home
(Population Aged 5 Years and Older)

	United States	Greater L.A.	L.A. County	New York
Population (in millions)	249	14.5	8.9	18.1
Foreign-born population	8%	27%	33%	20%
Foreign-born arrived 1980-90	44%	52%	53%	43%
Speak language other than English at home	14%	38%	45%	29%
Do not speak English well	6%	21%	25%	13%

Source: U.S. Department of Commerce, Bureau of the Census, 1990 Census of the Population: Social and Economic Characteristics, California (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), table 167, Language Spoken at Home.

French or French Creole and 0.8 percent Arabic.⁶³ In the city of Los Angeles, 70.7 percent of the population that speaks a non-English language at home speaks Spanish; 4.1 percent Tagalog; 4.0 percent Korean; 3.6 percent Chinese; 1.5 percent Japanese; 1.3 percent French and 0.7 percent Arabic.⁶⁴ Publicly, Chinese is heard primarily in Chinatown, Korean in Koreatown, and Vietnamese in Little Saigon, but by and large Asian speakers are dispersed throughout Los Angeles. Spanish "is now the dominant language of the eastern half of downtown Los Angeles as well as East Los Angeles and the neighborhoods to the west, up to and including what is officially

known as Koreatown."⁶⁵ The traditionally African American, South Central/Watts area is now about half Latino, immigrant and Spanish speaking. Virtually all census tracts in the settled parts of Los Angeles County consist of at least 10 percent of the population who speak a language other than English in the home.⁶⁶

The Census Bureau categorizes a household as "linguistically isolated" if no person over age 14 speaks only English and no person over 14 who speaks a language other than English speaks English "very well." In Los Angeles County 33.6 percent of Spanish-speaking households are linguistically isolated (8.7 percent of all households); 36.4 percent of Asian or Pacific Island language households are linguistically isolated (2.9 percent of all households); and 19.5 percent of all households speaking other lan-

⁶³ 1990 U.S. Census Data, *Los Angeles County*, Table "Language Spoken at Home."

⁶⁴ U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population: Social and Economic Characteristics, California (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), Table 167, "Language Spoken At Home," p. 856.

⁶⁵ Lopez, "Language Diversity," pp. 142-44.

⁶⁶ Ibid.

guages are linguistically isolated (1.4 percent of all households).⁶⁷ In the city of Los Angeles, 40.5 percent of those who speak Spanish do not speak English well; 16.7 percent of those speaking other Indo-European languages do not speak English well; 27.3 percent of those who speak Asian or Pacific Island languages do not speak English well; and 8.5 percent of those speaking all other languages do not speak English well.⁶⁸ K. S. Park, general counsel for the community organization Korean Immigrant Workers Advocates, testified that in Los Angeles 85 percent of the Korean community is first generation and depends on Korean as the primary language.⁶⁹

The LAPD and the LASD thus face a significant challenge in communicating with the significant portion of city and county residents who do not speak English well, if at all. Research on intergenerational language maintenance and shift indicates that this challenging task would persist over two to three generations, even if there were no immigration from this point forward. For example, the Fishman model of language shift, based initially on the study of European immigrants, posits that:

adult immigrants continue to use their mother tongue in most domains, especially in the home. The ethnic mother tongue is therefore transmitted to the second generation, but these young people grow up using the socially dominant language in most public and private domains. . . . By the time they are adults, this second generation, including children who are ethnically endogamous, tend to shift to the dominant language in all domains, including the home, generally the last domain of ethnic language use. As a result, the third generation has little opportunity to learn the ethnic mother tongue, which becomes an aspect of symbolic ethnicity. . . rather than an active language.⁷⁰

Research conducted in the late 1970s and early 1980s indicates that Asian languages, like European immigrant languages, faded over two to three generations, and that, "despite appearances, intergenerational shift was more the rule than the exception for Spanish as well."⁷¹ Others have contended, however, that the "length of the assimilation period is often extended for the Spanish speaking population because of 'the resilience of Spanish over time and the apparent difficulty for many immigrants in learning English even after a substantial period of residence in the country.'"⁷²

In any case, immigration to the United States shows no signs of halting, and for the purposes of communicating with each new immigrant generation, if not the next generation as well, non-English language speaking ability or availability of translation services will be important to the LAPD and LASD. As David Lopez, associate professor of sociology at the University of California, Los Angeles (UCLA) and chair of its Latin American Studies Program, has noted, "Spanish and other ethnic monolingualism is a characteristic of immigrants, not of entire ethnic communities."⁷³ Therefore, at the very least, to the degree that ethnic groups continue to have large numbers of immigrants among them, the need for language services will continue to increase for the foreseeable future.

Professor Lopez notes that there are, however, clear contrasts between Asian and Latino language patterns. Tables 1.3 and 1.4, taken together, show that immigrants of both groups speak their mother tongues in the home and usually do not attain proficiency in English. A significant minority of Asian immigrants, however, arrive in the United States and continue

⁶⁷ 1990 U.S. Census Data, *Los Angeles County*, Table "Household Language And Linguistic Isolation."

⁶⁸ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics, California* (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), Table 167, "Language Spoken At Home By Ability To Speak English," p. 856.

⁶⁹ K.S. Park, General Counsel, Korean Immigrant Workers Advocates, testimony, *L.A. Hearing*, vol. 2, p. 220.

⁷⁰ Lopez, "Language Diversity," p. 146 (citing Joshua Fishman, "The Status and Prospects of Bilingualism in the United States." *Modern Language Journal*, vol. 49 (1965), pp. 143-55; Joshua Fishman, *The Sociology of Language* (Rowley, MA: Newbury House, 1972)).

⁷¹ Lopez, "Language Diversity," p. 146 (citing David E. Lopez, "Chicano Language Loyalty in an Urban Setting," *Sociology and Social Research*, vol. 62 (1978), pp. 267-68; David E. Lopez, *Language Maintenance and Shift in the United States Today: The Basic Patterns and Their Implications* (Los Alamitos, CA: National Center for Bilingual Research, 1982); Calvin Veltman, *Language Shift in the United States* (The Hague: Mouton Publishers, 1983)).

⁷² Steven I. Locke, *Language Discrimination And English-Only Rules in the Workplace: The Case For Legislative Amendment of Title VII*, 27 Tex. Tech L. Rev. 33, 45-46 (1996) (quoting Scott Koslow et. al., *Exploring Language Effects In Ethnic Advertising: A Sociolinguistic Perspective*, 20 J. Consumer Res. 575, 575 (1994)).

⁷³ Lopez, "Language Diversity," p. 139.

TABLE 1.3
Percentage Speaking Only English at Home, by Ethnicity and Generation, 1989
(Selected Ethnic Groups, Ages 25–44)

	All Hispanic %	Mexican %	All Asian %	Chinese %
United States				
1st generation	6	2	11	8
1.5 generation	11	4	29	22
2nd generation	30	27	77	*65
Native of native	38	44	82	–
L.A. region				
1st generation	3	2	15	–
1.5 generation	13	6	–	–
2nd generation	28	28	75	–
Native of native	57	57	92	–

* 2d & 3d generation combined
 – Sample size too small

Source: David E. Lopez, "Language Diversity and Assimilation" in Ethnic Los Angeles, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996) p. 150. Lopez notes that the data in this and that of the next table were tabulated from unpublished data in the Public Use Sample, November 1989, Current Population Survey. The "1.5 generation" consists of foreign-born persons who immigrated before the age of 10.

TABLE 1.4
Percentage Both Speaking Ethnic Language at Home and Speaking English Very Well,
by Ethnicity and Generation, 1989 (Selected Ethnic Groups, Ages 25–44)

	All Hispanic %	Mexican %	All Asian %	Chinese %
United States				
1st generation	17	10	36	34
1.5 generation	48	39	31	38
2nd generation	53	54	19	*32
Native of native	45	47	11	–
L.A. region				
1st generation	15	10	44	–
1.5 generation	31	34	–	–
2nd generation	49	48	23	–
Native of native	39	40	8	–

* 2d & 3d generation combined
 – Sample size too small

Source: David E. Lopez, "Language Diversity and Assimilation" in Ethnic Los Angeles, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996) p. 151.

TABLE 1.5

Percentage Speaking Ethnic Language at Home, by Presence of Foreign Born in Household, Los Angeles Region, 1990 (U.S.-born Youth Aged 5-17)

	Sample size	No FB in HHD	One FB in HHD	Two or more FB in HHD	HHD with 2+ FB
Mexican	721,000	20%	67%	96%	51%
Salvadoran	27,000	—	87%	88%	88%
Guatemalan	15,000	—	77%	86%	86%
Korean	18,000	12%	51%	85%	83%
Vietnamese	14,000	—	65%	92%	92%
Filipino	35,000	11%	26%	29%	75%
Japanese	18,000	5%	35%	84%	20%
Chinese	28,000	9%	41%	83%	82%

HHD = Household
 — Sample size too small

Source: David E. Lopez, "Language Diversity and Assimilation" in *Ethnic Los Angeles*, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russel Sage Foundation, 1996) p. 152.

to function as bilinguals, unlike Latinos. Moreover, among Asians, the shift to monolingualism is nearly universal by the third generation, at which point only about 10 percent of Asians are bilingual. Among the Latino third generation, bilingualism is about four times more common than among Asians, although it is less common than English monolingualism.⁷⁴

Finally, from the data in table 1.5 it is apparent that the differences in intergenerational language maintenance due to the presence of immigrants in households is substantial. For Mexican American youth, "by far the largest group in Los Angeles,"⁷⁵ only 20 percent in households with no immigrants reported speaking Spanish at home, as opposed to 61 percent in households with one immigrant, and 96 percent in households with two or more immigrants present.

The national origin differences in table 1.5 support and refine the conclusions drawn from tables 1.3 and 1.4. Immigrant households (those with two or more immigrants present) overwhelmingly continue to use their ethnic primary language, and their children speak that language at home. Only Filipinos who arrive in the United States largely bilingual have a substantially lower rate of mother-tongue use by their children at home. Among entirely native-born, ethnic households, there is further evidence of a

broad Spanish/Asian language difference. Spanish language maintenance is moderately, but distinctly, greater (20 percent) than Asian language maintenance (5-12 percent). The primary conclusion to be drawn from table 1.5, however, is that the presence of immigrants in the household *per se*, not generation, is the most powerful predictor of language maintenance and shift.⁷⁶ The future of Asian languages in Los Angeles is thus "totally a function of immigration patterns." Spanish is more secure for two reasons, according to Professor Lopez. It is more tenacious intergenerationally, and large-scale immigration of Spanish-speaking persons is less likely to decline, if only because of the proximity of Los Angeles to Mexico.⁷⁷

Section II: Topical Summary

The changing demographics of Los Angeles pose significant challenges to local law enforcement and highlight the need for diversification and development of cultural awareness, language and other training to improve communication. Testimony before the Commission at its September 1996 hearing focused on the extent to which the LAPD and the LASD have been able to address the previously-noted problems within their departments, and the steps they have taken to serve the diverse population. Chapter 2 of this

⁷⁴ Ibid., p. 152.

⁷⁵ Ibid., p. 153.

⁷⁶ Ibid.

⁷⁷ Ibid., p. 160.

report assesses the degree to which the Christopher Commission recommendations and other reforms have been implemented by the LAPD and any obstacles impeding or preventing reform efforts. Chapter 3 evaluates the LAPD's progress in addressing allegations of racism and gender bias within the department. Chapter 4 appraises the LASD's progress in implementing the Kolts Commission's recommendations and other reforms, as well as obstacles to future reform of that department. Chapter 5 examines the rela-

tionship of local law enforcement with Los Angeles' large immigrant communities. Chapter 6 considers the role of the Federal Government in curbing the use of excessive force by local law enforcement officials through the U.S. Department of Justice's new and expanded authority to seek civil injunctive relief against local law enforcement agencies engaging in a pattern or practice of civil rights violations. The final chapter contains the Commission's findings and recommendations.

Chapter 2

Update on Christopher Commission Reforms

Section I: Los Angeles Police Department—Controls and Monitoring Systems

Allegations of Police Brutality and Use of Excessive Force—An Overview

Allegations of police brutality and use of excessive force are likely to exist in any major police department in the Nation. However, in spite of the Los Angeles Police Department's (LAPD) positive reputation for combating crime, use of sophisticated technology, and training efficient personnel, the department has also been the focus of the Nation's scrutiny both in the past and in recent years.¹

The Watts Riots— Findings of the McCone Commission

During the tenure of LAPD's Police Chief William Parker, the primarily African American communities of Watts and a portion of South Central Los Angeles erupted in 6 days of civil unrest.² In August 1965, an estimated 10,000 of the half-million black residents burned and looted white-owned businesses, and assaulted white bystanders.³

Police soon blockaded the streets leading into the riot area, forestalling certain death or injury to unwary motorists. . . . [T]he television stations did their part to inflame and terrify both whites and blacks. Into the city's living rooms came "live" coverage of widespread criminal behavior, arson and pillage, over-excited threats by blacks to carry the blaze to white neighborhoods and undeniable, overt police brutality. Sniper bullets and "molotov cocktail" firebombs endangered firemen as they struggled to contain the conflagration. Policemen, answering supposed calls for assistance, ran into ambushes. Every patrol car that entered the area, 103 in all, was damaged.⁴

"Thirty-four persons died, most of them blacks shot by National Guard troops and police officers; almost 1,000 people were injured, and hundreds of buildings were destroyed or damaged."⁵ The uprising was eventually halted by more than 13,000 Los Angeles sheriff's deputies and police officers, California national guardsmen, and United States Army staff.⁶

Although there were various underlying causes for this disturbance, two central factors have been regularly attributed as catalysts for the riot. One element was the known adversarial relationship between police authorities and minority residents.⁷ The other ingredient was the

¹ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. 31 (hereafter cited as *Christopher Commission Report*); "The Christopher Commission on Tuesday Issued A 228-Page Report on the Activities of the Los Angeles Police Department," *Los Angeles Times*, July 10, 1991, p. 12-A (hereafter cited as "228 Page Report"). See generally Gerald Woods, *The Police in Los Angeles: Reform and Professionalization* (New York: Garland Publishing, 1993). This source provides an overall account of the history of the LAPD's leadership. (hereafter cited as *The Police in L.A.*).

² Robert Lindsey, "A Decade and a Half After Riots, Watts is Termed 'Worse Hovel Than It Was'," *New York Times*, Aug. 10, 1980, §1, p. 24 (hereafter cited as "A Decade and a Half").

³ Woods, *The Police in L.A.*, p. 236. But see Robert Blauner, "Whitewash Over Watts," in *Ghetto Revolts*, ed., Peter H. Rossi (New Brunswick: Transaction Books, 1973), p. 251. The author indicates that Los Angeles authorities offered no

explanation of how it determined the number of participants in the riot.

⁴ Woods, *The Police in L.A.*, p. 237.

⁵ Lindsey, "A Decade and a Half," p. 24.

⁶ Woods, *The Police in L.A.*, p. 236.

⁷ Charles Sumner Stone, Jr., *Symposium: The Urban Crisis: The Kerner Commission Report Revisited: Thucydides' Law of History, or from Kerner, 1968 to Hacker, 1992*, N. C. L. REV., vol. 20 (1993), p. 1715; David Shaw, "Chief Parker Molded LAPD Image—Then Came the 1960s," *Los Angeles Times*, May 25, 1992, p. A-1 (hereafter cited as "Chief Parker Molder LAPD Image"). The McCone Commission determined that "a resentment, even hatred, of the police (was) a fundamental cause for the riot. But the 'widely shared' view among blacks in Los Angeles that they were 'at the mercy of bigoted police' had been reported . . . [in 1963] by the California Advisory Committee to the U.S. Civil Rights Commission." Ibid. "Earlier in his tenure, Parker attributed criminal activity among Latinos to their 'not being too far

August 11, 1965, arrest of Marquette Frye, a young black man, by California Highway Patrol officers.⁸ Officers had stopped Mr. Frye near his home at 116th Street and Avalon Avenue for driving while intoxicated on the freeway.⁹ A large crowd of onlookers observed while Mr. Frye's brother and mother reportedly intervened to prevent the arrest. An altercation ensued and the officers arrested the Fryes. The bystanders became angry, and the rioting began.¹⁰

removed from the wild tribes of . . . the inner mountains of Mexico." During the Watts Riots, he made this televised observation, "[i]t is estimated that by 1970, 45% of the metropolitan area of Los Angeles will be Negro. . . . If you want any protection for your home and family. . . you're going to have to get in and support a strong Police Department. If you don't, come 1970, God help you." Ibid.

See also Woods, *The Police in Los Angeles*, p. 236. Black leaders and organizations insisted that the department change its approach when dealing with minority residents, in order to avoid rioting, and noting that the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU) failed to obtain support from city officials for a civilian review process of the LAPD's operations and policies.

See generally Craig Horowitz, "Show of Force," *New York*, Sept. 22, 1997, pp. 29, 31. The article describes the type of indignities that minority communities endure from the police. Neil MacFarquhar, "Torture Case Makes Police More Skittish," *New York Times*, Aug. 27, 1997, p. A-1. "In Harlem, a group of six officers arriving to try to quell a violent domestic dispute emerge from their cars with their police batons in hand and run into a group of 8-year-olds on the stoop. . . . [T]he children. . . ask us who we are going to beat up." U.S. Commission on Civil Rights, *Confronting Racial Isolation in Miami* (Washington, DC: Government Printing Office, 1982), pp. 239-42, recounts the beating death of Arthur McDuffie by Department of Public Safety officers in Miami and concludes that the subsequent acquittal of the defendants was perceived by "the black community and many others in Miami and elsewhere, . . . to be the final proof that the criminal justice system in Dade County was incapable of condemning official violence against blacks."

⁸ Woods, *The Police in L. A.*, pp. 236-37; Darryl Dawsey, "25 Years After the Watts Riots—McCone Commission's Recommendations have Gone Unheeded," *Los Angeles Times*, July 8, 1990, p. B-1 (hereafter cited as "25 Years"). See also Daryl F. Gates and Diane K. Shah, *Chief: My Life in the LAPD* (New York: Bantam Books, 1992), pp. 89-90 (discussing the Watts riots) (hereafter cited as *Chief*).

⁹ See Gates, *Chief*, p. 88. In 1965 Chief Gates was an inspector for Patrol Area 3 of Los Angeles, which covered the middle and northern sections of the city. These area inspectors were responsible for ensuring that the LAPD's policies were consistently followed and for supervising uniformed officers in their divisions. On August 11, 1965, Chief Gates also served as a substitute inspector for Patrol Area 2, which included South Central and southwest Los Angeles.

¹⁰ Woods, *The Police in L.A.*, p. 237; see Dawsey, "25 Years," p. 1.

Eight days after this disturbance, then Governor Edmund G. (Pat) Brown directed that an investigation be conducted to determine the causes for the Watts riot. He named John McCone, a former director of the Central Intelligence Agency, to lead the investigation.¹¹ In December 1965, the McCone Commission submitted its findings and recommendations to Governor Brown:

the McCone report verified almost every charge made against the LAPD during the previous decade. The report admitted that blacks hated Chief Parker and feared in 1964 the Urban League had named Los Angeles the nation's "best" city for blacks. The McCone commission agreed that the ghetto suffered serious deprivation in schools, housing, jobs, transportation and welfare. The commissioners observed that the [Los Angeles] [P]olice [C]ommission, the civilian oversight body of the LAPD, existed as a mere figurehead, controlled by Chief Parker; that the citizens' complaint procedure did not satisfy public needs; that the department unwisely abandoned its juvenile crime prevention operation; and that its community relations program had lapsed. McCone proposed a city human relations commission to deal with these problems. . . . The McCone report served the useful function of stating, from an unimpeachably conservative "pro-police" source, that Parker controlled the department. Good or bad, its policies were his policies.¹²

Some of the McCone Commission's recommendations would later prove to be prophetic for the department. Specifically, the report advised that:

a revitalized police commission should exert its legal power, providing an open and influential forum for dissatisfied citizens. Second, the internal disciplinary system ought to be modified and placed in the hands of an inspector general, outside the regular police hierarchy. . . . The McCone commission actually criticized Parker's vision of police professionalism when it chided the LAPD for discontinuing its crime prevention work among juveniles. . . . Seeking ways to decrease police costs, Parker eventually eliminated department-sponsored youth programs, which further deprived the poor. After the riot the LAPD strengthened its community relations program.¹³

¹¹ Shaw, "Chief Parker Molded LAPD Image"; Lindsey, "A Decade and a Half," p. 24.

¹² Woods, *The Police in L.A.*, p. 238.

¹³ Ibid., pp. 238-39.

The report evoked a varied response from the Los Angeles community. Conservative and white supporters wholeheartedly endorsed the chief and the department.¹⁴ LAPD Chief Gates would later comment:

. . . I don't believe. . . [the McCone Commission] accounted for what occurred. Face it, people gorged themselves with a heady diet of unrestrained exploitation, conduct, stealing, burning, rock and bottle-throwing—destroying and flouting the authority of government. The saddest part was the general belief that everyone living in south central L.A. had participated, when only a small fraction had.¹⁵

In contrast, liberals observed that the McCone Commission's praise for Chief Parker overshadowed its criticism for his administration.¹⁶ Local black residents were skeptical. The Reverend H.H. Brookins, a community resident remarked, "[e]ven a cursory examination of the report. . . reveals that the commission does not present workable solutions to the problem of the racial ghetto itself, nor the basic problems of police malpractice, jobs, housing, economic exploitation, education and other factors."¹⁷

Although the McCone Commission recognized that blacks criticized the department, according to one analyst, Robert Blauner, the report implied that their beliefs were based on "misinterpretation of fact and paranoid reactions."¹⁸ Instead, in Blauner's view, the strained

relationship with the LAPD reflected a "more subtle attack on personal dignity that manifests itself in unexplainable questionings and searches, in hostile and insolent attitudes toward groups of young Negroes on the street or in cars, and in the use of disrespectful and sometimes racist language—in short, what [a] Watts man. . . [previously] called 'police harassment.' There is no evidence that this assault on individual self-esteem and dignity has ceased."¹⁹ Secondly, Blauner maintained that the McCone Commission's findings resulted from a narrow legal perspective of the disturbance, which was viewed in terms of preserving law and order, instead of identifying actual social or political factors.²⁰

The Eulia Love Shooting

In January 1979, two male LAPD police officers (one black and one white) responded to a report concerning a dispute over a gas bill. The source of the controversy was Eulia Love, an apparently mentally ill, 39-year-old black woman.²¹ Ms. Love had allegedly refused to make a \$22 minimum payment on an overdue gas bill, yelled profanities at a gas company serviceman, and assaulted him with a shovel.²² The serviceman

black community rather than contributing to their solution; this was in direct contrast to their attitudes toward the schools, the parks, the health services, and the probation officers." Ibid.

¹⁴ Ibid., p. 247; see, e.g., Paul Bullock, ed., *Watts—The Aftermath, by the People of Watts* (New York: Grove Press, 1969), pp. 133–53 (several Watts residents describe their encounters with police authorities).

²⁰ Blauner writes: "There was no attempt to look at the outbreak from the point of view of the black poor. The commissioners also played a dangerous game with the problem of responsibility. The Negro community as a whole is absolved from responsibility for the rioting while local and national leaders (civil-rights moderates and extremists alike) are taken to task for inflaming mass discontent and undermining commitments to law and authority. . . [T]he positions of the Los Angeles police department and city administrators are consistently protected. By discounting the relevance of police provocation and city policies without presenting any facts or evidence, the commission not only protects powerful interests, it abdicates its mandate to seek out facts and establish as best it could be the objective reality." Blauner, "Whitewash Over Watts," p. 238.

²¹ Gates, *Chief*, p. 192.

²² Ibid.; David Shaw, "Media Failed to Examine Alleged LAPD Abuses," *Los Angeles Times*, May 26, 1992, p. 1. See John W. Mack, president, Los Angeles Urban League, telephone interview, July 22, 1996 (hereafter cited as Mack Interview). All interviews were conducted by the profes-

¹⁴ Ibid., p. 238. Proponents included the mayor, the city council, Republican California assemblymen, the county board of supervisors, and publications such as the *Los Angeles Times* and *The Examiner*. Ibid.

¹⁵ Gates, *Chief*, p. 103.

¹⁶ Woods, *The Police in L.A.*, p. 238.

¹⁷ Dawsey, "25 Years After"; see Lisa Pope, "Riot Report Finds Watts Similarities," *Houston Chronicle*, Oct. 23, 1992, p. A-20.

¹⁸ Blauner, "Whitewash Over Watts," p. 246. Blauner indicated that: "a study by a Youth Opportunities Board was available to the [McCone] commission. It was based on intensive interviews with 220 people in the Watts, Willowbrook and Avalon districts, undertaken only two years before the outbreak in this very area. The sample included 70 delinquent and non delinquent children, 26 parents, and 124 high administrators and lesser personnel of the major agencies in the community (schools, welfare and probation, recreation and youth groups). Attitudes toward the critical agencies of the community were probed, and it was found that of all the 'serving institutions' of the larger society, the object of the greatest hostility was the police department. A majority of adults as well as children felt that the behavior of the police aggravated the problems of growing up in the

then fled from her home. Afterwards, Ms. Love reportedly purchased a \$22 money order in a local supermarket. Later that day, gas company servicemen returned with the police officers either to collect her payment or else terminate her gas service. When they arrived on the premises, they observed Ms. Love in her yard. She held an 11-inch boning knife. Although one of the officers successfully knocked the knife out her hand, Ms. Love recovered the weapon.²³ At this point she was approximately 6 feet away from the closest police officer. Despite warnings to Ms. Love to drop the weapon, she allegedly prepared to throw the knife at the officers. In response, they emptied their weapons. Ms. Love was hit by eight of the shots, and it was reported that the officers continued to fire after she had fallen to the ground.²⁴ Ms. Love subsequently died.²⁵

The LAPD's Officer-Involved Shooting Team later collected information relating to the incident to determine whether the action taken by the officers were in accordance with department policy. After reviewing this evidence, the LAPD's Shooting Review Board concluded that "the officers had fired their weapons in self-defense, which is permissible by law, and so ruled the shooting had been 'in' policy."²⁶

LAPD Police Chief Daryl Gates also investigated the Love shooting by reviewing the evidence and staging a reenactment of the incident. He determined that, while the officers initially used an inappropriate policing technique to subdue Ms. Love, they responded in self-defense.²⁷ Specifically, Chief Gates concluded that their reactions of emptying their weapons were characteristic of "rapid-fire syndrome." The rapid fire method had been demonstrated to police officers for use in close proximity circumstances, but additional police training also taught alternative techniques for similar situations.²⁸ Still, based

on the results of the shooting's reenactment, Chief Gates observed that the closest officer would have been struck by the flying knife,²⁹ and concluded that the shooting was within the department's policy. Chief Gates privately conceded, however, that "anyway you viewed it, it was a bad shooting."³⁰

African American residents, the Los Angeles media, and various community organizations strenuously objected to the department's finding of no culpability on the part of the officers. As a result, the Los Angeles Police Commission (Police Commission) conducted a separate investigation of the incident. In October 1979, the Police Commission concluded that the officers' actions were improper and instructed that "policemen involved in shooting[s] of suspects . . . be exonerated of misfeasance only with [the] concurr[er]ence of [the] 5-member civilian review board." The Police Commission concluded that the "Police Department was in error for exonerating officers involved in [the] Love shooting."³¹

LAPD's Use of the Chokehold

During the early 1980s, a controversy arose in Los Angeles over the department's use of several chokehold techniques to subdue suspects, particularly in minority communities. The "modified carotid" was one of the upper-body control tactics used by the LAPD at the time. According to Chief Gates:

Applied correctly, from behind, a police officer places his bicep[s] and forearm on either side of the suspect's neck, pressing the carotid arteries and cutting off the flow of blood to the brain for a split second. The individual goes limp. You handcuff him and cart him off to jail. We felt this control hold was far superior to banging someone over the head with a PR-42 baton.³²

a few bullets, and then analyze the situation before shooting again.

sional legal staff of the U.S. Commission on Civil Rights, Office of General Counsel.

²³ Gates, *Chief*, p. 194.

²⁴ Woods, *The Police in L.A.*, p. 274.

²⁵ Gates, *Chief*, p. 194.

²⁶ *Ibid.*, p. 195.

²⁷ *Ibid.*, pp. 196-97.

²⁸ *Ibid.*, p. 197. Chief Gates noted that because of the Eulia Love shooting, the department abandoned the "rapid fire" method and began to instruct its officers in a "shot assessment" technique instead. In this technique, officers first fire

²⁹ The knife reportedly landed 68 feet away. See Gates, *Chief*, p. 194.

³⁰ *Ibid.*; Woods, *The Police in L.A.*, p. 293.

³¹ Gladwin Hill, *New York Times*, Information Bank Abstracts, Oct. 22, 1979, p. 15.

³² Gates, *Chief*, p. 246. See Los Angeles Police Department, *Training Bulletin: Use of Force—Upper Body Control Holds*, vol. XIX, iss. 2, April 1987, subpoena duces tecum document, Exh. 1b, p. 2, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, Sept. 12-13, 1996 (references to the hearing tran-

In the second type of chokehold, the “bar-arm” control hold, “[a]n officer places his forearm across the trachea, cutting off the supply of oxygen to the lungs. [However, t]he problem with this hold is that a person instinctively fights harder when deprived of air. The police officer uses more pressure and, if not careful, can break the hyoid bone, causing death.”³³

Los Angeles community members and the City Council expressed concern about the frequency of the department’s use of chokeholds before the Police Commission. The employment of these techniques became a serious concern between 1975 and 1982 when 16 people died after being subdued by such restraints.³⁴ At least 12 of the 16 were reported to be African Americans.³⁵ One of these individuals was 20-year-old James Mincey, Jr. In April 1982, Mr. Mincey was apprehended after a high-speed chase, when he allegedly failed to stop for a police officer who noticed a crack in his car’s windshield.³⁶ Police officers contended that as Mr. Mincey was being taken into custody, he was restrained with a chokehold after he struggled when they attempted to change the position of his handcuffs to behind his back.³⁷ According to a coroner’s report, Mr. Mincey’s death was caused by neck injuries that prevented his brain from receiving an adequate supply of oxygen.³⁸

In response to the Mincey death, Chief Gates supported eliminating the department’s use of the “bar-arm” chokehold, while recommending the continued employment of the “modified ca-

rotid” technique.³⁹ Gates also maintained, however, that prevalent drug use among suspects served to conceal the actual number of people who died solely because of chokehold restraints.⁴⁰

The coroner would always include blunt-force trauma—the chokehold—as part of the cause, though not the primary one. The person might actually have died of a heart attack, brought on by overexertion while in a drug-induced state. Eighty-five percent of all suspects we arrested had drugs in their systems, and most of those who died had ingested narcotics. Cocaine and PCP make the heart beat faster and often cause violent behavior. . . . Furthermore, we had any number of cases where there was no blunt-force trauma, no upper-body holds placed on an individual, and he still died after he was put into restraints.⁴¹

The chokehold conflict was exacerbated further by Chief Gates’ comments to the media as to why more blacks than whites died from these restraints: “In some blacks, when it [the chokehold] is applied, the veins or arteries do not open up as fast as they do on normal people.”⁴² Local minority residents and the local Los Angeles political representatives were outraged by the remark.⁴³ Chief Gates later explained that his comments referred to the need for further research to determine whether blacks were more adversely susceptible to chokeholds, due to the presence of medical conditions (such as hypertension and sickle cell anemia) that are particularly endemic to a significant number of African Americans.⁴⁴ In spite of Chief Gates’ justification, his comments merely served to confirm the public’s perception that a specter of racism existed throughout the LAPD.

The Police Commission ultimately imposed a moratorium on both chokeholds, but eventually

script and related subpoenaed documents are hereafter cited as *L.A. Hearing*).

³³ Gates, *Chief*, p. 246; see also Los Angeles Police Department, “Fact Sheet: Historical Overview of Weaponless Self Defense Programs In-Service Training Division,” subpoena duces tecum document, *L. A. Hearing*, Exhibit 1e, p. 1 (hereafter cited as “Overview of Weaponless Self Defense Programs”). From 1973 to 1982, “weaponless self defense” training was offered primarily by the police academy. There was limited in-service instruction in this area offered to police officers once they joined the Department. *Ibid.*

³⁴ *Christopher Commission Report*, p. 195; see also Shaw, “Media Failed”; Mack Interview.

³⁵ Woods, *The Police in L.A.*, p. 282; see generally *City of Los Angeles v. Lyons*, 461 U.S. 95, 114–15 (1982) (Marshall, J., dissenting) (recounting use of chokehold by LAPD officers on Adolph Lyons, a 24-year-old black man).

³⁶ James Rainey, “Final Suit Over LAPD’s Use of Chokehold Settled,” *Los Angeles Times*, Sept. 29, 1993, p. 4.

³⁷ *Ibid.*

³⁸ *Ibid.*; Gates, *Chief*, p. 247.

³⁹ Gates, *Chief*, pp. 246–47. According to Chief Gates, some shorter (and female) officers supported the use of the bar-arm technique to restrain suspects, in order to compensate for their lack of height. *Ibid.*, p. 246; see also Rainey, “Final Suit.”

⁴⁰ Gates, *Chief*, p. 247.

⁴¹ *Ibid.*, p. 247. Chief Gates also maintained that the department’s statistics demonstrated that “in the first quarter of 1982, we had used upper-body chokeholds on forty-seven whites, forty-four blacks and forty-six Hispanics. The only serious injury was Mincey’s.” *Ibid.*

⁴² Shaw, “Media Failed.”

⁴³ Woods, *The Police in L.A.*, p. 283.

⁴⁴ Gates, *Chief*, pp. 248–55.

allowed the "modified carotid" hold to be used to counter a threat of serious injury or death. As of 1991, this policy remains in place.⁴⁵ The department has, however, investigated the use of other nonlethal methods to subdue suspects, such as the Taser gun, chemical sprays, and a new type of baton.⁴⁶

The 39th Street and Dalton Avenue Drug Raid

On August 1, 1988, 80 officers with search warrants from various divisions of the Los Angeles Police Department, participated in a drug raid on four apartments in the 3900 block of Dalton Avenue in South Central Los Angeles.⁴⁷ Internal reports indicated that the officers had been briefed by Sergeant Charles Spicer, who directed the LAPD's Southwest Area's Special Problems Unit. Sergeant Spicer "wanted them to be extra thorough. . . [and] to look under carpets or in holes in walls. He told them to search wherever they had to. . . . He ended the briefing on a positive note, saying that he knew that they were going to do an outstanding job and [to] be totally professional."⁴⁸

During the raid, the officers seized a rifle, and less than an ounce of both cocaine and marijuana. According to the LAPD's Internal Affairs investigators, the raid also resulted in "127 separate acts of vandalism, ranging from doors, walls and cabinets smashed apart, to a small piggy bank cracked open and a goldfish

bowl plundered."⁴⁹ Seven of 37 detained suspects were arrested and handcuffed, and many asserted that they were also beaten by police officers.⁵⁰

Further, it was reported that during this raid, Officer Todd B. Parrick "swung. . . [an] ax so wildly as he tore from room to room in the apartments. . . that his fellow LAPD officers believed he was going to hurt himself or the other policemen in his path."⁵¹ Officer Parrick did not have a specific assignment in the raid and had been employed in the LAPD for only 1 year. He subsequently admitted that he had indiscriminately swung the ax, while recalling a rumor that a police captain "wanted the neighborhood taken off the map."⁵² In an interview with the Internal Affairs Division, however, Sergeant Spicer defended the raid and maintained that property sometimes gets destroyed in the process of executing search warrants for illegal narcotics.⁵³

Although some mid-level LAPD representatives initially minimized their errors in planning the drug raid, others allegedly blamed gangs for damaging the apartments in order to avoid an

⁴⁵ *Christopher Commission Report*, p. 195. Los Angeles Police Department, *Use of Force Handbook* (Los Angeles: LAPD, 1995), pp. 18-19, *L.A. Hearing*, subpoena duces tecum document, exhibit 1D, vol. 2 (hereafter cited as *Use of Force Handbook*). The Handbook states in relevant part:

When the "Individual's Actions are Life Threatening," the modified carotid, full carotid, and locked carotid are upper body control holds available for use by officers. These holds can be used as an alternative in life threatening or endangering situations whenever the use of deadly force is warranted. When an upper body control hold is used on a person, a use of force report shall be completed.

See also Use of Force discussion in a subsequent section of this chapter. See Rainey, "Final Suit."

⁴⁶ Woods, *The Police in L.A.*, p. 283. The Taser gun emits a harsh, but nonfatal electric shock. Discussions of the LAPD's use of chemical sprays and a novel type of police baton follow in subsequent sections of this chapter.

⁴⁷ Richard A. Serrano, "Reports Tell of Frenzy and Zeal in Police Raid," *Los Angeles Times*, Nov. 26, 1990, p. 1, (hereafter cited as "Reports Tell"); *Christopher Commission Report*, pp. 38-39.

⁴⁸ Serrano, "Reports Tell."

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* "Carl DeLoach said he was kicked six times in the ribs. Hildebrandt Flowers said one officer held his legs apart while another kicked him in the groin, and residents said they saw Flowers choked with a wire that officers tied to a tree. Tammy Moore described to investigators what happened while she was sitting on the porch and holding her 7-month-old baby, Curtis. 'Suddenly officers drove up in vans and cars,' the reports said. 'They all got out and one officer ran up and told her to get off the porch. The officer then hit her on the side of the neck, causing her to drop Curtis on the concrete. . . . Curtis was unconscious for approximately 30 minutes.'" *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.* Police reports revealed that Officer Parrick demolished wooden sliding doors, a furnace grill, and a thermostat. He dislodged a cupboard from a wall and a toilet bowl from the bathroom. Also, Officer Charles A. Wilson was determined to have used a homemade battering ram to punch holes in living and dining room walls. Reportedly, the battering ram was later abandoned in a sewer.

⁵³ *Ibid.* Sergeant Spicer explained that narcotics have been uncovered in toilets, walls and under carpets. *But see* Henry Weinstein, "Award in Final Dalton Case O.K.'d by Court," *Los Angeles Times*, Jan. 23, 1992, p. 1-B (reporting other damages, including a broken glass table, a television, chairs, dishes, kitchen appliances, and wall clocks, as well as bleach poured on clothing and a dining room table thrown out of a window).

internal police investigation.⁵⁴ A civil lawsuit was later filed against the city of Los Angeles by the owners of the apartment building. In 1992 a Federal court judge approved a \$600,000 settlement to the building's owners.⁵⁵

Public's Perception of Police Brutality

Southern California residents' perceptions of the existence of excessive force and police brutality by LAPD officers and LASD deputies are largely influenced by the race of the observer. A 1990 *Los Angeles Times* poll of 1,901 respondents indicated that nearly half of the black respondents maintained there was "a fair amount of police brutality in the Southern California area." Blacks gave this reply more than twice as frequently than white respondents.⁵⁶ Secondly, "more than a third of the black [respondents indicated that] they or a family member had been intimidated or harassed by law enforcement officers—a percentage three times that expressed by [white respondents]."⁵⁷ In addition, the poll revealed that local residents generally believed that both law enforcement agencies were performing in a satisfactory manner. However, less than a third of all respondents indicated they had "a lot a confidence" that police would protect them from crime; only 12 percent of black respondents similarly responded. Although most respondents, 55 percent, contended they had "some confidence" they have protection from crime, one in every five black respondents had

"no confidence" that police would protect them from crime.⁵⁸

The Rodney King Beating

In March 1991, a department sergeant conducted a roll call training session on use of the baton.⁵⁹ On March 3rd, two police officers, Timothy Wind and Laurence Powell, who had attended the training session responded to a domestic dispute involving African Americans. Computer transmissions from their squad car to foot patrol officers at 12:31 a.m. contained racial epithets describing the incident.⁶⁰ Meanwhile, a 12:47 a.m. computer transmission from the LAPD's emergency board operator announced that police officers were in pursuit of a speeding white Hyundai (driven by Rodney King), that continually failed to yield and evaded the police.⁶¹ California Highway Patrol and the two LAPD officers, Wind and Powell, participated in the chase.⁶² Mr. King, a black unemployed construction worker, was on parole following a previous robbery conviction. Eventually, the car was stopped and its occupants detained by the police eastbound of Foothill Boulevard.

Mr. King's version of the subsequent events varied widely from that of the police officers. According to Sergeant Stacey Koon, King appeared

⁵⁴ Richard A. Serrano, "Memos Detail Police Response to Drug Raid," *Los Angeles Times*, Sept. 21, 1990, p. 1-B.

⁵⁵ Weinstein, "Award," p. 1. At the time of the settlement, the city of Los Angeles had previously paid \$445,000 in attorney's fees as a result of this incident.

⁵⁶ Cathleen Decker, "The Times Poll—Most Rank Police High in L.A. and Orange Counties," *Los Angeles Times*, Feb. 13, 1990, p. 1.

⁵⁷ *Ibid.* For example, a group of black and Latino youth at Will Rogers State Historic Park asserted that they were "kicked and struck by officers sometimes waving handguns, accused of being gang members and subjected to a rain of threats and racial slurs [on February 12, 1990]." See Andrea Ford, "Youths Allege Brutality, Racial Slurs by LAPD," *Los Angeles Times*, Apr. 11, 1990, p. 1B; see also Robin Toma, Esq., human relations consultant, Los Angeles County Human Relations Commission, telephone interview, Aug. 6, 1996 (hereafter cited as Toma Interview). Mr. Toma described how Garden Grove law enforcement officers routinely stop Asian teenagers, accuse them of being members of Asian gangs, photograph them without their parents' knowledge or consent, and without arrest.

⁵⁸ Decker, "The Times Poll." See also Steven A. Tuch and Ronald Weitzer, "Racial Differences in Attitudes Towards Police," *Public Opinion Quarterly*, vol. 61, no. 4, (Dec. 22, 1997), p. 642. "[This source] presents trend data from the National Opinion Research Center (NORC), Gallup, one other national survey, and a series of *Los Angeles Times* polls taken before and after three well-publicized brutality incidents in the Los Angeles area: the 1979 killing of Eulia Love; the 1991 beating of Rodney King; and the 1996 beatings of two Mexican immigrants. . . . Public opinion in general is sensitive to the influence of major events, and race has long been a strong predictor of attitudes toward the police, with African Americans more likely than whites to express unfavorable attitudes toward various aspects of policing." *Ibid.*

⁵⁹ "Crisis in the LAPD: The Rodney King Beating, The Internal Affairs Report," *Los Angeles Times*, May 21, 1991, p. 3-B (hereafter cited as "Crisis in the LAPD").

⁶⁰ Tracy Wood and Sheryl Stolberg, "Patrol Car Log in Beating Released," *Los Angeles Times*, Mar. 19, 1991, p. 1-A.

⁶¹ *Ibid.*; Robert Vernon, *The Inside Story—L.A. Justice: Lessons from the Firestorm*, (Colorado Springs: Focus on the Family Publishing, 1993), p. 47 (hereafter cited as *L.A. Justice*).

⁶² Vernon, *L.A. Justice*, p. 49.

to be under the influence of a drug, "PCP."⁶³ In an effort to subdue Mr. King, Sergeant Koon fired his 50,000 volt Taser electric dart gun.⁶⁴ Officers then struck Mr. King with batons and he was later handcuffed.⁶⁵ In contrast, Mr. King maintained that after he got out of his vehicle, he was beaten by police officers although he was handcuffed and "hog-tied."⁶⁶ King's passengers—Bryant Allen and Freddie Helms—were handcuffed while on the right side of the Hyundai. Although they heard Mr. King's screams, they did not witness his confrontation with the police officers because they were directed not to look and to keep their heads on the ground.⁶⁷

In spite of the LAPD officers' and Mr. King's conflicting perspectives, an unseen observer's (George Holliday) videotaped recording captured images of the officers beating Mr. King. A police official's report revealed that "[Mr.] King was hit between 53 and 56 times by officers wielding their batons. The bones holding his eye in its right socket were broken, and he suffered 11 broken bones at the base of his skull."⁶⁸ A computerized message sent from Officers Powell and Wind's squad car to foot patrol officers in the Sunland-Tujunga area confirmed that Powell and/or Wind had beaten Mr. King.⁶⁹

The videotape of the incident also revealed that 18 LAPD officers who witnessed the beating, did not intervene to stop their fellow officers. Ten of the 18 were rookie officers. Similarly, three California Highway Patrol officers

who were present at the scene reported the beating to their supervisors, yet also did not intercede.⁷⁰ A former LAPD police officer suggested that police officers' "code of silence"—an unspoken and unwritten rule to support fellow officers—was the primary reason for the lack of intervention.⁷¹

After the videotape was initially televised on a local Los Angeles station and eventually on national networks, the public immediately expressed its outrage by telephoning the mayor's office, the media, and the LAPD.⁷² Chief Gates, who was unaware of the computerized patrol car messages, first maintained that Mr. King's beating was not racially motivated. He stated at a news conference, "[w]e can turn up absolutely nothing that would suggest that, except for the fact that the officers were white and the suspect was black."⁷³ The chief later indicated that he hoped that the public would not conclude that the incident reflected the police department's usual practices.⁷⁴

The Rodney King beating precipitated an avalanche of events, including a demand by civil rights and community groups for the resignation of Police Chief Gates.⁷⁵ Data collected for a March 7–8, 1991, Los Angeles public opinion poll indicated:

94 percent of whites, 89 percent of Latinos, and 98 percent of blacks said that the "police officers used too much force in dealing with King." The [Rodney King] incident had a dramatic effect on all three groups but particularly on blacks, only 26 percent of whom expressed approval of the LAPD (down from 64 percent in 1988).⁷⁶

⁶³ "Crisis in the LAPD," p. 3; Wood and Stolberg, "Patrol Car Log." Toxicology tests later showed no evidence of drugs or alcohol. *Ibid.*

⁶⁴ Wood and Stolberg, "Patrol Car Log." A computerized message from Sergeant Koon to an unidentified officer at the Foothill Station's watch commander's desk stated, "You just had a big time use of force. . . tased and beat the suspect of CHP [California Highway Patrol] pursuit, Big time." After receiving the officer's response, Sergeant Koon replied that he planned to return to the station "for a fresh taser and darts."

⁶⁵ "Crisis in the LAPD," p. 3.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*; *Christopher Commission Report*, p. 7.

⁶⁸ Wood and Stolberg, "Patrol Car Log."

⁶⁹ *Ibid.* Their message was, "Oops. . . I haven't beaten anyone this bad in a long time." The foot patrol officers responded, "Oh not again. Why for you [sic] do that. . . I thought you agreed to chill out for a while. . . What did he do. . ." Officers Powell and Wind's replied, "I think he was dusted. . . [on PCP] many broken bones later. . . after the pursuit."

⁷⁰ Brenda Grinston, "Why Minority Cops are Afraid to Speak Out," *Los Angeles Times*, July 2, 1991, p. 7-B (Op-Ed Desk).

⁷¹ *Ibid.*; see also Carole Telfer Downey, "Police Brutality," *Los Angeles Times*, Mar. 23, 1991, p. 5-B. A criminal defense attorney states that retaliatory beatings with batons and gun butts, use of chokeholds, and malicious use of K-9 units by law enforcement authorities are commonplace.

⁷² *Christopher Commission Report*, p. 12.

⁷³ Wood and Stolberg, "Patrol Car Log."

⁷⁴ *Christopher Commission Report*, p. 12.

⁷⁵ See Carol McGraw and Lois Timnick, "Issue of Gates' Future Now Rests with Judge," *Los Angeles Times*, May 10, 1991, p. 1B.

⁷⁶ Tuch and Weitzer, "Racial Differences in Attitudes." "By the time of [a] March 20–21 poll, support for the LAPD among all three groups had plummeted even further, but disappeared almost entirely for blacks, only 14 percent of whom approved of the police department." *Ibid.*

A Los Angeles grand jury indicted Sergeant Koon, Officers Powell, Wind, and a third officer, Theodore Briseno, on felony charges of assault with a deadly weapon and unnecessarily beating a suspect under color of authority.⁷⁷ In May 1991, Chief Gates dismissed Officer Wind, a rookie officer without tenure, from the department, while Sergeant Koon and Officers Powell and Briseno were suspended without pay.⁷⁸ Over one year later in April 1992, a Ventura County jury found no criminal liability against either Sergeant Koon or Officers Powell, Wind, and Briseno.⁷⁹ The verdict stunned much of the country, and prompted demands for reform in the LAPD. It also triggered an immediate period of unrest, looting, and violence in South Central Los Angeles, followed by civil rights charges by the U.S. Department of Justice (DOJ) against the four policemen.⁸⁰

The Christopher Commission Background

On March 27, 1991, Chief Gates introduced a plan to determine whether departmental policies contributed to the Rodney King beating.⁸¹ Some of his strategies included examining the LAPD's use of force procedures; requesting a psychological profile of the officers involved in the incident, as well as those who had allegedly been named in excessive force complaints; assigning sergeants to analyze Mobile Digital Terminal (MDT) messages for improper transmissions; instituting an Internal Affairs 24-hour hotline to receive public complaints on excessive force; and requesting that retired California Supreme

Court Judge John Arguelles lead a five member panel to investigate the department's use of force training and control systems.⁸²

A few days later, Los Angeles Mayor Tom Bradley established another mechanism to study the LAPD's practices. On April 1, 1991, he created the Independent Commission on the Los Angeles Police Department (the Christopher Commission), as a temporary measure to address various law enforcement issues in the city.⁸³ Mayor Bradley appointed Deputy Secretary of State Warren Christopher as chairperson of the commission.⁸⁴ The commission's membership was composed of staff attorneys and other staff members.⁸⁵ The overall goal of the commission was to "examine all aspects of the law enforcement structure in Los Angeles that might cause or contribute to the problem of excessive force."⁸⁶

Notwithstanding Mayor Bradley's efforts, in establishing the commission, to restore public confidence in his administration's oversight of law enforcement, not every member of the public was enthusiastic about the Christopher Commission's formation or its subsequent recommendations. One witness who appeared before the Christopher Commission had a different view of the actual purpose of this committee. In his book, *The Inside Story: L.A. Justice—Lessons from the Firestorm*, now-retired LAPD Assistant Chief Robert Vernon argued that the creation of the Christopher Commission served as a mechanism for Chief Gates' opponents to remove him from his position as chief of the department.⁸⁷ Chief Gates also criticized the work of the Commission. He noted:

The [Christopher] commission often failed to indicate how it had reached its conclusions. Some of what I read was unsubstantiated, much of it misrepresentative. The commission had taken raw data, not both-

⁷⁷ Wood and Stolberg, "Patrol Car Log."

⁷⁸ Seth Mydans, "The Police Verdict," *New York Times*, Apr. 30, 1992, p.1 (hereafter cited as Mydans, "The Police Verdict").

⁷⁹ Ibid. The jury (consisting of 10 whites, 1 Asian, and 1 Hispanic) was deadlocked on one count against Officer Powell.

⁸⁰ Ibid. See generally Vernon, *L.A. Justice*, pp. 18–29; CNN News, "People Angry Over Police Officers' Acquittal," April 30, 1992, transcript 27–2; Richard Serrano and Tracy Wilkinson, "All 4 in King Beating Acquitted, Violence Follows Verdicts, Guard Called Out," *Los Angeles Times*, April 30, 1992, p. 1–A; Janny Scott, "King Case Aftermath: A City in Crisis – What Swayed the Jury?" *Los Angeles Times*, May 2, 1992, p. 1–A; Joe Drape and Lyle V. Harris, "Nine Dead, 150 Injured as L.A. Vents Rage in Night of Rioting," *Atlanta Journal and Constitution*, Apr. 30, 1992, p. 1–A.

⁸¹ Gates, *Chief*, p. 380.

⁸² Ibid., pp. 380–81.

⁸³ *Christopher Commission Report*, p. ii.

⁸⁴ Mydans, "The Police Verdict."

⁸⁵ Andrea Ford, "Christopher Panel Takes Heed of Critics," *Los Angeles Times*, May 12, 1991, p. 1–B. In response to concerns raised by community activists, Chairman Christopher increased the number of women staff members to 12. In addition, the Christopher Commission supplemented its focus to examine issues affecting women in law enforcement. See generally *Christopher Commission Report*.

⁸⁶ *Christopher Commission Report*, p. vii.

⁸⁷ Vernon, *L.A. Justice*, p. 117.

ered to analyze it or understand what it meant, then used it to damn the department. . . . When we asked to see the backup for their report—what use they had made of LAPD data and their own research and interviews—they turned us down flat. To this day (except for the MDT messages) they have refused to provide us with the supporting data for their conclusions. . . . The commission told us to do what we believe we were already doing. But they wouldn't tell us why they thought we weren't doing it or were doing it wrong.⁸⁸

Nevertheless, the Christopher Commission examined several concerns, which were spotlighted as a result of the King beating. They included:

1. the apparent failure to control or discipline officers with repeated complaints of excessive force.
2. concerns about the LAPD's "culture" and officers' attitudes toward racial and other minorities.
3. the difficulties the public encounters in attempting to make complaints against LAPD officers.
4. the role of the LAPD leadership and civilian oversight authorities in addressing or contributing to these problems.⁸⁹

The Christopher Commission used a comprehensive methodology to investigate these issues, which included:

[Obtaining the testimony of] more than 50 expert witnesses. . . in 26 executive sessions, and more than 150 representatives of community organizations and private citizens. . . in five public hearings held by the full Commission in different sections of the City. Members of the Commission [took] many individual initiatives ranging from night time "ride-alongs" in patrol cars to meetings with groups of ministers and priests. More than 500 current and retired Los Angeles police officers [were] interviewed. . . . [C]omputerized studies [were conducted] of the Department's use of force reports from 1987 to 1991 and of all complaints filed by members of the public between 1986 and 1990. . . . Staff reviewed Mobile Digital Terminal communications (MDTs) of the Department's patrol cars for six sample months drawn from a 16 month period. . . . [The Commission] examined . . . files in the 83 civil damage cases involving excessive force claims that were settled by the City Attorney, with the approval of the City Council, for more than \$15,000. . . . [M]ore than one million pages of documents [were] reviewed.⁹⁰

⁸⁸ Gates, *Chief*, pp. 403–04.

⁸⁹ *Christopher Commission Report*, pp. vii–viii.

⁹⁰ *Ibid.*, pp. ii–iii.

Findings

The Christopher Commission's investigation generated numerous findings and recommendations relating to the LAPD. In general, they can be grouped in the following categories:

- The Relationship between the Los Angeles Police Commission and the LAPD
- The Problem of Excessive Force
- Racism and Bias
- Community Relations/ Community Policing
- Recruitment, Selection, and Psychological Testing
- Personnel Issues
- Civilian Complaints and Officer Discipline (creating an Office of the Inspector General within the Los Angeles Police Commission)
- Implementation of Recommendations⁹¹

The Relationship between the Los Angeles Police Commission and the LAPD

The City Charter authorized the Los Angeles Police Commission in 1925 with administrative authority to supervise and manage the LAPD.⁹² The Police Commission holds public meetings and is also authorized to "appoint, discipline, and remove the Chief of Police."⁹³ Its members serve on a part-time basis, and in practice are usually replaced when a new mayoral administration begins.⁹⁴ The mayor has the ultimate authority to appoint and remove police commissioners, with the consent of the majority vote of the City Council.⁹⁵

The *Christopher Report* revealed:

In concept, the Police Commission is intended to function much like a corporate board of directors, setting policies for the Department and overseeing its operations in conjunction with the Chief of Police, who acts as a chief executive officer responsive to the direction and control of the Police Commission. In practice, the Police Commission's authority has proven illusory; a number of structural and operational constraints greatly weaken the Police Commission's power to hold the Chief accountable and therefore its ability to per-

⁹¹ "228 Page Report."

⁹² Los Angeles City Charter, §§ 70(b), 77, 78; *Commission Report*, p. 184.

⁹³ *Commission Report*, p. 184. The Police Commission also grants permits for various local activities and businesses.

⁹⁴ *Ibid.*, p. 184.

⁹⁵ *Ibid.*

form its management responsibilities, including effective oversight. As a result, real power and authority effectively reside in the Police Chief.⁹⁶

The Christopher Commission also viewed the full-time employment of the police commissioners in other occupations as an impediment to the effectiveness of the Police Commission in performing its oversight responsibilities.⁹⁷ According to former Commissioner Raymond Fisher, then-president of the Los Angeles Police Commission, although the Christopher Commission later retreated from the idea of full-time employment of the Police Commission's members, it supported using a police model that investigated civilian complaints through the LAPD's Internal Affairs Division.⁹⁸ This process would then be periodically monitored by the Police Commission's newly-appointed inspector general.

In contrast to these perspectives, Chief Gates argued that the chief of police was susceptible to potential political maneuvering by members of the Police Commission.⁹⁹ He further maintained that those commissioners who are familiar with the inner-workings of a police department are more useful to assisting the LAPD and the Los Angeles community.¹⁰⁰ Similarly, former Assistant Chief Robert Vernon also maintained that the department was vulnerable to manipulations by the mayor and various city council members who sought to control the LAPD.¹⁰¹

• *Problem of Excessive Force*

The Christopher Commission concluded that problems with excessive force among LAPD officers should be a primary concern of the depart-

ment's management.¹⁰² The Christopher Commission also indicated that "[t]he problem of excessive force is aggravated by racism and bias within the LAPD."¹⁰³ These and other assessments were based, in part, upon a review of LAPD statistics and interviews with command and rank-and-file officers. The Christopher Commission determined that an identifiable group of officers employ excessive or improper force more frequently than other officers.¹⁰⁴ Testimony from police officers revealed that "problem officers" are improperly supervised and not receiving appropriate attention from LAPD's management.¹⁰⁵ The underlying data indicated that:

of approximately 1,800 officers against whom an allegation of excessive force or improper tactics was made from 1986 through 1990 . . . 183 officers had four or

¹⁰² *Christopher Commission Report*, p. 32.

¹⁰³ *Ibid.*, p. xii. Cf. Christopher John Farley, "A Beating in Brooklyn," *Time*, Aug. 25, 1997, p. 38. The article describes the sexual assault of Abner Louima, a Haitian immigrant, allegedly by police officers of the New York City Police Department's 70th Precinct. He was taken into custody while attending a Brooklyn, New York, nightclub. According to Mr. Louima, when he arrived at the police station he was beaten, strip-searched, and sodomized with a toilet plunger. He allegedly indicated that the officers uttered racial epithets and informed him that "[t]his is [Mayor] Giuliani's time, not [former Mayor] Dinkins' time." [Former Mayor Dinkins is African American.] Mr. Louima suffered broken front teeth, a ripped bladder and a punctured lower intestine. See also Dan Barry, "Officer Charged with Brutalizing Man in Brooklyn Police Station," *New York Times*, Aug. 14, 1997, p. A-1. But see Howard Safir, police commissioner of the City of New York, to Stephanie Y. Moore, general counsel, U. S. Commission on Civil Rights, May 18, 1998. Police Commissioner Safir noted that "[o]n February 26, 1998, United States Attorney for the Eastern District of New York, Zachary Carter, unsealed the indictments of five officers involved in the incident and confirmed during a press conference that the statement regarding 'Giuliani time' was never made by police officers or anyone else during the incident."

¹⁰⁴ *Ibid.*, p. 32. See generally "228 Page Report," In 1991 the LAPD's policy on the use of force stated: "While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm." LAPD Chief Willie L. Williams, telephone interview, Aug. 5, 1996 (hereafter cited as Williams Interview).

¹⁰⁵ *Christopher Commission Report*, pp. 32-35.

⁹⁶ *Ibid.*, p. 183.

⁹⁷ Commissioner Raymond C. Fisher, Esq., telephone interview, July 22, 1996 (hereafter cited as Fisher Interview). See also Matt Lait, "Perez to Head Police Commission, Vows to Boost Morale, Cut Crime," *Los Angeles Times*, July 30, 1997, p. 1. (Commissioner Edith R. Perez was elected president of the Police Commission in July 1997. Former Commissioner Fisher has been nominated for a position in the U.S. Justice Department.)

⁹⁸ Fisher Interview.

⁹⁹ See Gates, *Chief*, pp. 373, 384.

¹⁰⁰ See *ibid.*, pp. 384-85.

¹⁰¹ Vernon, *L.A. Justice*, pp. 64-65. See also Frederick M. Muir and Richard A. Serrano, "Council Calls Session on Police Commission," *Los Angeles Times*, Oct. 18, 1990, p. 1-A; Sheryl Stolberg and Jane Fritsch, "Commission Orders Gates to Reinstate Critic," *Los Angeles Times*, July 17, 1991, p. 1-A.

more allegations, 44 had six or more, 16 had eight or more, and one had 16 allegations. . . .

of nearly 6,000 officers identified as involved in use of force reports from January, 1987 through March, 1991 . . . 63 officers had 20 or more reports each. The top 5% of officers ranked by number of reports accounted for more than 20% of all reports, and the top 10% accounted for 33%.

of 662 officers involved in any shooting from 1986 through April, 1991, 19 officers were involved in three or more. . . . For the years covered by the database, one officer had 13 allegations of excessive force and improper tactics, five other complaint allegations, 28 use-of-force reports, and one shooting; another had six excessive force and improper tactics allegations, 19 other complaint allegations, 10 use-of-force reports, and three shootings. . . .¹⁰⁶

In addition, Christopher Commission staff identified 44 officers who had six or more allegations of excessive force or improper tactics from 1986 to 1990. Personnel records and 200 investigation files were also reviewed. The *Christopher Report* noted that although the 44 officers received favorable performance evaluations, their ratings did not reflect the officers' disciplinary histories.¹⁰⁷

Other indications of improper use of force were observed by examining records of computer messages transmitted between LAPD patrol cars. Some messages from officers throughout Los Angeles referred to injuring suspects and other civilians.¹⁰⁸

¹⁰⁶ *Ibid.*, pp. 36–37.

¹⁰⁷ See generally, *ibid.*, pp. 39–48. The *Report* advised that potential “problem officers” are not limited to this group of 44 officers.

¹⁰⁸ *Ibid.*, pp. 48–54. For example, the following exchanges were noted: COMMENT—“Did you really break his arm[?]” RESPONSE—“Along with other misc parts”; COMMENT—“We have his oriental buddy for 11364” RESPONSE—“Great . . . make sure u burn him if he’s on felony probation . . . by the way does he need any breaking . . . [?]”; COMMENT—“Did U arrest the 85 yr old lady of [sic] just beat her up[?]” RESPONSE—“We just slapped her around a bit. . . she/s getting m/t [medical treatment] now.” Cf. Kevin P. Jenkins, “Police Use of Deadly Force Against Minorities: Ways to Stop the Killing,” *Harvard BlackLetter Journal*, vol. 9 (1992), pp. 1, 18–19. In reference to the Rodney King beating, the author commented:

The most sinister element illustrated by this incident is the lack of concern the officers showed about making their racist statements and violent actions known to other members of the police force over a recorded radio transmission line. This candor shows an attitude of acceptance, and indicates that

Lastly, staff members analyzed force-related civil cases closely to examine the types of alleged misconduct. Specifically, a review was made of 83 cases of alleged excessive or improper force by LAPD officers from 1986 to 1990, in which settlements or judgments of more than \$15,000 were obtained.¹⁰⁹ The researchers concluded that although most of the cases alleged obvious misconduct that seriously injured or killed the victims, some of the incidents were due to accidental or negligent conduct. The *Christopher Report* determined that “[t]he LAPD’s investigation of these 83 cases was flawed in many respects, and discipline against the officers involved was frequently light or nonexistent. Further, the LAPD does not have adequate procedures in place to review or learn from the results of this litigation.”¹¹⁰

The *Christopher Report* also included the results of a May 1991 LAPD survey of its officers on the use of excessive force.¹¹¹ A *Los Angeles Times* article describing the survey results, indicated that almost 5 percent of the respondents agreed that “an officer was justified in ‘administering physical punishment’ to suspects in heinous crimes or [to] those who had uncooperative attitudes. Another 11 percent said they had no opinion on the matter.”¹¹² Some of the other findings included the following:

About half of the respondents identified job-related stress, off-duty personal problems, lack of self-confidence and fear of personal injury as contributing to the use of excessive force.

Sixty-four percent said a “lack of verbal communication skills” may lead to the use of excessive force, and 39% said “ineffective supervision” also contributes.

More than 86% said most officers know the appropriate level of force to use, but only 78% agreed that “the use of excessive force is serious misconduct.” About 9% disagreed with the statement, and 13% had no opinion.

beliefs and actions based on racial prejudice must continue to be addressed and resolved in order to reduce the level of police violence against Blacks and other minorities.

¹⁰⁹ *Ibid.*, pp. 56–58.

¹¹⁰ “228 Page Report.”

¹¹¹ Dean E. Murphy, “Officers Cite Lack of Control for Excessive Force Cases, Survey Finds,” *Los Angeles Times*, July 20, 1991, p. 3–B.

¹¹² *Ibid.*

Ninety-one percent said the carotid chokehold, which was banned by the department several years ago, should be allowed as an alternative to deadly force.

Among the causes of "negative interaction between the police and the community," 92% identified the media and outspoken community leaders; 64% pointed to the attitudes and perceptions of citizens; 32% cited a lack of compassion and sympathy among police officers; 31% pointed to feelings of superiority and cynicism among officers; and 25% listed racial bias among officers.

Low morale was identified by 65% as a problem in the department, while 56% said there is a "substantial lack of motivation." Asked whether there was lack of support for the department among residents, 54% agreed, 30% disagreed and 16% had no opinion.

Thirty-eight percent said officers' lack of knowledge about particular communities contributed to "cultural bias," which the survey defined as including prejudice toward racial and ethnic groups. But 81% said residents' lack of knowledge about police procedures also was a factor.¹¹³

While the Christopher Commission commended the LAPD for its overall efforts to create an atmosphere free of drug use and corruption, it urged the department's leadership to disseminate a clear message to its officers that the goal of eliminating use of excessive force was a priority for the LAPD. It also advised that the department should hold command officers, lieutenants, and sergeants accountable for the actions of the officers they supervise; employ video and audio-tape equipment to monitor interaction between the public and the police; and evaluate "mid-level" use of force options before exposing them to the public.¹¹⁴

• **Racism and Bias**

The Christopher Commission acknowledged that the LAPD has an official policy against "racially or ethnically oriented remarks."¹¹⁵ Staff

¹¹³ Ibid. "The respondents roughly reflected the ethnicity, race and sexual diversity of the department, according to statistics released with the survey. About 57 percent were white, 22 percent Latino, 14 percent black and 1 percent Asian. The others didn't provide such information. Nearly 83 percent of the respondents were male, and 83 percent held the rank of officer." Ibid.

¹¹⁴ *Christopher Commission Report*, pp. 60-65.

¹¹⁵ Ibid., p. 73. "These remarks are an inappropriate form of communication which becomes a destructive wedge in rela-

review of the MDT transcripts, however, revealed that officers nonetheless used racial epithets, and that a number of offensive MDT comments originated from sergeants' field supervisory units.¹¹⁶ In addition, only a small number of personnel complaints based on improper racial remarks were sustained from 1984 to 1990. The sustained complaints usually resulted in insignificant penalties.¹¹⁷ According to former Assistant Chief Robert Vernon, however, the Christopher Commission's review overstated the problem:

What. . . [the Christopher Commission] didn't say was that of the thousands of MDT messages they reviewed, less than two-tenths of 1 percent had anything in them that could be considered racist, sexist, or condoning of excessive force. My point is not to say that even one racist message should be condoned. The tolerance level should be zero. I'm just saying that the commission made dishonest use of the data to build a case for a pervasive problem.¹¹⁸

Public testimony before the Christopher Commission indicated that minority civilians in Los Angeles were susceptible to discriminatory treatment and harassment by the LAPD. For

tionships with peers and members of the community. The deliberate or casual use of racially or ethnically derogatory language by Department employees is *misconduct* and will not be tolerated under *any* circumstances." Ibid. (emphasis in original). The *Report* also recognized that the department had a history of discriminatory treatment towards gay men and women civilians and noted the lack of openly gay men and women officers in the LAPD. Ibid., pp. 88-89.

¹¹⁶ Ibid., p. 73. *But see* Gates, *Chief*, p. 398. "Most of the objectionable transmissions were just plain dumb locker-room humor spoken between two people, privately. To a police officer nothing is sacred, and unfortunately in these tapes there was a good deal of sexism, untoward jokes, and racial remarks. Actually, I can't say *racial*; *insensitive* would be better. I explained [to the Christopher] Commission how [the LAPD] was going through the tapes and would discipline every officer who spoke out of line." (emphasis in original); Joseph Gunn, assistant deputy mayor, City of Los Angeles, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, May 15, 1998 (hereafter cited as Gunn Letter, May 15, 1998).

¹¹⁷ Ibid., pp. 73-74. In one incident, "a white male officer transmitted a vulgar sexual and racial remark to an African-American female officer, who used her MDT to respond with angry profanities. The commanding officer recommended a four-day suspension for the white male officer and a two-day suspension for the African-American female officer. The Chief of Police reduced the penalties to one-day suspensions for each."

¹¹⁸ Vernon, *L.A. Justice*, pp. 122-23.

example, blacks and Latinos were subjected to the “prone-out” tactic¹¹⁹ and excessive force tactics,¹²⁰ as well as being detained by the police because they matched generalized descriptions of minority suspects.¹²¹

The LAPD’s employment of police dogs in minority communities was also examined by the Christopher Commission. In general, the department’s use of police dogs has greatly assisted officers in apprehending criminal suspects, detecting and locating narcotics and explosives, and searching for missing children and adults.¹²² Since the LAPD’s K-9 search policy is usually directed towards those individuals whom the department considers dangerous or resistant to arrest, canine unit officers routinely carried “specialized equipment, such as ear [communicators], heavy duty body armor, and flashlights mounted [on] semi-automatic shotguns[,] and pistols.”¹²³

During the early and later years of the 1980s, the majority of dogs in the K-9 Platoon were instructed by the “find and hold” method of training, instead of the “find and bark” tech-

nique.¹²⁴ In the “find and hold” method, when the animal has pinpointed a suspect, it is taught to give the police officers a silent signal through its body language.¹²⁵ Afterwards, “handler control and circumstances determine whether the canine will be allowed to physically confront the suspect.”¹²⁶ In contrast, the “find and bark” method trains the dog to provide a barked “alert” when it confronts a suspect.¹²⁷ In spite of these precautions, the Christopher Commission’s researchers received and reviewed complaints on the frequency and manner of use of police dogs in minority communities:

data provided by the LAPD show[ed] a high correlation between the frequency of use of the canines and the areas of the City with significant minority populations. . . . During the period 1986-1989, [the South and Central Bureaus] comprised 70.8% of the total canine searches, 70.4% of the suspects apprehended in canine searches and 69.6% of the reported dog bites.¹²⁸

Further, in June 1991, prior to the issuance of the Christopher Commission’s findings, two

¹¹⁹ *Ibid.*, p. 75. Vernon explains, “[t]he ‘prone-out’ position is a police control tactic that requires the suspect first to kneel, and then lie flat on his stomach, with his arms spread out from his sides or his hands behind his back. The [Christopher] Commission received numerous accounts of incidents involving African-American or Latino males stopped for traffic infractions, who were ‘proned-out’ under circumstances that did not present any risk of harm to the officers and that did not involve a felony warrant.” *Ibid.*

¹²⁰ *Christopher Commission Report*, p. xii.

¹²¹ Vernon, *L.A. Justice*, p. 75. See also Angela Oh, Esq., telephone interview, July 18, 1996 (hereafter cited as Oh Interview); Toma Interview; Mack Interview.

¹²² See LAPD—Chief Darryl F. Gates and Sergeant (II) Ron Ryan, Metropolitan Division, “K-9 Search Operations,” *L.A. Hearing*, subpoena duces tecum document, Exh. 1h, vol. 9, pp. 1, 13. The subpoenaed document revealed that “[d]uring the K-9 Platoon’s nine year existence, there have been seven medals presented for individual bravery by K-9 officers and their search dogs. In 1989, Metropolitan Division’s K-9 Platoon was awarded a Meritorious Unit Citation for distinguished duty performance.” *Ibid.*, p. 13.

¹²³ *Ibid.*, p. 5. According the subpoenaed document, “The Department policy under which the K-9 Platoon operates states that police dogs will conduct searches for felony suspects: who have evaded officers and are hiding within the community; who have secreted themselves in structures and their locations are unknown to officers; or any suspect known to have committed a crime with a firearm and the search for that suspect compromises officer safety.” *Ibid.*, p. 4.

¹²⁴ See *Chew v. Gates*, 27 F. 3d 1432 (9th Cir. 1994). The Court of Appeals for the Ninth Circuit recognized that the plaintiff established that: “throughout the 1980s, the LAPD vacillated between these two different policies. . . . [B]eginning in 1980, the LAPD trained its police dogs to find, bite and hold suspects even if the suspects were stationary and not resisting the dog. In 1984, this policy was abandoned in favor of a find and bark policy used by many other law enforcement agencies. In 1988, the LAPD returned to its original find, bite, and hold policy.” *Id.* at 1453 n.5; see also LAPD, “Subcommittee Report: K9 Policies and Practices,” Aug. 13, 1992, *L.A. Hearing*, subpoena duces tecum document, Exh. 1h, vol. 9, p. 26.

¹²⁵ LAPD, “Subcommittee Report: K9 Policies and Practices,” Aug. 13, 1992, *L.A. Hearing*, subpoena duces tecum document, Exh. 1h, vol. 9, p. 24.

¹²⁶ *Ibid.*, p. 24.

¹²⁷ *Ibid.*

¹²⁸ *Christopher Commission Report*, p. 73. See also National Public Radio, “Morning Edition,” Jan. 8, 1992. Guests on the radio program discussed treatment of suspects who were apprehended by the LAPD’s K-9 Platoon. Critics of the K-9 Platoon alleged that the department allowed the dogs to bite those individuals that they apprehend as a reward. Also, Constance Rice, western region legal counsel for the NAACP, opposed the canines’ practice of biting suspects, bystanders, unthreatening suspects, and children first before any questioning has taken place by the police. LAPD Deputy Chief Ronald Frankel dismissed the canine “biting as a reward” allegation. The show’s host also reported that during an interview for a local television Police Chief Darryl Gates had publicly stated that the police dogs had a gentle nature.

civil rights organizations—the NAACP Legal Defense and Education Fund, and the American Civil Liberties Union of Southern California—filed a class action lawsuit against the department. The plaintiffs asserted that the LAPD’s K-9 Platoon injured a large number of Latino and African American civilians who did not threaten the police.¹²⁹ Specifically, their suit alleged that “the dogs frequently inflict[ed] serious injuries, that using them in nonviolent situations constitute[d] excessive force, that dog handlers receive[d] inadequate training and supervision, and that the animals are used in a manner that is racially discriminatory, and therefore unconstitutional.”¹³⁰ Further, the plaintiffs urged that the LAPD abandon its current canine practice of “find and bite,” and impose the department’s deadly force policies on its use of police dogs.¹³¹

¹²⁹ Sheryl Stolberg, “Lawsuit Charges Improper Use of Police Dogs,” *Los Angeles Times*, June 25, 1991, p. B-1 (hereafter cited as “Lawsuit Charges,”); David Beers, “A Biting Controversy,” *Los Angeles Times*, Feb. 9, 1992, magazine section, p. 23.

¹³⁰ Stolberg, “Lawsuit Charges.” The article also notes, however, “Lt. Pete Durham, the LAPD officer in charge of the K-9 search unit, said the dogs are used only to track down felony suspects, or misdemeanor suspects who are known to be armed.” *Ibid.*

¹³¹ See Beers, “A Biting Controversy.” “Police dogs bit an estimated 1,000 people in Los Angeles County during the last three years—more than anywhere else. The 18 dogs in the LAPD unit bit about 900 people, and the [Los Angeles] Sheriff’s Department’s 15 dogs bit about another 150. In contrast, during the same period, the 47 police dogs working Washington, DC, bit 215 people. [In 1991], Baltimore [City Police Department]’s 41 dogs bit 30 people, and Houston’s 19-dog K-9 unit recorded a single bite serious enough to require a night’s hospitalization. In recent years, suspects caught by the Los Angeles departments’ K-9 teams were bitten between a third and half the time, a very high ‘bite rate’ by national standards, according to Hubert Williams of the Washington, DC, nonprofit Police Foundation.” *Ibid.* See also Stolberg, “Lawsuit Charges,” p. B-1. The LAPD’s deadly force policy would prevent police officers from using canines “unless officers believed a suspect posed a serious threat of death or physical injury to the officers or other citizens.” The Los Angeles Sheriff’s Department’s Captain Dan Burt reviewed the history of the K-9 unit in 1990, when he assumed responsibility for the sheriff’s department’s canine division. He supported the “find and bite” policy, since some LAPD dogs have died in the line of duty when apprehending dangerous suspects. However, law enforcement officials in other cities maintained that their canine units’ “circle and bark,” similar to LAPD’s “find and bark,” policies have not prevented them from making arrests and also decreased the number of civil liability suits. See Beers, “A Biting Controversy.”

Although the NAACP’s lawsuit detailed complaints of biased treatment towards minority civilians, the Christopher Commission received evidence of discriminatory treatment of minority police officers by their fellow officers.¹³² Interviews with Asian, Latino, and African American LAPD officers indicated that they were often subjected to racial and ethnic slurs from their peers. The officers were concerned, however, that their careers would be jeopardized if they reported these and other instances of discriminatory treatment.¹³³ Moreover, minority officers observed that the department failed to enforce existing policies against racist conduct vigorously, and therefore, appeared to condone such activity.

Similar complaints were heard in the ranks of female officers regarding gender bias.¹³⁴ However, the Christopher Commission did not find any evidence that substantiated that this form of discrimination contributed to the harassment of female suspects or victims, or in the use of excessive force.¹³⁵ The researchers did indicate, however, that female officers were underutilized in the department.¹³⁶

Hence, the Christopher Commission recommended that the department’s chief of police create tangible methods of communicating that any form of discrimination would not be tolerated in the department. Some of these methods could include: imposing disciplinary sanctions, establishing cultural awareness training for su-

¹³² Freed, “LAPD: Despite Gains, Race, Sex Bias Persist,” *Los Angeles Times*, Sept. 28, 1986, § 1, p. 1; *Christopher Commission Report*, pp. 79–80.

¹³³ *Ibid.*, pp. 78–80.

¹³⁴ *Ibid.*, p. 83. “At the West Los Angeles police station, for example, black and women officers complained last year to their supervisors that white policemen belonged to a clique that was harassing them. . . . The clique was known to some as ‘White Anglo Saxon Police (WASP)’ and to others as ‘Men Against Women.’ One black woman rookie—the first ever assigned to the West Los Angeles station—alleged that she was maliciously soaked with gasoline at the station’s fuel pump by a white policeman. She also said she was assigned to no fewer than 32 training officers—some of whom she said never spoke to her—during the one year she patrolled West Los Angeles.” See also *Other Developments* section of this chapter discussing evidence adduced in the O.J. Simpson trial regarding Mark Fuhrman’s taped interview alleging sexist and racist police misconduct.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

pervisors and officers, and maintaining recruitment of minority officers.¹³⁷

• *Community Relations/Community Policing*

Prior to the creation of the Christopher Commission, the LAPD employed an overall policing strategy that featured a "professionalism" model. Chief William Parker is usually credited as the originator of this policing approach.¹³⁸ Under this model police officers were equipped with the latest in technological advancements such as helicopters, computers, and vehicles in order to combat crime.¹³⁹ "Unlike police in many other big cities, LAPD officers . . . cruise[d] the streets, looking for trouble before it happen[ed], trying to spot possible criminals by their appearance and their demeanor, determined to do unto them before they c[ould] do unto anyone else."¹⁴⁰ The "professionalism" model, however, had an unfortunate byproduct: it also served to isolate police officers from law-abiding citizens, and emphasized crime control, instead of crime prevention.¹⁴¹ As a result, community members viewed the police department with mistrust,

¹³⁷ Ibid., pp. 90–92. See Williams Interview. Chief Williams indicated that he made a public statement denouncing discrimination and implemented a gender, racial, and sexual orientation awareness training program for upper management staff.

¹³⁸ Shaw, "Chief Parker Molded LAPD Image." See generally Gunn Letter, May 15, 1998. The tenures of LAPD Police Chiefs Brown, Reddin, Murdoch, immediately followed Chief Parker's. Chief Gates became chief of police after Chief Murdoch's tenure.

¹³⁹ *Christopher Commission Report*, p. 97. "Tactics focused on stopping crimes-in-progress and on criminal investigation. Officers in cars patrolled city streets to interrupt crimes and respond immediately to calls for service. . . ." George Kelling, "The Blue-Uniformed Fear of 'Social Work,'" *Los Angeles Times*, p. B-7. See also Woods, *The Police in L.A.*, pp. 228–29. The author cites examples such as a decrease in pedestrian and vehicular traffic fatalities, and the development of comprehensive police training manuals as some of the department's successes with the "professionalism" model. Gates, *Chief*, pp. 41–42. Former Chief Parker streamlined the department by improving training procedures, creating the Administrative Vice Division (to audit other vice units and the Intelligence Division), and promoting officers based on their Civil Service exam score.

¹⁴⁰ Shaw, "Chief Parker Molded LAPD Image."

¹⁴¹ *Christopher Commission Report*, pp. 98–99; Kelling, "The Blue-Uniformed Fear."

since they were perceived by the police as potential criminals.¹⁴²

After the Watts Riot, Chief Parker initiated a community relations officer program.¹⁴³ In the 1970s, Ed Davis, who served as chief of the LAPD from 1969 to 1978, expanded the community based concept by implementing a "Basic Car Plan."¹⁴⁴ This plan required a team of nine officers to patrol a designated area on a 24-hour basis. A senior officer supervised each team. The department held formal meetings with community members on a monthly basis, and also informally met during the month.¹⁴⁵ According to Chief Gates, "[n]ine officers, on rotating shifts, would man each car. Once a month the officers would sit down at a church or school in the community, . . . and talk about crime."¹⁴⁶ In addition, a "directed patrol" approach was created,

¹⁴² *Christopher Commission Report*, pp. 99–100. See also Shaw, "Chief Parker Molded LAPD Image." This mistrust was perhaps heightened in the African American community. "This problem was not unique to Los Angeles. . . . An 11-city study by Peter Rossi at Johns Hopkins University in 1968 showed that because the 'the urban lower class is today disproportionately black. . . a dark skin is to the police a statistically significant cue to social status and thus to potential criminality.'" Ibid. See generally Daniel E. Georges-Abeyie, *Symposium: Law Enforcement and Racial and Ethnic Bias*, *Florida State University Law Review*, vol. 19 (Winter 1992), p. 717. The author examines literature relating to police-minority relations in the United States.

¹⁴³ Woods, *The Police in L.A.*, p. 310; Gates, *Chief*, p. 356. "Unfortunately for the communities of Los Angeles, Chief Davis used the CRO's as community organizers to get people out to city hall when the chief wanted them there to support his proposals. After Tom Bradley was elected mayor, funds for CRO's were cut from the police budget to derail the Davis political machine." with Gunn Letter, May 15, 1998. Assistant Deputy Mayor Gunn disagreed with this view. "[T]here was no political machine, but an organized community interested in public safety who were objecting to Bradley's numerous budget cuts in the police department."

¹⁴⁴ See National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police* (Washington, DC: Government Printing Office, 1973), p.157 (hereafter cited as NACCJSG, *Report on Police*).

The stated objectives of the basic car plan were to help society prevent crime by improving community attitudes toward the police; to provide stability of assignment for the street policeman; and to instill in each team of officers a proprietary interest in their assigned area and a better knowledge of the police force role in the community. Beginning in November 1969, the plan was tested in two [Los Angeles police] divisions; it was expanded citywide in April 1970.

¹⁴⁵ Ibid., p. 157. Under this plan, the duties of patrol watch commanders and field sergeants remained the same.

¹⁴⁶ Gates, *Chief*, p. 356.

which required officers who were waiting for dispatch calls to address particular crime incidents in their specific patrol area.¹⁴⁷

In Chief Gates' view, the "team policing" concept was not effective. Nor was it a substitute for eliminating crime.¹⁴⁸ Specifically, he contended that most Los Angeles residents were not interested in assisting the department in preventing crime, and that the public generally expected police authorities to combat illegal activity. Further, Chief Gates noted that the program was adversely affected by budgetary restrictions.¹⁴⁹ As a result, in 1979, he abolished "team policing" and re-focused the Department's overall goal to fighting crime.¹⁵⁰

After receiving testimony from various police administration experts, the Christopher Commission had a different perception of the necessity for a cooperative relationship between the LAPD and its local residents, in order to combat crime jointly.¹⁵¹ These police administration officials advised the Christopher Commission that if a "community policing model" of policing was implemented in the Department, it would help to address the LAPD's use of excessive force and improve the LAPD's relationship with the community.¹⁵²

Community policing emphasizes a department-wide philosophy oriented toward problem solving, rather than arrest statistics. The concept also relies heavily on the articulation of policing values that incorporate community involvement in matters that directly affect the safety and quality of neighborhood life. To acquire an understanding of the particular concerns and priorities of different neighborhoods, officers must interact with residents on a routine basis and

¹⁴⁷ Woods, *The Police in L.A.*, p. 310. LAPD programs, such as DARE and Jeopardy, which were designed to dissuade L.A. youth from joining gangs and using drugs are effective examples of team policing. Gates, *Chief*, p. 356. Crime prevention programs such as the Neighborhood Watch Program were later created in Los Angeles.

¹⁴⁸ See *ibid.*, pp. 357–58; Woods, *The Police in L.A.*, pp. 310–11.

¹⁴⁹ Gates, *Chief*, pp. 356–58

¹⁵⁰ Woods, *The Police in L.A.*, pp. 310–12 (describing how Chief Gates' anticrime programs were centered on developing new weapons for the department).

¹⁵¹ *Christopher Commission Report*, p. 100.

¹⁵² *Ibid.*

keep them informed of police efforts to prevent neighborhood crime.¹⁵³

• **Recruitment, Selection, and Psychological Testing**

In addition to changing the LAPD's policing philosophy implementing community policing strategies, the Christopher Commission found that the LAPD's preemployment screening procedures did not ensure that an officer's emotional and psychological problems were detected prior to employment. Although police officer applicants were subjected to an oral interview, two psychological tests, and a social history questionnaire, these mechanisms rarely excluded many candidates.¹⁵⁴

The criteria used by LAPD's background investigators was questioned by city personnel department employees during interviews with Christopher Commission researchers. The employees contended that the background investigators centered their inquiries on the candidate's sexual history and use of drugs, and minimized attention to an applicant's potentially violent tendencies and inability to interact with other people.¹⁵⁵ Moreover, the researchers also concluded that many of the background investiga-

¹⁵³ *Ibid.*, pp. 100–01. In an interview with Commission staff Mr. Mack indicated that African American communities were initially skeptical of community policing. Mack Interview. Similarly, Angela Oh described barriers to implementing community policing programs in Asian immigrant neighborhoods. Oh Interview. Dr. Armando Morales, telephone interview, Aug. 24, 1996 (hereafter cited as Morales Interview) (making similar observations with respect to Latino community).

¹⁵⁴ *Christopher Commission Report*, pp. 110–11. One commonly used psychological test is the MMPI-2. The MMPI-2 provides a general warning of mental illness, and identifies areas that should be further investigated. *Ibid.* But see William A. Geller and Hans Toch, eds., *And Justice for All: Understanding and Controlling Police Abuse of Force* (Washington, DC: Police Executive Research Forum, 1995), p. 153. Although the Christopher Commission recommended periodically testing police officers for psychological, physical and emotional problems, other evidence indicates that this is of limited value. "[T]he utility of psychological screening for reducing the use of abusive force is still a subject for debate. . . . While the search for tests that will do a better job of predicting violent behavior continues, not all researchers agree that this can be done. Even optimistic researchers admit that '[i]t's unrealistic to say we are going to have any one test that will eradicate this problem—though we have to try.'" *Ibid.*

¹⁵⁵ *Ibid.*, p. 111.

tors were inadequately trained and overworked.¹⁵⁶

As a result, the *Christopher Report* recommended that prescreening procedures for police officer applicants focus closely on the individual's past behavior. Candidates should not be hired until a background investigation has been completed. Also, the report recommended that current police officers be psychologically and physically evaluated every 3 years to determine the existence of potential problems.¹⁵⁷ Further, the Christopher Commission suggested that background investigators should receive better training.

• **Training**

The Christopher Commission recognized the noteworthy reputation that the Police Academy enjoys as a training institution.¹⁵⁸ However, it also observed that "approximately 90–95% of each entering academy class graduates. Less than 10 years ago that rate was closer to 60%. A portion of this change . . . seems attributable to an unwillingness to terminate poorly performing recruits."¹⁵⁹

After graduating from the academy, the officers are designated in a probationary status and are assigned to a field training officer (FTO). The FTOs serve as the LAPD's primary mechanism to familiarize probationary officers with the department's policies and traditions. Hence, Christopher Commission staff "interviewed 227 field training officers in four of the city's 18 divisions. . . . [They] found that 93 were promoted to training officers after personnel complaints were

¹⁵⁶ Ibid., p. 112. "At any given time, investigators are expected to carry a caseload of approximately 120–150 investigations, each of which involves contacting about 10 to 20 people (a candidate's relatives, friends, current and former employers) and running checks with federal, state, and local law enforcement agencies. Most investigators complained that they did not have enough time to contact all references of all candidates." Ibid.

¹⁵⁷ Ibid., p. 110. *But see* Rich Connell, "Christopher Spotlight Shifts to Police Union," *Los Angeles Times*, Aug. 20, 1991, p. B-1 (hereafter cited as "Christopher Spotlight Shifts") (noting that "[m]any of the Christopher Commission proposals require labor negotiations . . . includ[ing] psychological testing of officers already on the job").

¹⁵⁸ *See* Ted Rohrlich, "LAPD Seeking to Improve Rookies' Training," *Los Angeles Times*, Sept. 17, 1991, p. 1-B. The academy instructs recruits to exercise restraint in using force.

¹⁵⁹ Ibid., p. 125.

sustained against them. Nineteen were promoted despite sustained complaints for having been too violent; and some others were promoted despite subscription to a formal code of silence to cover up wrongdoing by colleagues."¹⁶⁰ In response, the researchers' generally recommended that the LAPD should provide a consistent training curriculum between the academy and the department, in addition to establishing uniform criteria for selecting FTOs in order to disqualify those individuals with histories of disciplinary and/or excessive force problems.¹⁶¹

• **Personnel Issues**

At the time of the Christopher Commission's investigation, the LAPD employed a promotion system (from a police officer to sergeant's position) that included a Civil Service Interview Board's review of a candidate's background.¹⁶² However, the board often did not have access to a candidate's entire complaint history and disciplinary record. Therefore, a candidate's potentially disturbing pattern of excessive force allegations were unknown to the board.

Among other recommendations, the Christopher Commission suggested that the patrol officers' assignments be periodically rotated so that officers would be exposed to diverse assignments and neighborhoods. The commission further recommended that histories of "sustained" and "not sustained" complaints be made available to promotion committees and included in officers' central and division staff files.¹⁶³

• **Civilian Complaints and Officer Discipline**

The focus of many of the public's adverse comments about the LAPD concerned the handling of citizen complaints. Although the Christopher Commission acknowledged that police officers are often the target of false allegations, it maintained that the LAPD's civilian complaint procedures are biased in favor of police officers in excessive force situations.¹⁶⁴ One primary recommendation was the following:

¹⁶⁰ Rohrlich, "LAPD Seeking." *See Christopher Commission Report*, pp. 126–29 for specific examples.

¹⁶¹ Rohrlich, "LAPD Seeking." *Christopher Commission Report*, pp. 134–36.

¹⁶² *Christopher Commission Report*, pp. 139–42.

¹⁶³ Ibid., pp. 148–49.

¹⁶⁴ Ibid., p. 153 ("[Out of a total] [o]f . . . 3,419 allegations of excessive force or improper tactics initiated by members of

that the discipline system be restructured fully and that the operation of that system be open to meaningful public review by a civilian authority. To ensure that review, we recommend establishment of an office of the inspector general within the Police Commission, with responsibility to audit and oversee the disciplinary process, participate in the adjudication and punishment of the most serious cases, and report to the Police Commission and its newly created chief of staff.¹⁶⁵

The *Christopher Report* also noted the continuing presence of the “code of silence” among police officers in the department. It detailed how the “code” often leads to ostracism and harassment of officers who provide adverse information about their fellow officers.¹⁶⁶

• **Implementation of Recommendations**

The Christopher Commission advised that the cooperation of the mayor, City Council, Police Commission, LAPD, and community members would be essential to implement many of its reforms. Indeed, many of the recommendations would ultimately affect the structural relationship between these parties. Some of the reforms included:

- a. Assigning the Police Commission a direct role in addressing citizens’ complaints against police officers.
- b. Requiring the Police Commission to report annually on the status of the LAPD.
- c. Limiting the position of Chief of Police to a five-year term, which would be renewable at the discretion of the Police Commission.¹⁶⁷

Section II: Leadership of the Los Angeles Police Department

Passage of Amendment F: The LAPD Receives a New Police Chief

Prior to 1992 the term of office for the chief of police was virtually permanent; this civil service

the public from 1986 through 1990, only 103 (3.0%) were sustained. Of . . . 2,152 allegations involving excessive force, only 42 (2.0%) were sustained.”)

¹⁶⁵ *Ibid.*, pp. 153–54. Katherine Mader, Esq., telephone interview, Aug. 15, 1996 (hereafter cited as Mader Interview). Ms. Mader, who is a former prosecutor and defense attorney, became the inspector general of the Police Commission in late June 1996.

¹⁶⁶ *Christopher Report*, pp. 169–71.

¹⁶⁷ *Ibid.*, pp. 207, 209, 215.

position was deemed as the individual’s “essential property right.”¹⁶⁸ As a result, the Police Commission could only suspend or remove the chief from the position based on misconduct established in an adversarial hearing.¹⁶⁹ Other procedural obligations included:

[ensuring that] no charge [was] . . . based upon conduct [that] occur[ed] more than one year earlier. The Chief [could] require the Police Commission to prove its charges in a hearing before the Civil Service Board[,] at which the Chief [could] . . . cross-examine the witnesses against him. If the Civil Service Board [found] the Chief guilty as charged, it [was required to] . . . prescribe a penalty of reprimand, suspension, or discharge, which the Police Commission [could] . . . reduce, but not increase. At any phase of the proceedings against him the Chief [could] seek a writ of mandamus in the superior court to remedy any perceived violation of the Charter’s prerequisites. . . . Further, because the Charter declare[d] the Chief’s job to be a “substantial property right,” he [could] challenge the proceedings against him in state or federal court to prevent any violation of his constitutional, procedural due process rights. . . . [I]f a penalty [was] imposed at the conclusion of the Section 202 proceedings, the Chief [could] file suit in superior court. [In addition], . . . the Charter offer[ed] little guidance on the substantive grounds sufficient to support such action.¹⁷⁰

These procedural requirements effectively hindered replacing the chief of police. Police reform advocates and community activists believed that limiting the duration of the chief’s position was essential to implementing effective reform in the department.¹⁷¹ However, Chief Gates objected to those Christopher Commission reforms that would eliminate the chief of police’s civil service protection and reduce term limits. He cautioned that these recommendations would

¹⁶⁸ *Ibid.*, p. 200.

¹⁶⁹ *Ibid.*, p. 200 (citing Los Angeles City Charter, §§ 199, 202(1), which provides that an individual cannot be removed from the position of Chief of Police, except “for good and sufficient cause shown upon a finding of ‘guilty’ of the specific charge or charges assigned as cause or causes therefor after a full fair and impartial hearing before the Board of Civil Service Commissioners”). See “Police Reform Controversy: Some Questions and Answers,” *Los Angeles Times*, Apr. 13, 1992, p. B-4.

¹⁷⁰ *Christopher Commission Report*, pp. 200–01.

¹⁷¹ “Gay Groups Endorse Police Reform Measure,” *Los Angeles Times*, May 14, 1992, p. B-4; Louis Sahagun, “New Latino Group Steps Up Campaign for Police Reform,” *Los Angeles Times*, Apr. 30, 1992, p. B-3.

create an opportunity for the mayor of Los Angeles to directly control the chief of police.¹⁷²

An initial ballot measure permitted the mayor to choose the chief of police, with the endorsement of the City Council.¹⁷³ The chief could then be terminated from the position by the mayor with the Police Commission's agreement. This decision could be appealed to the City Council, and subsequently overturned by a two-thirds vote.¹⁷⁴ In June 1992, Los Angeles voters took the initial step of dismantling the unlimited term policy and implementing corrective measures by approving local Charter Amendment F.¹⁷⁵ Although Amendment F restricted the chief of police's tenure to two 5-year terms, expanded civilian review authority through the Police Commission, and provided city hall with the capacity to remove the chief of police from his or her position, other Christopher Commission reforms were not addressed by this charter measure.¹⁷⁶

One month after the passage of Amendment F, Chief Gates retired from the department amidst his controversial 14-year tenure as chief

of the LAPD.¹⁷⁷ The Police Commission would ultimately select the new chief from the three highest scoring candidates. In order for a nondepartment candidate to be considered, he or she "had to achieve the highest score after LAPD candidates had seniority bonus points added to their scores."¹⁷⁸ The new chief of police was Willie L. Williams, a former Philadelphia police officer and commissioner.¹⁷⁹ Among the final candidates, he had obtained the highest score on the oral and written tests, although additional points for seniority had been factored into the LAPD candidates' scores.¹⁸⁰ Chief Williams became the LAPD's first African American chief of police, as well as the first chief who was previously unaffiliated with the department.¹⁸¹

Notwithstanding Chief Williams' historic appointment, critics of the LAPD noted that Chief Gates' deputies remained in the department.¹⁸² According to Temple University's James Fyfe, a professor and nationally recognized expert on police reform, "[i]t's as if you elected a new President but forced him to work with the former President's Cabinet. The single most important thing that the mayor [of Los Angeles] could give Willie Williams is the authority to appoint some high-level people of his own."¹⁸³ At the time of Chief Williams' appointment, however, the mayor neither expressed his support nor disapproval of providing the chief with the authority to appoint high-level staff.¹⁸⁴ James R. Lasley, a professor of criminal justice at California State University-Fullerton, stated that "[m]any [LAPD] police officers feel an insider should have been selected. With the passage of Charter Amendment F, Williams will have a hard time

¹⁷² Frederick M. Muir and Sheryl Stolberg, "Gates Opposes Some of Panel's Reform Ideas," *Los Angeles Times*, Sept. 18, 1991, p. B-1. Chief Gates also maintained that many existing department policies already addressed the Christopher Commission's concerns relating to use of the "prone-out technique" in minority communities, the "code of silence" issue, and the need for increased recruitment of Asians. He opposed "psychological re[-]testing of officers during their careers, creating a position of commander to handle community relations and having deputy chiefs or commanders—rather than captains—conduct initial personnel investigations." *Ibid.*

¹⁷³ Frederick M. Muir, "1992 Vote on Terms for Chief Approved," *Los Angeles Times*, July 25, 1991, p. B-1.

¹⁷⁴ *Ibid.*

¹⁷⁵ James Rainey and Louis Sahagun, "Local Elections—Measure F Vote Called Just Start of Police Reforms," *Los Angeles Times*, June 4, 1992, p. 1-B (hereafter cited as "Local Elections"). "Charter Amendment F passed in all but one of Los Angeles' 15 City Council districts. Councilman Hal Bernson's predominantly white San Fernando Valley 12th District voted 46% for measure F. The measure received its strongest support in the mostly black 8th Council District of Councilman Mark Ridley-Thomas, where 92% of those casting ballots voted yes." *Ibid.*

¹⁷⁶ *Ibid.* Other reforms such as "expand[ing] police contacts with civilians, updat[ing] equipment, train[ing] officers in foreign languages and screen[ing] out overly aggressive officers with psychological tests" were not addressed by this referendum.

¹⁷⁷ Paul Pringle, "No Fond Farewells for Gates as He Leaves L.A. Police Job," *San Diego Union-Tribune*, June 28, 1992, p. A-1.

¹⁷⁸ Woods, *The Police in L.A.*, p. 289. "The [scoring] value of departmental longevity. . . [is] not as great today as [it was] in 1978." *Ibid.*

¹⁷⁹ Jorge Casuso, "New L.A. Chief Faces Challenges of Reform," *Chicago Tribune*, July 1, 1992, p. 2.

¹⁸⁰ Woods, *The Police in L.A.*, p. 289.

¹⁸¹ Peter Larsen, "King Case Created Mood for Change at LAPD," *Commercial Appeal (Memphis)*, Apr. 30, 1992, p. 9-A.

¹⁸² Jim Newton, "Lots of Talk, Inaction on LAPD Reform," *Los Angeles Times*, July 11, 1993, p. A-1 (hereafter cited as "Lots of Talk").

¹⁸³ *Ibid.*

¹⁸⁴ Newton, "Lots of Talk."

convincing officers he is truly on their side and not a double-agent or conduit for political policies.”¹⁸⁵

In spite of the presence of upper management LAPD staff, who may have had differing views on the need for police reform, Chief Williams began the task of implementing Christopher Commission recommendations.¹⁸⁶ Some civil rights organizations became apprehensive about the department’s ability to address police reform measures. Specifically, the American Civil Liberties Union and other groups expressed their concern to the mayor’s office that some Christopher Commission reforms would not be established, due to limited city funding.¹⁸⁷

While there has been a great deal of publicity about implementation of the Christopher reforms, the department’s own status report shows clearly that dozens of important components of the reform process are not in place or are incomplete, often because of a stated lack of financial resources. . . .The (status report) raises grave concerns that the Christopher Commission reforms, so widely embraced in this community, will be defeated quietly in the budget process by a lack of financial resolve. This vital reform process must not be allowed to be undermined in this way.¹⁸⁸

Other Developments

After the appointment of Chief Williams several events occurred that focused upon the department’s policies and its relationship with neighboring Los Angeles communities. As a result, the Nation’s attention was again centered on the activities of the LAPD.

1993 Los Angeles Hearing

In June 1993, the United States Commission on Civil Rights (Commission) held a hearing in Los Angeles on racial and ethnic tensions. Among the issues examined by the Commission was the efficiency of reform measures to elimi-

nate the use of excessive force by the LAPD and the LASD. Witnesses’ testimonies revealed that the implementation of some of these measures, such as community policing, had been impeded by the lack of financial and staffing resources, while others that had been implemented required a greater span of time before their effectiveness could be determined.

During this 1993 hearing, one witness, William C. Violante, then president of the Los Angeles Police Protective League, which represents the department’s police officers, maintained that the LAPD failed to implement essential Christopher Commission recommendations.¹⁸⁹ He emphasized that the LAPD had not executed such measures as improved training, psychological testing and counseling for officers, and incentives for officers to perform patrol assignments.¹⁹⁰ In contrast, Chief Williams informed the Commission of those areas in which the department had begun to initiate or had satisfied the Christopher Commission’s recommendations.¹⁹¹ He also urged the Commission to advocate for additional Federal resources to assist the department in instituting the remaining recommendations.¹⁹²

LAPD Detective Mark Fuhrman’s Testimony in the O.J. Simpson Murder Trial

In the summer of 1995, incidents associated with LAPD again brought the department into the spotlight. During the O.J. Simpson double murder trial, the defense offered recorded evidence of one of the prosecution’s witnesses,

¹⁸⁹ Jim Newton, “Union Leader Says LAPD Drags Heels on Reforms,” *Los Angeles Times*, June 16, 1993, p. B-1 (hereafter cited as “Union Leader Says”).

¹⁹⁰ *Ibid.*

¹⁹¹ Jim Newton, “Chief’s Balancing Act: Discipline and Morale,” *Los Angeles Times*, June 26, 1993, p. B-1. For example, the previous civilian complaint system directed only serious complaints to the department’s Internal Affairs division. In June 1993, Chief Williams directed that at least 50 Internal Affairs investigators be hired to address all citizen complaints. See also Jim Newton, “Lots of Talk,” *Los Angeles Times*, July 11, 1993, p. 1-A. “Earlier [that] year, the LAPD produced a comprehensive update on the progress of reform and found that a great deal of progress had been made. According to that status report, presented to the Police Commission in late March, most of the Christopher Commission reform proposals were in place or in the process of being implemented, although it also identified several areas where more work was needed.”

¹⁹² Newton, “Union Leader Says.”

¹⁸⁵ Rainey and Sahagun, “Local Elections.”

¹⁸⁶ See *ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ Newton, “Lots of Talk.” The reporter also noted that “fulfilling . . . commission recommendations will take years and could mean pulling officers out of patrol duties, a move that contradicts one of [Mayor] Riordan’s chief campaign promises: to put more officers on the streets”). See also Miles Corwin, “Williams Vows to Examine Controversial LAPD Issues,” *Los Angeles Times*, July 9, 1992, p. B-3.

LAPD Detective Mark Fuhrman.¹⁹³ The evidence consisted of Detective Fuhrman's taped interviews with a screenwriter, on which he repeatedly used racial epithets against African Americans and other minorities, and expressed disdain for female police officers.¹⁹⁴ Furthermore, the LAPD was cast in a negative light by Detective Fuhrman's statements relating to beating suspects and planting incriminating evidence.¹⁹⁵ Although the presiding judge ultimately did not allow the *Simpson* jury to review the evidence in its entirety, the public heard both courtroom and media broadcast of Detective Fuhrman's comments.

Detective Fuhrman retired later in 1995. Nevertheless, the department initiated an investigation into the information detailed in his statements.¹⁹⁶ In October 1996, the *Los Angeles Times* obtained a copy of the LAPD's inquiry.¹⁹⁷

According to the 30-page summary of the LAPD's still-secret investigation, five teams of department investigators probed 29 allegations of misconduct against Fuhrman. . . . [T]he investigation turned up

¹⁹³ See generally Kenneth B. Noble, "Not Guilty: A City Reflects," *New York Times*, Oct. 4, 1995, p. A-13; Jim Newton, "Simpson Not Guilty," *Los Angeles Times*, Oct. 4, 1995, p. A-1. These articles provide background information about the Simpson double murder trial.

¹⁹⁴ Sylvester Monroe, "Race Man," *Emerge*, Dec./Jan. 1996, p. 30, 32. The article describes the prosecution's motion to exclude tape recorded evidence of 42 incidents of Detective Fuhrman's use of racial epithets directed towards African Americans. Jim Newton, Andrea Ford, and Henry Weinstein, "Fuhrman Tapes Aired: A Recital of Racism, Wrath," *Los Angeles Times*, Aug. 30, 1995, p. A-1. See also Kenneth B. Noble, "Ex-Detective's Tapes Fan Racial Tensions in Los Angeles," *New York Times*, Aug. 31, 1995, p. A-18. White officers in the department indicated that Detective Fuhrman's statements did not reflect the views of the majority of LAPD police officers while black LAPD officers who were interviewed were not surprised by Detective Fuhrman's comments. "Anti-Female Society was a Joke," *Milwaukee Journal Sentinel*, Apr. 29, 1997, p. 6. This source discusses the Los Angeles Police Commission's 18-month investigation of Fuhrman's allegations regarding the group "Men Against Women."

¹⁹⁵ Newton and Ford, "Fuhrman Tapes." The authors describe the tape in which Fuhrman "alleges . . . a brutal police beating and a successful attempt to dupe Internal Affairs investigators who looked into more than a dozen civilian complaints."

¹⁹⁶ Beth Shuster and Ann O'Neill, "Fuhrman Case Adds to Delays in LAPD Probes," *Los Angeles Times*, Feb. 18, 1997, p. 1.

¹⁹⁷ Jim Newton, "LAPD Concludes Fuhrman Lied About Misdeeds," *Los Angeles Times*, Oct. 18, 1996, p. 1.

incidents that paralleled some of the details Fuhrman provided to the screenwriter. In almost every instance, however, the inquiry concluded that Fuhrman was exaggerating or lying outright. As a result, the executive summary states that LAPD brass, including [Chief] Williams, have decided not to sustain charges of brutality, racism and excessive use of force.¹⁹⁸

Simultaneously, the United States Department of Justice (DOJ or Justice Department) reportedly expanded an informal probe of the LAPD's operations into a "pattern and practice" investigation.¹⁹⁹ The Justice Department was to examine allegations of officers' use of excessive force and racially motivated misconduct in order to determine the necessity for Federal intervention. "One [F]ederal official familiar with the investigation said the probe had started after tapes surfaced that contained racist comments by Fuhrman referring to specific acts of violence against African Americans."²⁰⁰ Some department police officers maintained that the investigation unfairly characterized LAPD police officers. According to Bill Harkness, president of the LAPD's Police Protective League police union, "it's all a big political game. . . . They won't find anything. Racism and sexism [have]. . . not been rampant in the Los Angeles Police Department."²⁰¹

When an initial version of the LAPD's investigation was issued in October 1996, the Los Angeles Police Commission was concerned about how DOJ officials would view the LAPD's policies and procedures because the report did not explain how a police officer, like Fuhrman, who had exhibited such racial and gender bias was promoted in the LAPD.²⁰² In May 1997, the LAPD eventually released an official report of its investigation into Detective Fuhrman's state-

¹⁹⁸ *Ibid.*

¹⁹⁹ Pierre Thomas, "U.S. Widens Investigation of L.A. Police," *Washington Post*, Oct. 4, 1996, p. 3-A (hereafter cited as "U.S. Widens Investigation"). The Justice Department's investigation was also prompted by the release of the special counsel's report to the Los Angeles Police Commission in May 1996, examining the LAPD's progress in implementing the Christopher Commission's reforms. This report is discussed in the next section of this chapter.

²⁰⁰ *Ibid.* See also "Official Business—Justice Department to Review Fuhrman Case in its Probe of LAPD," *Los Angeles Times*, Oct. 19, 1996, p. 2-B.

²⁰¹ Thomas, "U.S. Widens Investigation."

²⁰² Newton, "Probe Cites Fuhrman Lies."

ments. The official report, like the initial one, concluded that many of his comments relating to excessive force and racist treatment of suspects were fabrications.²⁰³ Similarly, Detective Fuhrman later maintained in a book, *Murder in Brentwood*, that he was attempting to impress the female screenwriter by boasting of these false exploits.²⁰⁴

With respect to Detective Fuhrman's comments regarding women, the internal investigation concluded that the LAPD should address conditions in the department in order to eliminate gender discrimination.²⁰⁵ This conclusion stemmed from an examination of working conditions for female employees at the West Los Angeles Police Station.²⁰⁶ In the *Simpson* evidence tapes, Detective Fuhrman had asserted that he was the leader of an antifemale group, "Men Against Women," at the West Los Angeles Police Station.²⁰⁷ He later maintained that this organization was fictional.²⁰⁸ However, an 18-month investigation of the Fuhrman tapes by the Los Angeles Police Commission indicated that the "Men Against Women" group did exist in the 1980s.²⁰⁹ Moreover, in spite of the controversy surrounding the existence of the organization,

²⁰³ Lou Cannon, "L.A. Police Probe Highlights Bias Against Women," *Washington Post*, May 6, 1997, p. A-10 (hereafter cited as "L.A. Police Probe"); Jim Newton, "Probe Cites Fuhrman Lies in Taped Boast—LAPD Civilian Bosses Want Report Redrafted," *Washington Post*, Oct. 18, 1996, p. A-22 (hereafter cited as "Probe Cites Fuhrman Lies").

²⁰⁴ Mark Fuhrman, *Murder in Brentwood* (Washington, DC: Regnery Pub., 1997); Cannon, "L.A. Police Probe"; Newton, "Probe Cites Fuhrman Lies."

²⁰⁵ See also Matt Lait, "Group Seeks Outside Probe of Domestic Abuse in LAPD," *Los Angeles Times*, May 1, 1997, p. 3-B. According to Penny Harrington, director of the National Center for Women and Policing, The Feminist Majority Foundation, "female LAPD officers have told [me] that gender bias is so great at the department that their male colleagues sometimes do not back them up on emergency calls. And when a female officer lodges a complaint against a male colleague she often becomes the target of further harassment and retaliation in the department." *Ibid.*; Penny Harrington, telephone interview, July 9, 1996 (hereafter cited as Harrington Interview). *But see* Gunn Letter, May 15, 1998. Assistant Deputy Mayor Gunn contended that Ms. Harrington has not validated her charges that male officers do not back up their female counterparts in emergency police calls.

²⁰⁶ Cannon, "L.A. Police Probe."

²⁰⁷ *Ibid.*

²⁰⁸ "Anti-Female Society was a Joke," *Milwaukee Journal Sentinel*, Apr. 29, 1996, p. 6.

²⁰⁹ *Ibid.*

the department's report acknowledged that a "hostile working environment" for women [had] existed for 10 years" at the West Los Angeles Police Station.²¹⁰

The Christopher Commission Reforms: Five Years Later

The Police Commission began to initiate several measures to implement the Christopher Commission's reforms for the LAPD. To that end, the Police Commission in 1995 hired the Christopher Commission's former deputy general counsel, Merrick J. Bobb, as a consultant to establish the LAPD's Office of the Inspector General.²¹¹ Within one year, the Police Commission received a report from Mr. Bobb entitled, *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department's Implementation of Independent Commission Recommendations*.²¹² The report examined the status of the Christopher Commission's reforms for the LAPD, and was also forwarded to the LAPD, the new inspector general, and the Los Angeles City Council.²¹³

The underlying study employed two methods to collect information. First, high-ranking LAPD officials, specialized police unit members, employees, and a variety of ranking department members were interviewed.²¹⁴ Second, the staff of the special counsel analyzed statistical data and reviewed documents from a variety of sources, such as complaint files, internal memoranda, and use of force reports. Information was examined for the years 1991 through 1995.²¹⁵

The report concluded that the LAPD had improved in several areas that were previously

²¹⁰ Cannon, "L.A. Police Probe."

²¹¹ Jodi Wilgoren, "Police Commission OKs 3 Steps to Implement Reforms," *Los Angeles Times*, Oct. 11, 1995, p. B-6. Attorney Mark Epstein also offered his pro bono services to assist Mr. Bobb.

²¹² Merrick J. Bobb, et al., *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department's Implementation of Independent Commission Recommendations*, May 1996 (hereafter cited as *Five Years Later*).

²¹³ Mark H. Epstein, Esq., special counsel to the Los Angeles Police Commission, telephone interview, July 15, 1996 (hereafter cited as Epstein Interview).

²¹⁴ *Ibid.*

²¹⁵ *Ibid.* In some instances, the shortest period of time examined was from 1994 to 1995.

highlighted as troublesome for the department.²¹⁶ For example, the report found:

- The number of “use of force” incidents had significantly decreased since 1991.²¹⁷
- Police officers’ use of the baton declined from 15 percent (of all uses of force) to 2 percent in 1995.
- The department had increased its efforts in becoming a more diverse department.
- In the complaint and discipline area, there was improvement in the quality of adjudication procedures.
- The department was preparing to implement a computerized tracking system, [the Training Evaluation and Management System] (TEAMS), to identify “problem officers,” who, for example, generated a disproportional number of “use of force” complaints, or used a suspicious number of sick days.

Among other suggestions, *Five Years Later* recommended that:²¹⁸

- the “code of silence” issue be further analyzed;
- the classification of complaints be improved, since there remained a tendency for evidence to be construed in the officer’s favor;
- the department initiate additional interaction with the public during the citizen complaint process;
- the “miscellaneous memo”²¹⁹ procedure be abolished; and
- the LAPD continue its efforts to recruit and retain minorities and women.

²¹⁶ Ibid.

²¹⁷ The authors maintained that this outcome was probably not due to underreporting the number of “use of force” incidents, but was the result of use of less force by police officers.

²¹⁸ Epstein Interview.

²¹⁹ Williams Testimony, *L.A. Hearing*, vol. 1, p.154; LAPD *Manual of the Los Angeles Police Department* (1994) [excerpt], *L.A. Hearing*— subpoena duces tecum document, Exh. 1j, vol. 13–14, § 820.01, p. 26 (hereafter cited as *LAPD Manual*). The miscellaneous memorandum procedure is a final adjudication of a personnel complaint that occurs after the completion of the department’s investigation of alleged acts of misconduct. An incident can be assigned a miscellaneous memorandum classification in specific circumstances: when a complaint is filed against a non-LAPD employee; when it cannot be determined if an alleged act of misconduct occurred, and if it did transpire, whether the source(s) of the complaint were department employees; and/or when the police officer’s actions were legally justified.

Efforts to Reform the LAPD

Overview—Impact of the Inspector General

Chief Williams is generally credited as the initial catalyst for beginning the complex task of implementing the Christopher Commission reforms within the LAPD.²²⁰ A significant step in this venture was the 1996 appointment of Katherine Mader as the inspector general in the Police Commission.²²¹ As recommended by the Christopher Commission, restoring the public’s trust in the department became a primary goal for the Police Commission. Accordingly, the Police Commission concentrated on strengthening its civilian oversight of the LAPD and considered the new inspector general position as a means to accomplish this objective.²²²

²²⁰ See also Tuch and Weitzer, “Racial Differences in Attitudes.” The authors examined Los Angeles approval rating data of the public’s opinion of the LAPD. Some of their findings included: “The percentage of white respondents who expressed approval of the LAPD in 1995 was nearly identical to the percentage in 1988, 77 percent and 74 percent, respectively; and, among blacks in 1994 and 1988, 61 percent and 64 percent. Thus, for both groups, the level of support for the police in the 1994 and 1995 polls was approximately the same as its pre-Rodney King level. (Approval among Latinos also increased by 1995, but not quite to its 1988 level.) This dramatic rise in approval ratings from their abysmal levels in the immediate aftermath of the [Rodney King] beating may be partly a function of some reforms in the LAPD since 1991, such as the hiring of more minority officers and greater oversight by the Los Angeles Police Commission. . . , and it may also reflect the June 1992 hiring of Willie Williams to replace Daryl Gates as police chief. Chief Williams was the first African American to head the LAPD and he actively cultivated better police-community relations. His appointment in June 1992 appears to have had rather immediate symbolic benefits for the LAPD: 1 month earlier, in May [of 1992], approval of the LAPD among blacks was 23 percent; just 5 months later it had reached 34 percent. . . . [I]n a June 1995 Los Angeles Time poll, 65 percent of Los Angeles residents approved of the way Williams was doing his job; an identical percentage credited him with improving the LAPD.” Ibid.

See generally Miles Corwin, “Williams Vows to Examine Controversial LAPD Issues,” *Los Angeles Times*, July 9, 1992, p. 3–B.

²²¹ Jim Newton, “LAPD’s Inspector General Goes to Work,” *Los Angeles Times*, June 29, 1996, p. 1–A (hereafter cited as “LAPD’s Inspector General”); Mader Interview.

²²² *Christopher Commission Report*, p. 171. “We conclude that the best approach is to place oversight of the disciplinary process in the Police Commission, with that Commission being given adequate staffing to permit it to accomplish its mission effectively. This oversight responsibility would be centered in a new civilian staff position, the Office of the Inspector General, which will report directly to the Police Commission and its Chief of Staff, also a newly created posi-

One of Ms. Mader's initial responsibilities was to monitor the department's officer disciplinary investigations and procedures. In addition, the Police Commission also had the flexibility of assigning the inspector general to a variety of departmental inquiries on an as-needed basis. Some of these responsibilities have included reviewing the department's investigation of issues raised by former LAPD Detective Fuhrman's testimony during the O.J. Simpson murder trial, performing background investigations of transit officers, and examining the LAPD's responses to the Christopher Commission's reforms.²²³ Ms. Mader's office is also examining whether there is a correlation between police officers' domestic violence history and their use of force, and investigating complaints of discrepancies in punishments between command and rank-and-file officers for similar departmental violations.²²⁴

Implementing Reforms: Responses by the LAPD and Los Angeles Communities

In September 1996, following up from its 1993 proceedings, the Commission held another hearing in Los Angeles designed in part to determine the status of the department's responses to the Christopher Commission's recommendations.²²⁵ The information gathered from the hearing is discussed in the remaining sections of this chapter.

• Excessive Force

As previously mentioned, the Christopher Commission identified officers' use of excessive force as a serious concern for the LAPD. In 1996 the department continued to receive allegations of excessive force incidents.²²⁶ However, Bill

tion." Newton, "LAPD's Inspector General Goes to Work"; Matt Lait, "Making Waves as LAPD Watchdog," *Los Angeles Times*, July 2, 1997, p. B1. Dan Rosenblatt, executive director of the International Association of Chiefs of Police, indicated that he is "unaware of any major [local] police department with an inspector general post like that held by Mader." Ibid.

²²³ Ibid.

²²⁴ Mader Interview.

²²⁵ This hearing also examined the approaches used by the Los Angeles Sheriff's Department to address Kolts Commission reforms (see subsequent chapters of this report).

²²⁶ LAPD, "Summary of Personnel with 3+ Complaints, July 1, 1995 through June 30, 1996," *L.A. Hearing*, subpoena duces tecum document, Exh. 1j, vol. 13-14, pp. 1, 4, 6, 8. Summaries of some of the "unauthorized force" complaints

Harkness, president of the Police Protective League, testified before the Commission that he doubted that excessive force was a widespread problem for the department.²²⁷ Indeed, assessing whether use of force is excessive is a multifaceted endeavor:

in analyzing use of force by police, it is necessary to look at whether the civilian was resisting police orders. What was the nature of the perceived resistance? Was he or she physically or verbally refusing to obey the officer or was the civilian merely questioning the officer's conduct, asking for an explanation, or asserting his or her civil rights? It has often been pointed out that police officers may perceive such behavior as resistance, or even as a kind of assault, albeit a "symbolic assault," requiring an aggressive response by the officer.²²⁸

According to the *Five Years Later* report, two indicators of excessive force (the number of use of force incidents and officers' use of the baton) declined within the LAPD in 1991 and 1995.²²⁹ Witnesses' testimonies at the Los Angeles hearing reflected a variety of reasons for this trend. For example, Chief Williams attributed this decrease to several factors:

The Los Angeles Police Department reports [have] a greater level of reporting of use of force than any other police department in the county. If you were arrested, and we just had to do a wrist lock, a firm grip, to walk you to the [police] car, you didn't go voluntarily, to ensure that we are following our guidelines, we report that. Most agencies do not report that. So use of force is then reviewed by the supervi-

include: "struck suspect in groin with fist, made improper remarks. . . kicked suspect after foot pursuit. . .kicked complainant in ribs; placed a gun to the back of complainant's head; planted evidence on complainant. . .OC [pepper] sprayed handcuffed, compliant suspect. . .unauthorized force; removed arrestee's handcuffs and challenged to fight."

²²⁷ William "Bill" Harkness, president of the Police Protective League, testimony, *L.A. Hearing*, vol. 1, p. 188 (hereafter cited as Harkness Testimony).

²²⁸ Ohio Advisory Committee to the United States Commission on Civil Rights, *Policing in Cincinnati, Ohio: Official Policy v. Civilian Reality* (Washington, DC: 1981), pp. 7-8 (citing The National Advisory Commission on Criminal Justice Standards and Goals, *Police* (Washington, DC: Government Printing Office, 1973), p. 24); Jerome H. Skolnick, *Justice Without Trial* (New York: John Wiley & Sons, 1966), pp. 45, 105.

²²⁹ Epstein Interview. Mr. Epstein noted that use of force incidents are defined in terms of the "arrests in which the use of force is reported."

sors to determine whether it was appropriate, which is something that is important to understand. The decline in the misuse of force . . . is a combination of things. . . . [S]ome officers. . . understand that there is a higher review of this than before, not just within the organization, but outside through the public. . . . The reduction is due to training, . . . better tools, [and] increasing the responsibility and oversight of supervisors and management. . . and also, how we have handled [misuse of force], when necessary, through the disciplinary process, those people who have violated the policies and regulations. . . . Plus there's been an unequivocal message from me, as Chief of Police, that we will not tolerate any of these issues.²³⁰

Similarly, the mayor of Los Angeles, Richard Riordan, testified that the department's incidents of inappropriate use of force have been decreasing for a few years.²³¹ Despite this decrease, Mayor Riordan indicated that crime control may be inadvertently affected by the departmental decrease in use of force complaints.

I think there's a catch 22 to . . . this, because the number of arrests are down dramatically in the department, and there's a lot of criticism . . . that officers are afraid to get into dangerous situations, because if they have to act quickly, decisively, they may be subject to criticism of overreacting or . . . illegitimate violence.²³²

In contrast to this view, Chief Williams emphasized that the department's decline in the misuse of force was attributed to improved training methods, instead of officers' reluctance to enforce laws.²³³

²³⁰ LAPD Chief of Police Willie Williams, testimony, *L. A. Hearing*, vol. 1, pp. 140–42 (hereafter cited as Williams Testimony).

²³¹ Richard Riordan, mayor of Los Angeles, CA, testimony, *L. A. Hearing*, vol. 1, p. 111 (hereafter cited as Riordan Testimony).

²³² *Ibid.*, p. 112; Jim Newton, "Chief's Balancing Act: Discipline and Morale," *Los Angeles Times*, June 26, 1993, p. B-1. In the 2 years since the Rodney G. King beating, Los Angeles police officers say they have become more reluctant to confront suspects, for fear they might face disciplinary charges. One result, according to officers, is that arrests have dropped off. Annual arrests (in thousands) for Part 1 crimes, the most serious offenses, were: 1988: 60.8; 1989: 68.8; 1990: 70.6; 1991: 67.1; 1992: 63.7.

Part 1 crimes include: homicide, forcible rape, robbery, aggravated assault, burglary, burglary/theft from automobiles, burglary/theft from persons and other thefts. Source: Los Angeles Police Department.

²³³ Williams Testimony, *L. A. Hearing*, vol. 1, p. 143. See LAPD, "Office of the Chief of Police—Memorandum No. 4, Deployment of Less-Lethal Crowd Dispersal Munitions, Apr. 16, 1993," *L. A. Hearing*, subpoena duces tecum document,

The hearing examined the department's current approaches to reduce use of excessive force. According to Joseph Gunn, assistant deputy mayor of Los Angeles for police and safety, the Police Commission formed a specific task force in order to implement those Christopher Commission's reforms relating to use of force.²³⁴ This task force examined the LAPD's use of force policy and recommended improvements, in addition to monitoring use of excessive force incidents in the LAPD.²³⁵ Moreover, the department developed a mechanism to monitor officers' personnel complaint history by converting the former Officer Behavior Indicators Tracking System (OBITS) into the Training Evaluation and Management System (TEAMS).²³⁶ Specifically,

Exh. 1k, vol. 15(1) (describing use of various types of less-lethal projectiles for crowd control purposes).

²³⁴ Joseph Gunn, assistant deputy mayor of Los Angeles, Police and Safety, testimony, *L. A. Hearing*, vol. 1, pp. 112–13 (hereafter cited as Gunn Testimony). Commissioner Edith Perez is the chairperson of the task force. In addition to Police Commission members, the task force includes representatives from the local community and the department. Gunn Letter, May 15, 1998. See also Los Angeles Board of Police Commissioners, "Office of the Inspector General Six-Month Report," (January 1977), p. 57 (hereafter cited as Police Commission, "OIG Six Month Report"). In 1998 the Office of the Inspector General plans to audit several areas in the department: i.e., "use-of-force, officer-involved shootings, [and] officer with three or more allegations during the past year." *Ibid.*

²³⁵ Gunn Letter, May 15, 1998. According to Assistant Deputy Mayor Gunn, "out of the million plus citizen contacts per year by members of the Los Angeles Police Department, there are less than 100 complaints of excessive force per year."

²³⁶ LAPD, "Executive Summary—Training Evaluation and Management System," *L. A. Hearing* -subpoena duces tecum document, Exh. 1J, vols. 13/14 (hereafter cited as "Executive Summary—TEAMS"); Gunn Testimony, *L. A. Hearing*, vol. 1, p. 113. See also "Officer Behavior Indicators Tracking System Overview," LAPD subpoena duces tecum document, Exh. 1J, vols. 13/14, pp. 1–2 (hereafter cited as "OBITS Overview"). OBITS included nine categories of information about officers: discipline, sick and IOD history, traffic accident, use of force, officer-involved shooting, pursuit, civil litigation, work permit, and commendation. However, a tentative agreement between the Police Protective League and the department contained the following provisions: "[1] Any personnel complaint, regardless of disposition, may cause additional training or counseling for the concerned employee. [2] Information contained in an OBITS-type system may only be retained for five years. [3] Numbers generated by the system will only trigger an inquiry. Commanding officers must look at individual incidents to determine the need for counseling or additional training. [4] Any use of summarized narratives must be shown to the concerned officer, who has a right to include his written response in

TEAMS is an electronic personnel file that reflects information from nine subsystems. The information may be displayed for individual employees or brought together to examine trends or areas where training should be focused. . . . Five [LAPD] area/divisions currently use TEAMS. They are Central Area, Southwest Area, Juvenile Division, West Los Angeles Area, and the Police Commission. . . .When fully implemented and loaded, the [TEAMS] information will assist persons who produce performance ratings. Commanding officers will be able to identify persons in their command who meet specific selection criteria.²³⁷

Another witness, Mark H. Epstein, special counsel to the Police Commission, testified that TEAMS should not be viewed as the sole means of satisfying the Christopher Commission's recommendation of monitoring statistics relating to all officers in the department.²³⁸ He noted that TEAMS should be used as a mechanism to assist the LAPD's management staff in making informed decisions about their officers.²³⁹ Although this system is designed to identify the development of a particular pattern of behavior, it does not interpret the meaning of the behavior.²⁴⁰ Further, Mr. Epstein remarked that it would be inappropriate to discipline an officer who has a significant number of civilian complaints or uses of excessive force without investigating other factors.²⁴¹ For example, the bases for the civilian complaints could be false, or there could be a plausible explanation for the high levels of uses of force, e.g., the officer was routinely assigned

the data files. [5] Thresholds must be consistent throughout the Department and may not be established by individual commands." Ibid.

²³⁷ LAPD, "Executive Summary—TEAMS," pp. 1–2.

²³⁸ Mark H. Epstein, Esq., special counsel to the Los Angeles Police Commission, *L.A. Hearing*, Sept. 12–13, 1996, vol. 1, pp. 162–63 (hereafter cited as Epstein Testimony).

²³⁹ Ibid., pp. 162–63. See also Williams Interview. Chief Williams explained that LAPD programmers are using funds from a Federal grant to develop an information system to monitor officers' propensity for the misuse of force, and the frequency of disciplinary cases, accidents, tardiness, commendations, complaints (including the race of the officer and the complainant), and use of legitimate force.

²⁴⁰ See Epstein Testimony, *L.A. Hearing*, vol. 1, pp. 163–64; Epstein Interview.

²⁴¹ Epstein Testimony, *L.A. Hearing*, p. 166; Epstein Interview. Mr. Epstein maintained that TEAMS data identify overly aggressive activity. The department's management staff must then examine the officer's behavior in closer detail.

to extremely dangerous duties.²⁴² Once questionable activity has been identified, police captains could direct the officer to an appropriate type of intervention such as counseling, transfer to a desk assignment or another work area, discipline, or alternative use of force training methods.²⁴³

Lastly, the Christopher Commission observed that the LAPD's K–9 unit generated a significant number of dog bite related injuries to civilians in minority communities.²⁴⁴ In March 1995, the Los Angeles City Council approved a \$3.6 million settlement payment to 54 individuals named in a 1991 class action lawsuit who had been bitten by police dogs.²⁴⁵ This settlement prompted several policy changes for the department's K–9 Platoon.²⁴⁶ One of the attorneys in the suit, Constance Rice of the NAACP Legal Defense and Education Fund, explained:

The dogs were being used in African American and Latino communities far out of proportion to crime rates and population in those areas, which led us to believe that there was a racial bias to the use of the dogs. We want to praise Chief Williams and the Canine Unit for the many positive changes which have been made to bring the situation under control.²⁴⁷

As demonstrated by figure 2.1, the number of dog bites inflicted by the department's K–9 Platoon has significantly decreased from 159 biting incidents in 1991 to 19 in June 1996. An examination of data in figure 2.2 of canine deployments in the LAPD's divisions for July 1, 1995, through June 30, 1996, reveals that while the Newton police division had the greatest number of deployments (163), the Southwest division

²⁴² Epstein Testimony, *L.A. Hearing*, pp. 165–66.

²⁴³ Epstein Interview.

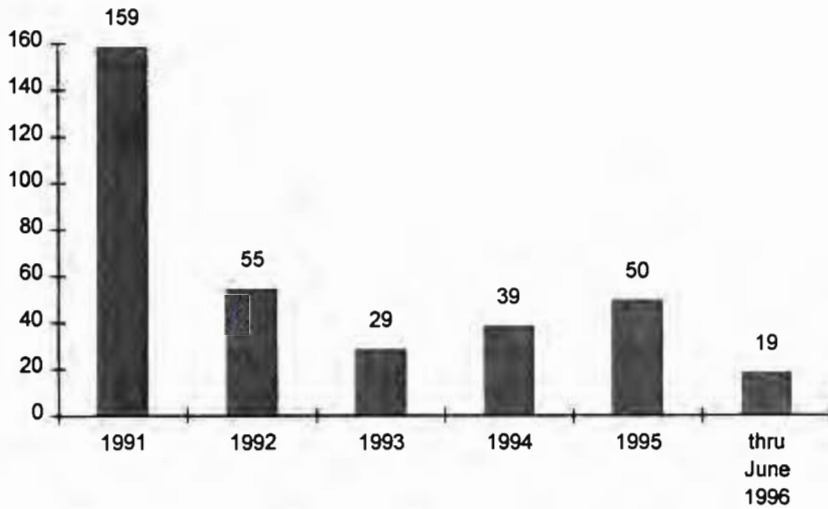
²⁴⁴ *Christopher Commission Report*, p. 73. For additional information, see previous discussion on this issue in the Christopher Commission's "Findings" section of this chapter.

²⁴⁵ "54 Maimed by Cop Dogs to Get \$3.6 Mil," *Los Angeles Sentinel—The Ethnic NewsWatch*, Mar. 29, 1995, vol. LX, No. 51, p. A1 (hereafter cited as "54 Maimed"). See generally National Public Radio, "Morning Edition."

²⁴⁶ See LAPD, "Manual of Policies and Procedures, Los Angeles Police Department Metropolitan Division, K–9 Platoon," *L.A. Hearing*, subpoena duces tecum document, May 22, 1995, Exh. 1g, vol. 9, p. 1, n.1 (hereafter cited as "K–9 Manual"). The settlement was from the Los Angeles Superior Court case *Lawson v. Gates* BC 031232.

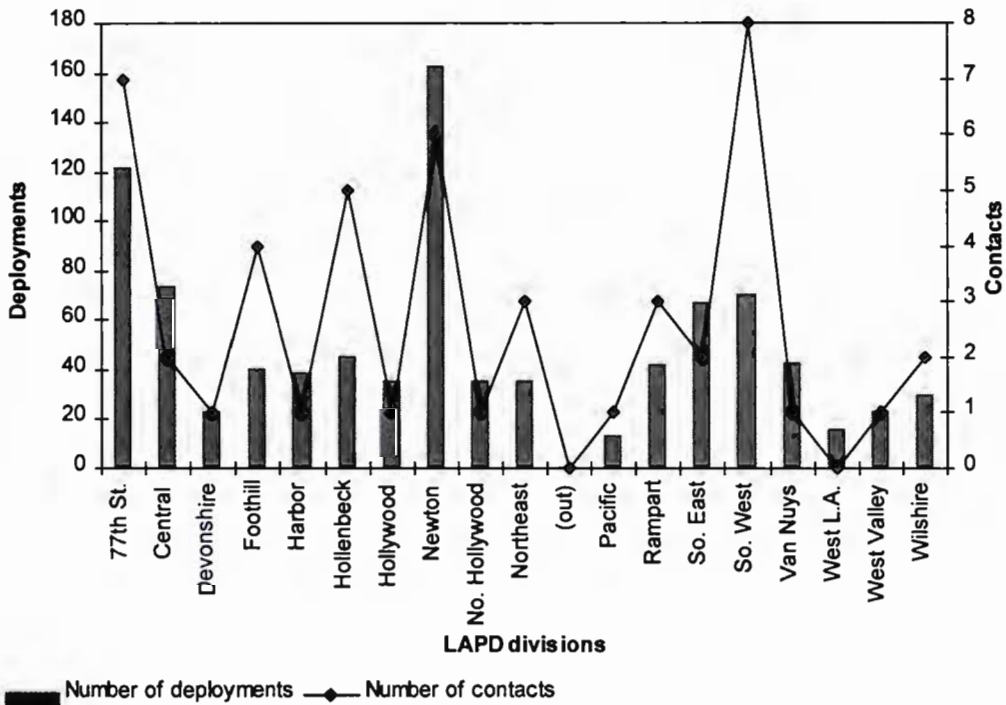
²⁴⁷ "54 Maimed."

FIGURE 2.1
LAPD K-9 Bites: 1991-June 1996



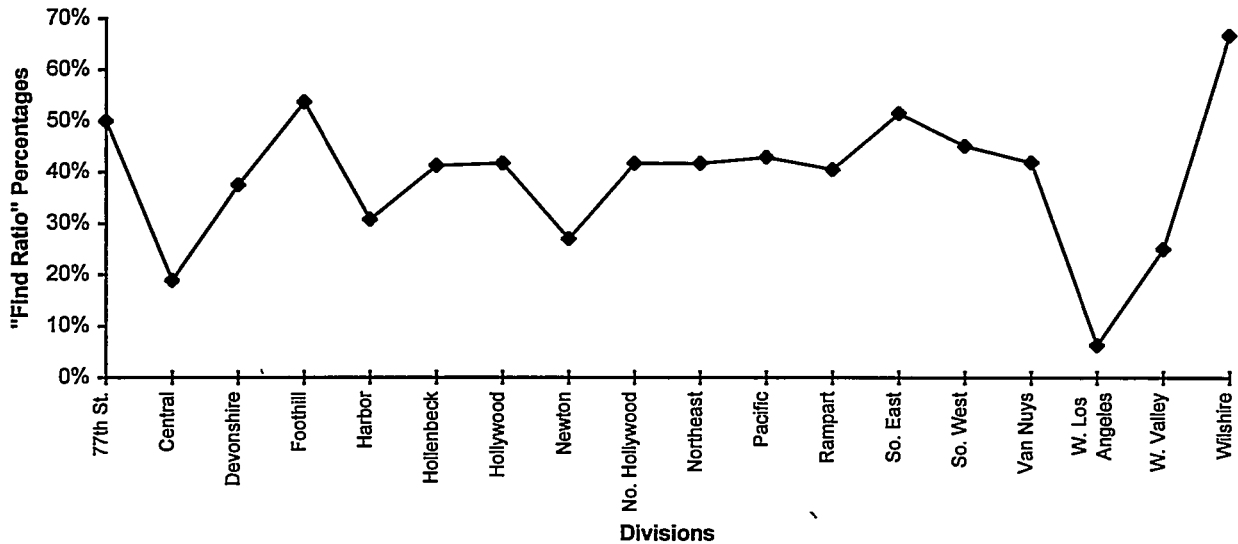
Source: LAPD, Metropolitan Division K-9 Platoon data, L.A. Hearing—subpoena duces tecum document, Exh. 1g, vol. 9.

FIGURE 2.2
LAPD Metropolitan Division: K-9 Summary Report for 7/1/95-6/30/96



Source: LAPD, Los Angeles Police Department Metropolitan Division—K-9 Summary Report for 7/1/95 to 6/30/96, L.A. Hearing—subpoena duces tecum document, Exh. 1g, vol. 9.

FIGURE 2.3
LAPD Metropolitan Division: K-9 Summary Report for 7/1/95 to 6/30/96



Source: LAPD, Los Angeles Police Department Metropolitan Division—K-9 Summary Report for 7/1/95 to 6/30/96, L.A. Hearing—subpoena duces tecum document, Exh. 1g, vol. 9.

generated the highest number of canine physical contacts with civilians (8).²⁴⁸ In addition, the K-9 Platoon was deployed the least number of times in the Pacific division (14), with one contact incident.²⁴⁹ Source data also indicated that the K-9 Platoon was deployed to locate felony suspects, lost or missing persons, and misdemeanor suspects who carried firearms.²⁵⁰

Figure 2.3 illustrates the percentages of times when the K-9 Platoon successfully located suspects and missing individuals (i.e., the “find ratio”) from July 1, 1995, through June 30, 1996. The data indicate that the Wilshire division possessed the highest find ratio of 67 percent, while the West Los Angeles division had the lowest ratio (6 percent).²⁵¹

One major modification to the LAPD’s K-9 Platoon’s policies was to change the method of training the dogs. Previously, some criticized the department’s “find and hold” canine training approach. Accordingly in 1992, Chief Williams implemented a change in animal training orientation to the “find and bark” approach.²⁵² Currently, all police dogs and dog handlers have been instructed by this method.²⁵³ In addition to this recommendation, the Los Angeles Police Commission required the department to revise

poses of illustration. However, “out” was listed as having 1 deployment with a 100 percent find ratio.

²⁵² Williams Interview. In an interview with Commission staff, Chief Williams noted that he had observed benefits such as a decrease in the number of injured officers and civilians when police dogs apprehended suspects using the “find and bark” method in Philadelphia, PA. Philadelphia’s police department had implemented the “find and bark” approach for its canine unit in the 1980s. See also LAPD Chief Willie L. Williams, “Intradepartmental Correspondence to the LAPD Board of Police Commissioners, First Interim Report—K-9 Policies and Practices,” Sept. 29, 1992, L.A. Hearing, subpoena duces tecum document, Exh. 1g, vol. 9, p. 3 (hereafter cited as “First Interim Report—K-9 Policies and Practices”).

²⁵³ Williams Interview.

²⁴⁸ The data indicated that there were zero number of hospitalizations for any of the divisions during this time period.

²⁴⁹ This observation does not include data from the “out” division included in the LAPD’s K-9 summary report.

²⁵⁰ See also LAPD, “K-9 Manual,” p. 7 (identifying other search criteria considerations including “but . . . not limited to: the safety of the public and the officers; the nature of the crime; the threat level to officers and the community; and, the age of the suspect”).

²⁵¹ Data for the division listed as “out” in the LAPD’s original summary report was omitted from figure 2.3 for pur-

several other practices of the K-9 Platoon. These recommendations included:²⁵⁴

1. . . .implementing a policy that announcements [to suspects of the presence of a police dog] will be routinely made.
2. . . .develop[ing] a standardized bite investigation format which would pertain to any incident in which someone is bitten, whether it be a suspect, bystander, or officer.
3. . . .ensur[ing] that injury incidents receive a higher level of consideration commensurate with that employed in use of force incidents, the Department is directed to develop an added review process, which would include the convening of a special review board, for those instances involving hospitalization or any medical treatment beyond the simple cleansing and dressing of the bite.
4. . . .ensur[ing] that there is overall coordination and supervision at the scene of a K-9 deployment, either a patrol supervisor and/or K-9 supervisor should be present and approve the use of the K-9 Units. In instances where someone is bitten, however, a K-9 supervisor or a Metro supervisor trained in K-9 policy and operations must be required to respond to conduct the bite investigation.
5. . . .adding sufficient permanent training staff to the Platoon's complement.
6. . . .add[ing]. . . one full time clerical position to the Platoon. . . [and] an administrative specialist, or adjutant, and a personal computer dedicated for K9 Platoon use.²⁵⁵
7. . . .clarify[ing] policy regarding the operation within Los Angeles City limits of K9 units from outside jurisdictions. . . .²⁵⁶
8. . . .consolidat[ing] all interrelated guidelines covering the deployment, application, and investigation of K-9 Units into one integrated document subject to final review and approval by the [Police] Commission.
9. . . . [informing the LAPD that] the Board of Police Commissioners believes that the deployment and use of canines should be based upon an evaluation of the totality of the circumstances including such factors as the nature of the crime, the propensity for violence, the threat and level of danger to officers and residents, the age of the suspect, and the effectiveness of the operation in order to determine if the deployment is in the best interest of

²⁵⁴ LAPD Chief Williams, "First Interim Report—K-9 Policies and Practices," pp. 1-3.

²⁵⁵ LAPD, "Subcommittee Report: K9 Policies and Practices," p. 45.

²⁵⁶ Ibid.

the Department and the community and is in the furtherance of the officer and public safety.

The LAPD took a number of actions in response to the recommendations of the Police Commission. For example, the Metropolitan Division's K-9 Platoon policy was revised and reissued in the department's K-9 manual.²⁵⁷ In addition, as of September 24, 1992, at the beginning of a K-9 search team's pursuit for a suspect, an officer will issue an announcement in the search area to give the suspect an opportunity to surrender.²⁵⁸ Specifically, the officer must announce: "This is the Los Angeles police. A police dog is going to be used to find you. If you surrender now, the dog will not be used. You have one minute to surrender."²⁵⁹ If the officers have reason to believe that

²⁵⁷ LAPD, "K-9 Manual," pp. 2-3. The department determined there were specific situations when it was appropriate to use a search dog: for detecting, controlling, and apprehending individuals suspected of being involved in criminal activity; investigating possible crimes; defending peace officers and others from immediate danger; and defending themselves from provoking activity. The LAPD also maintained that canines should not usually be encouraged to bite suspects, unless there are no other feasible alternatives. However, canines can be commanded to apprehend a fleeing suspect, and one that poses a danger to local residents or to fellow officers. If a dog does bite a suspect, police officers should make every effort to quickly retrieve the animal in order to reduce the risk of injury to the suspect, other officers, and the dog. Ibid.

²⁵⁸ LAPD, Capt. David J. Gascon, commanding officer, Metropolitan Division, "Intradepartmental Correspondence to K-9 Platoon Personnel, regarding K-9 Search Announcements, Sept. 24, 1992," *L.A. Hearing*, subpoena duces tecum document, Exh. 1g, vol. 9 (hereafter cited as "K-9 Search Announcements").

Prior to initiating an area search, perimeter containment officers shall confirm hearing a loud and clear K-9 search announcement. In those situations wherein noise or perimeter size are a factor, consideration should be given to the use of a vehicular or helicopter public address system. When structural barriers may inhibit hearing the announcement, additional warnings shall be given during the course of the search.

Ibid.

²⁵⁹ Ibid.; see also LAPD, "K-9 Manual," p. 10 (adding the following statements to the announcement: "Make your location known to us immediately. Put down all weapons, come out with your hands raised, and follow directions"). But see *ibid.*, p. 10: "Exception: Each K-9 search announcement must be balanced with concerns of safety for the public, the officer and the suspect(s). In those situations wherein known *articulable facts* indicate that tactics and/or officer or public safety may be compromised by a warning, the K-9 handler shall advise the on-scene supervisor of those facts and recommend that no announcement be made. If the supervisor concurs, the search may be initiated with-

the suspect speaks Spanish, the announcement will also be made in Spanish by an officer who is fluent in the language.²⁶⁰

Chief Williams also indicated that a new reporting process was instituted for situations when a serious dog bite incident requires any individual to be hospitalized.²⁶¹ When this occurs, a "K-9 Related Injury Notification Report" is completed and issued to the Office of the Chief of Police by the next business day following the incident.²⁶² For those bite incidents that are associated with use of force situations, the department now requires:

If the [dog's] handler is involved in a reportable use-of-force incident, a K-9 supervisor shall be notified immediately. If a K-9 supervisor is not available, one shall be notified by the metropolitan Division Watch Commander and shall respond without delay. If a K-9 supervisor cannot respond, a Metropolitan Division supervisor shall conduct the appropriate investigation and follow Department and Division policies regarding the reporting of the use of force.²⁶³

Moreover, all claimed or actual canine related injuries must be reported to the appropriate supervisory authorities. An investigation of the incident, documented in writing, is conducted in order to determine whether the injury was the anticipated result of department policies and training tactics.²⁶⁴ Also, if possible, photographs of the injuries must be taken by the department representative who investigates the incident.²⁶⁵ Finally, in addition to other duties, the K-9 supervisor is responsible for responding to "all search requests involving an officer-involved shooting;. . .all searches involving suspects

armed with a firearm;. . .[and] . . .all incidents of K-9 related injuries."²⁶⁶

Applicable Guidelines for the Department's Use of Force

The degree of force and the circumstances in which force can be used by the Nation's law enforcement authorities are influenced by various legal and policy guidelines. The U. S. Supreme Court reviewed the LAPD's use of chokeholds in *City of Los Angeles v. Lyons*.²⁶⁷ In *Lyons*, the Court ruled that if an individual who had been restrained by a chokehold, sought to obtain a Federal injunction to prohibit a particular law enforcement agency from routinely employing this restraint procedure, he or she would have to satisfy a strenuous legal standard:²⁶⁸

[The petitioner] would have. . .to allege that he [or she] would have another encounter with the police. . . make the. . .assertion either, (1) that *all* police officers [in their local area] *always* choke any citizen with whom they happen to have an encounter, whether for the purpose of arrest, issuing a citation, or for questioning, or (2) that the City ordered or authorized police officers to act in such a manner.²⁶⁹

In other words, an individual who had been subjected to the chokehold could not automatically challenge the routine use of the procedure.

Subsequently, in *Graham v. Connor*,²⁷⁰ the Supreme Court held that the fourth amendment

out the search announcement. On those searches where an announcement is not made, the facts supporting the decision and the name of the supervisor who concurred, shall be included in the K-9 search report (emphasis in original)."

²⁶⁰ LAPD, "K-9 Manual."

²⁶¹ Williams Interview.

²⁶² LAPD, "K-9 Manual," p. 15; Williams Interview. According to Chief Williams, the chief receives the written report within 48 hours of the event, and verbal notification of the incident within 24 hours.

²⁶³ LAPD, "K-9 Manual," p. 15.

²⁶⁴ *Ibid.*, p. 18.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*, p. 6. The K-9 supervisor also "ensures that all K-9 searches conform to the K-9 search criteria, through training of personnel and supervision at K-9 searches, [and] ensures proper deployment of the K-9 team." *Ibid.*

²⁶⁷ 461 U.S. 95 (1983).

²⁶⁸ Gregory Howard Williams, "Controlling the Use of Non-Deadly Force: Policy and Practice," *Harvard BlackLetter Journal*, vol. 10 (1993), pp. 79, 88 n. 60 (hereafter cited as *Non-Deadly Force*). The facts of the *Lyons* case are discussed in a footnote of the "LAPD's Use of the Chokehold" subsection in this chapter.

²⁶⁹ *Lyons*, 461 U.S. at 105-06 (emphasis in original).

²⁷⁰ 490 U.S. 386 (1989). In November 1984, the plaintiff, Dethorne Graham (a diabetic), became aware of an impending insulin reaction. A friend, William Berry, drove him to a local convenience store to buy some orange juice, so that he could stabilize his insulin levels. When Mr. Graham entered the store, he noticed the number of customers at the checkout line and quickly left the premises. He then asked Mr. Berry to drive him to another friend's home. Meanwhile, a Charlotte, North Carolina, police officer noticed his arrival and rapid departure from the store. The officer became suspicious and stopped their vehicle. Although Mr. Berry advised the officer of the nature of the plaintiff's illness, the officer directed them to wait until he determined whether a

provided the appropriate constitutional standard for determining whether law enforcement officials used excessive force in the course of conducting an investigatory stop or arrest of a civilian.²⁷¹ As a result, the Court applied the test of whether the type and severity of force used by the police was “reasonable,” based on the viewpoint of a “reasonable officer on the scene.”²⁷² This analysis “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”²⁷³ The Court emphasized that this inquiry should also consider the fact that police officers must make instantaneous decisions on the degree of force to use in unpredictable situations.²⁷⁴

In 1994 the U.S. Court of Appeals for the Ninth Circuit reviewed an appeal from a motion for summary judgment in favor of the law enforcement and municipal defendants in *Chew v.*

crime had been committed at the convenience store. When the officer went to his patrol car, he radioed for assistance. Meanwhile, Mr. Graham began acting erratically and then briefly lost consciousness. Additional officers arrived on the scene and ignored Mr. Berry’s pleas to give the plaintiff some sugar. One police officer tightly handcuffed the plaintiff and refused to check his wallet for diabetic medical alert identification. Mr. Graham’s face was shoved on the hood of a car. He was thrown head first into a patrol car. When one officer was informed that the plaintiff had not committed a crime at the store, he was released. However, due to his struggle with the police, the plaintiff suffered several cuts and bruises, an injured shoulder, a broken foot, and a ringing sensation in his right ear. Mr. Graham later filed a complaint against the officers, pursuant to 42 U.S.C. § 1983, alleging that they had used excessive force during their investigative stop. *Id.* at 389–90.

²⁷¹ *Graham*, 490 U.S. at 394. The fourth amendment provides in pertinent part that “[t]he right of the people to be secure in their persons. . . against unreasonable searches and seizures, shall not be violated.” U.S. CONST. amend. IV (emphasis added). The Court also included other “seizures” of the person by law enforcement authorities as being within fourth amendment protection. See also the discussion of the Court’s 1985 decision in *Tennessee v. Garner* in the Applicable Standards of Deadly Force section of this chapter.

²⁷² See *Graham*, 490 U.S. at 396.

²⁷³ *Id.* at 396.

²⁷⁴ *Id.* at 396–97. The Court further indicated that “[a]n officer’s evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer’s good intentions make an objectively unreasonable use of force constitutional.” *Id.*

Gates.²⁷⁵ The case had been brought by a class of plaintiffs who, among other things, charged that the LAPD’s canine policy was racially discriminatory. The court identified the most essential issue in the appeal as determining the constitutionality of the department’s policy of using police dogs to apprehend fleeing or concealed suspects.²⁷⁶ Although the panel of judges in *Chew* ultimately ruled that the department’s canine policy at the time was unconstitutional, they had differing reasons for the same result.²⁷⁷ Using one of the factors established in *Graham*, the court focused on whether the suspect, Mr. Chew, was a threat to the officer’s immediate security, and concluded that the facts in the record did not support a finding that he was.²⁷⁸ The court concluded that a jury should determine if it was a reasonable choice of force to use the police dog to locate and subdue the plaintiff, particularly since the animal had been trained by the LAPD

²⁷⁵ 27 F. 3d 1432, 1435 (9th Cir. 1994). In September 1988, the plaintiff, Thane Carl Chew, was stopped by a LAPD police officer for a traffic violation in Los Angeles. Mr. Chew produced his driver’s license upon the officer’s request. He then lit a cigarette and talked briefly with the officer. The officer did not search Mr. Chew for a weapon. The plaintiff then fled from the officer and hid in a junkyard. At this point, the officer radioed for assistance and the police established a perimeter around the area. A helicopter and canine units were called in to search for Mr. Chew, who remained hidden for approximately 2 hours. Officer Bunch then released police dog “Volker” who located the plaintiff before the arrival of the officer. The plaintiff later contended that he attempted to surrender when he was aware of Volker’s presence by yelling to the police. Officer Bunch did not immediately stop Volker from seizing and biting Mr. Chew, and the plaintiff suffered severe lacerations to his left side and forearm. Both parties had conflicting views regarding whether Officer Bunch ordered the dog to attack Mr. Chew. In addition, the plaintiff maintained that he repeatedly pleaded for the officers to restrain Volker. However, Officer Bunch asserted that when he arrived on the scene, Mr. Chew was hitting the dog with a lead pipe. In response, the officer admitted that he probably kicked the plaintiff to disarm him and to protect the animal. *Id.* at 1442, 1436.

²⁷⁶ See *id.* at 1435. If the Court had concluded that the LAPD’s policy was constitutional, it would have then proceeded to determine whether defendant municipal police officers were shielded from liability due to qualified immunity.

²⁷⁷ *Id.* at 1435. “Judge Norris prefe[rred] to concentrate on the issue of whether the force involved—the use of police dogs to seize and bite people—is deadly, while [Judge Reinhardt] would approach the issue more broadly: by examining the question whether the force is excessive—deadly or not.” *Id.*

²⁷⁸ *Chew*, 27 F. 3d at 1441.

in the “find and bite” apprehension method.²⁷⁹ Hence, the Court of Appeals found that the lower court erred in holding that the arresting officer’s choice to release the canine on the plaintiff was reasonable, and remanded the case to the U.S. District Court for a jury trial on fourth amendment and municipal liability issues.²⁸⁰

In addition to the parameters on the use of force established by the Federal judiciary, the department developed its guidelines on this issue. An effort was initiated in 1995 to further disseminate the LAPD’s use of force policy guidelines throughout the department’s ranks. During this time, the LAPD distributed a *Use of Force Handbook* for its officers, which was a first-time achievement for the department.²⁸¹ Chief Williams indicated that the manual condenses the department’s use of force policies and lists guidelines for applying different types of force.²⁸² The *Handbook* describes the LAPD’s overall use of force policy as follows:

In a complex urban society, officers are daily confronted with situations where control must be exercised to effect arrests and to protect the public safety. Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary

in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is *reasonable* and *necessary* to protect others or themselves from bodily harm. California Penal Code, Section 835a, states that officers may use force to *effect an arrest, prevent escape, or overcome resistance*.²⁸³

The LAPD’s *Handbook* also advises officers who use a method of force on an individual to photograph all alleged and actual injuries.²⁸⁴ It defines those uses of force incidents that must be reported to supervisory staff as:

any incident in which any on-duty Department employee or off-duty Department employee or off-duty employee, whose occupation as a Department employee is a factor, uses a non-lethal control device or any physical force to:

- compel a person to comply with the employee’s directions; or
- overcome resistance by a suspect during an arrest or a detention; or
- defend any person from an aggressive action by a suspect.²⁸⁵

The department also sought to identify alternative nonlethal methods to subdue suspects and to protect its officers. In 1995, the LAPD created a “weaponless self-defense” curriculum that was based on a computerized analysis of more than 6,000 altercation incidents.²⁸⁶ The

²⁷⁹ *Id.* at 1443; *see also id.* at 1456 (Norris, J., concurring in part and dissenting in part) (“[W]hether the police dogs, trained by the LAPD to bite and hold, are instruments of deadly force is an issue of fact that cannot be resolved on the summary judgment record before us”).

²⁸⁰ *Chew*, 27 F. 3d at 1435, 1440; *see also id.* at 1440 (“[I]t is not necessary to decide here whether the city’s policy of training its police dogs to bite and seize is unconstitutional. However, on remand, Chew is entitled to pursue that question fully, as well as any other theory of municipal liability as to which he can obtain probative evidence.”). *Cf. Quintanilla v. City of Downey*, 84 F. 3d 353 (9th Cir. 1996). In *Quintanilla* the plaintiff, who had been apprehended by a police dog, asserted on appeal that the trial court erred in failing to provide deadly force instructions to the jury. The court distinguished the factual circumstances in his case from other use of deadly force incidents involving police dogs:

Quintanilla suffered only non-life threatening injuries that did not require serious attention. Moreover, the [police] dog was trained to release on command, and it did in fact release Quintanilla on command. In light of these facts, and the absence of admissible evidence regarding this particular dog’s capacity for harm, the district court correctly refused to give deadly force instructions.

Id. at 358.

²⁸¹ Gunn Testimony, *L.A. Hearing*, vol. 1, p. 113.

²⁸² Williams Interview.

²⁸³ LAPD, *Use of Force Handbook*, pp. 1–2 (emphasis in original).

²⁸⁴ *Ibid.*, p. 35.

²⁸⁵ *Ibid.*, pp. 36–38. The manual further provides:

“*Exceptions*: the following incidents are *not* reportable under the provisions of this Section:

“The use of a firm grip control only, which does not result in an injury; or

“The force necessary to overcome passive resistance due to physical disability or intoxication which does not result in an injury; e.g., the use of a wrist lock to assist an intoxicated person to a standing position; or,

“An incident investigated by the Homicide Special Section, Robbery-Homicide Division or Detective Headquarters Division; or,

“Any non-lethal or lethal control device of physical force used at an approved training exercise.”

²⁸⁶ LAPD, “Overview of Weaponless Self Defense Programs,” p. 3. “The techniques were . . . developed by a panel of volunteer martial artists from every major martial art (judo, karate, aikido, jiu-jitsu, kung-fu, etc.). . . . Additionally, a sub-committee of attorneys from the district attorney, city attorney

techniques used in the course were constructed with the joint cooperation of a panel of martial artists and a subcommittee of medical doctors in order to ensure that the self-defense curriculum reduced the possibility of harm to both police officers and suspects.²⁸⁷ During the same year, the first class of police academy officers were taught the weaponless self-defense program. Subsequent police academy classes have similarly been taught this method.²⁸⁸

Moreover, in December 1995, the department initiated a mandatory 40-hour "arrest and control school" course within the weaponless self-defense curriculum for LAPD officers ranking up to (and including) detective II or sergeant.²⁸⁹ Figures 2.4 and 2.5 illustrate the race, ethnicity, gender, and number of recruit graduates of the July 1995 through February 1996 class who participated in the curriculum. White and Hispanic males were the majority of the participants, while African American (45), Asian (52), Native American (6), and Filipino (21) men were less represented. A similar outcome is demonstrated for female participants: African American (18), Asian (5), Native American (1), and Filipino (2) female recruit graduates were less frequently represented in this class.²⁹⁰

In spite of all of these measures, police officers must employ their judgment to adhere to the department's policy on the use of force. Specifically, they are left to determine what type of

force is "reasonable and necessary" to protect themselves and the public. This standard could provide an opportunity for the misuse of force.²⁹¹

Responses to the LAPD's Efforts to Eliminate Excessive Force Incidents

Although the methods discussed in the previous section, as well as others, have assisted the LAPD in reducing incidents of excessive force, local Los Angeles community residents and other public authorities continue to view this issue as a lingering problem for the department. As a result, they contend that additional measures should be investigated to eliminate police officers' use of excessive force. One witness at the Los Angeles hearing, Dr. Armando Morales, a professor at the University of California, Los Angeles Psychiatric and Biobehavioral Sciences Department, maintained that while most police officers are law-abiding, in actuality, experienced officers tend to use excessive force more frequently than rookie officers.²⁹²

According to the testimony of Robin Toma, chairperson of the Asian Pacific Islander Advisory Council to the Los Angeles Police Commission, police officers should also be taught to resolve conflicts.

even though officers use their gun rarely in the course of their career, they receive hundreds of hours of use-of force training using firearms. Every single day they use their verbal skills and their communication skills to deal with different situations, but they receive lit-

ney, and private practices advised the panel on the codified and case law that empower an officer to use force." Ibid.; Williams Interview. Chief Williams indicated that this program is the first of its type in the country.

²⁸⁷ LAPD, "Overview of Weaponless Self Defense Programs," p. 3.

²⁸⁸ Ibid., p. 3; Riordan Testimony, *L.A. Hearing*, vol. 1, p. 113; Williams Interview.

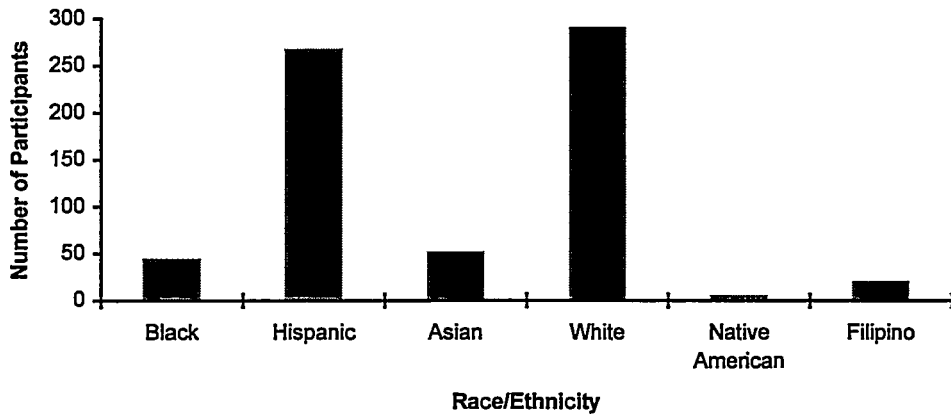
²⁸⁹ LAPD, "Overview of Weaponless Self Defense Programs," p. 3. "Lieutenants, Detectives III and above, as well as officers with medical restrictions only are required to complete eight hours of Arrest and Control training. It is projected that by December 1997, all sworn personnel will have attended the new Arrest and Control School." Ibid. (emphasis in original).

²⁹⁰ See also Mack Interview. Mr. Mack noted that there has been a recent decrease in the department's initiatives to recruit blacks and some other minorities. Bill Lee, Esq., NAACP Legal Defense and Educational Fund, Inc., testimony, *L.A. Hearing*, Sept. 12-13, 1996, vol. 1, pp. 261-62. Mr. Lee discussed the LAPD's increasing recruitment rate of white officers, and the declining recruitment rates of African American police officers.

²⁹¹ Williams, *Non Deadly Force*, p. 84. See generally Horowitz, "Show of Force." Horowitz writes: "It's an angry cop losing sight of where to draw that thin blue line between reasonable and excessive force. It's the extra one or two whacks beyond what's needed to control a situation. It's callously tightening down the [hand]cuffs to intentionally cause pain and injury to show who's boss (one expert estimates that as many as 20 percent of all force complaints involve the use of handcuffs). It's hitting a suspect after he's cuffed and restrained, when he no longer poses a threat.' Though some cops told . . . [the author of this article] the rule of the street is that once the [hand]cuffs are on it's over, others disagreed. 'He's yours until he's standing in front of the desk sergeant. . . and believe me, that includes the ride to the station.'" Ibid., p. 31.

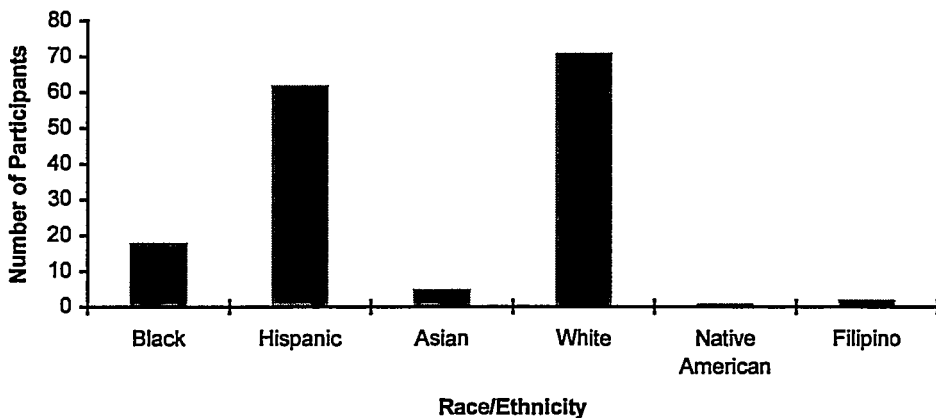
²⁹² Dr. Armando Morales, professor, UCLA Psychiatric and Biobehavioral Sciences Department, telephone interview, Aug. 24, 1996 (hereafter cited as Morales Interview). Dr. Morales discussed an East Los Angeles shooting incident of a 14-year-old Hispanic boy who was killed. It was alleged that one of the "44 problem officers" (referred to in the *Christopher Commission Report*) was responsible for this shooting.

FIGURE 2.4
Male Recruit Graduate Participants: “Arrest and Control Curriculum”



Source: LAPD, *Fact Sheet—Historical Overview of Weaponless Self Defense Programs, In-service Training Division, in L.A. Hearing, subpoena duces tecum document, Exh. 1e, vol. 3–4.*

FIGURE 2.5
Female Recruit Graduate Participants: “Arrest and Control Curriculum”



Source: LAPD, *Fact Sheet—Historical Overview of Weaponless Self Defense Programs, In-service Training Division, in L.A. Hearing, subpoena duces tecum document, Exh. 1e, vol. 3–4.*

file or no training in that regard. Conflict resolution, de-escalation of tensions, mediation—none of those things are part of the curriculum in a significant way in the police department.²⁹³

²⁹³ Robin Toma, Esq., Chairperson of the Asian Pacific Islander Advisory Council to the Los Angeles Police Commission, testimony, *L.A. Hearing*, vol. 1, p. 241 (hereafter cited as Toma Testimony). Mr. Toma is also employed as a Human Relations Consultant with the Los Angeles County Human Relations Commission. See also Minnesota Advisory Committee to the U.S. Commission on Civil Rights, *Police Practices in the Twin Cities* (Washington, DC: 1981), p. 16. The Minnesota Advisory Committee supported formal education for officers in negotiation and arbitration techniques.

Another factor that affects the department’s ability to reduce excessive force incidents is the presence of the “code of silence” in the LAPD. There are various views on whether the “code of silence” exists within the department, and if it affects the quantity of excessive force incidents in the LAPD. Although Chief Williams testified that the department does not have a specific definition of what constitutes the “code of silence,” the LAPD has attempted to address the

code's influence.²⁹⁴ He explained that employees who have been found at fault for various infractions and involved in "code of silence" misconduct incidents received appropriate training and discipline.²⁹⁵ Similarly, Joseph Gunn, assistant deputy mayor of the City of Los Angeles emphasized that "there are over 35 documented cases in the last two years [from 1996 to 1998] where junior [police] officers have reported violations by their senior officers for offenses ranging from excessive force to dishonesty."²⁹⁶ In contrast, an Office of the Inspector General audit of allegations of "false and misleading" statements against LAPD employees indicated that:

- 1) The concept of the "code of silence" is generally thought of as applying to situations where an officer does not report an improper use of force by another officer. *Only seven of 36 employees were disciplined for "code of silence" violations involving improper force-type situations during the past four years.*
- 2) Allegations of violations of the "code of silence" are sustained at a rate of 65 percent. Other categories of violations are sustained at a lower rate. This suggests that the Department generally has strong cases when it proceeds against officers for code of silence violations. . . .
- 3) [N]umerous cases are pursued by the Department in which officers were percipient witnesses to sustained misconduct, but claimed to have not seen or heard the misconduct, particularly in situations involving excessive force. The Department rarely, if ever, takes action against these officers.²⁹⁷

The Office of the Inspector General recommended that the LAPD conduct a thorough search of disciplinary records alleging "false and misleading complaints," increase its efforts to discover and discipline officers involved in these

incidents, and create a "code of silence" category of offenses.²⁹⁸

As in other law enforcement agencies throughout the Nation, the LAPD's employment of pepper spray on certain suspects continues to be a debatable practice.²⁹⁹ Law enforcement authorities usually view use of pepper spray on overly aggressive individuals as a less forceful means of subduing suspects.³⁰⁰ In September 1993, the American Civil Liberties Union of Southern California (ACLU-SC) published a study on the effectiveness of California law enforcement agencies' use of Oleoresin Capsicum (OC) or "pepper" spray.³⁰¹ A revised March 1994

²⁹⁸ Police Commission, "OIG Six Month Report," p. 42.

²⁹⁹ See generally Elaine Herscher, "Pepper Spray Ban Considered, Berkeley Council Weighs Police Concerns," *San Francisco Chronicle*, July 31, 1997, p. 13-A. "The Berkeley City Council is torn over a recommendation that would make the city the first to ban police use of pepper spray, as it tries to reconcile health concerns with police insistence that the chemical irritant is safer than batons or bullets." Sarah Ragland, "'Sprayed' Suspect's Death Questioned—Man was Found Cuffed, Face Down After Battling Sheriff's Deputies," *Sun-Sentinel*, Dec. 20, 1996, p. 1-B. "When paramedics found Lyndon Stark's body, he was handcuffed, face down on the floor and the room reeked of pepper spray—a scenario that raise[d] questions about how Palm Beach County[, Florida] sheriff's deputies subdued him. . . . Some deputies were trying to open windows, while other deputies were leaving, apparently overwhelmed, Palm Beach County Fire-Rescue officials said." *Ibid.*

³⁰⁰ Williams Testimony, *L.A. Hearing*, vol. 1, p. 139. Williams testified before the Commission: "I support the use of what's commonly known as pepper spray, which gives the officers an opportunity where necessary when confronting a violent or non cooperative individual, within certain guidelines, that they can use this instead of the rubber or metal baton, which has a higher propensity of leaving serious injuries to the individual, or perhaps, when taken away, causing injuries to our officers." *Ibid.*; see also Cindi Lash, "4 Officers Injured Subduing Brawler," *Pittsburgh Post-Gazette*, Aug. 5, 1997, p. 1-B (recounting incident in which a 6 feet tall, 300 pound man assaulted officers not authorized to use pepper spray); Editorial, "Pepper Spray Protection—Without Question, City Police Should Carry Pepper Spray," *Pittsburgh Post-Gazette*, Aug. 8, 1997, p. 14-A. Pittsburgh Police Chief Robert W. McNeilly, Jr., has begun the process of equipping Pittsburgh's patrol officers with pepper spray and providing training sessions, but police vehicles require adequate ventilation to transport suspects who have been pepper sprayed.. Herscher, "Pepper Spray Ban," p. 13-A. Berkeley Police Chief Dash Butler supports the use of pepper spray, since police officers are less likely to need hand-to-hand combat techniques and because female officers often use pepper spray instead of attempting to overpower suspects.

³⁰¹ American Civil Liberties Union of Southern California, *Oleoresin Capsicum Pepper Spray Update: More Fatalities More Questions* (Los Angeles: ACLU, 1995), p. 4 (hereafter cited as *Pepper Spray Update*). "In its May, 1995 statistical

²⁹⁴ Williams Testimony, *L.A. Hearing*, vol. 1, p. 152.

²⁹⁵ *Ibid.*

²⁹⁶ Gunn Letter, May 15, 1998.

²⁹⁷ Los Angeles Board of Police Commissioners, "Office of the Inspector General—Six Month Report," (January 1977), pp. 41-42 (hereafter cited as Police Commission, "OIG Six Month Report") (emphasis in original). *But see* Jim Newton, "Williams Disputes Report on LAPD," *Los Angeles Times*, Jan. 22, 1997. During his testimony, Chief Williams maintained that the LAPD had made progress in addressing the "code of silence" issues. He later commented that it was inappropriate for the inspector general to investigate whether his administration is indeed addressing the issue.

version of the report revealed that 14 deaths had occurred since police authorities began using OC.³⁰² Specifically:

Both versions of the ACLU report found that review of the fatal cases, as well as review of more than 600 reports of non-fatal pepper spray incidents, suggested that OC may be of extremely limited effectiveness when used on people who are intoxicated on alcohol or stimulant drugs, including cocaine, PCP and methamphetamine and people in states of extreme mental distress or agitation.³⁰³

summary, the [U.S. Department of Justice] claimed an overall effectiveness rating for pepper spray of 86.2 percent. However, the rating was computed by including 182 incidents in which pepper spray was used to control dogs, an application in which OC enjoys a documented effectiveness rating approaching 100 percent. If animal incidents are subtracted from both the total number of usages (15,668) and from the total of claimed effective usages, OC's statewide effectiveness rate declines slightly, to 86 percent. Thus the reported effectiveness of OC in subduing subjects statewide is approximately the same as September, 1993, when the rate was 83.3 percent." Ibid., p. 7.

³⁰² Ibid., p. 5. "Oleoresin Capsicum's active ingredient is capsaicin, one of a family of chemicals called capsaicinoids that are common to pepper plants. In the body, capsaicinoids release a brain signaling compound called Substance P, which helps govern pain recognition and sensitivity to heat. High capsaicin levels cause the body to release too much Substance P. The potency of the effect of pepper spray depends on how much Substance P reaches the brain and spinal cord. As a result of this chemical action, when a person is pepper sprayed, immediate, excruciatingly painful symptoms occur in the eyes, bronchial passages and other respiratory organs. Breathing becomes almost impossible and the eyes are forced closed." Ibid., p. 4.

³⁰³ Ibid., p. 5. "OC sprays cause upper respiratory inflammation and may have detrimental effects on people with pre-existing respiratory problems. Furthermore, it is known that capsaicin directly affects nerves that transmit pain. Excessive stimulation to those neurons causes them to stop functioning properly. With continued stimulation, nerve death can result. . . . Subjects who are extremely agitated mentally ill, or under the influence of drugs or alcohol may not feel pain. It is important that officers do not develop an over-reliance on pepper spray. Rather than expecting the pepper spray to incapacitate the suspect by itself, many agencies suggest that OC spray should be used to distract the arrestee through discomfort. . . . However, if the person is expecting to totally incapacitate the suspect, and that result is not observed, the officer may be inclined to keep spraying the individual until s/he stops, or at least longer than the one-second burst that is recommended by the manufacturers. This obviously would be an overexposure, which may cause added health risks. This also raises the concern of excessive use of force, which is anything above the minimal amount of force needed to ensure the safety of the officer while subduing the individual." Ibid., p. 8.

But see Jeremy Travis, director, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice,

Based on this finding and the potential for harm to individuals who have preexisting illnesses such as asthma, or cardiovascular or cardiorespiratory diseases, the ACLU-SC encouraged California law enforcement agencies to use OC on a limited basis.³⁰⁴

In contrast, other authorities have determined that OC's effectiveness is *not* diminished when applied on "intoxicated, mentally ill, and 'physically stressed' suspects."³⁰⁵ An analysis of 1994 autopsy data of deaths initially attributed to OC spray exposure indicated that "positional asphyxia" (suffocation due to body position) was

memorandum to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, May 29, 1998 (hereafter cited as Travis Memorandum, May 29, 1998). Mr. Travis indicates that available empirical evidence does not support the conclusion that a 1-second burst of OC spray can be considered as an overexposure to the substance.

³⁰⁴ Ibid., p. 5. The ACLU-SC maintained that "by late May, 1995, . . . [489 law enforcement agencies throughout California reported they used OC]. . . indicating that virtually 100 percent of all California law enforcement agencies . . . [use] pepper spray." Ibid., p. 7.

California's largest pepper spray supplier, Defense Technology Corporation of America (Def-Tech), developed a research schedule for a series of toxicology studies on long-term risks and hazards of use of pepper spray on human beings in the strengths common to police and civilian-use OC sprays. . . . Def-Tech's unpublished proposal included a warning to law enforcement officers that any use of OC on a subject be limited to a single burst of not more than one second. . . . The paper observed that "[s]tudies have been done on the effectiveness of OC as a 'less than lethal weapon.' However, little or nothing is known about the health risk or toxicity of pepper spray, OC and other ingredients. Police usually rank OC just after physical pain compliance and immediately before the use of impact weapons. . . . The FBI Firearms Training Unit did research on OC in 1987 and approved its use by its special agents. FBI chemists concluded that they did not foresee any long-term health risks associated with the use of OC. *However, there is some question as to the actual scientific data to back these claims. . . .*" (emphasis in original).

Ibid., p. 8.

See also Jeremy Travis, director, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, memorandum to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, May 29, 1998 (hereafter cited as Travis Memorandum, May 29, 1998) citing R.W. Fuller and others, "Bronchoconstrictor Response to Inhaled Capsicum in Humans," *Journal of Applied Physiology*, vol. 58, no. 4, pp. 1080-84. The authors "found no significant difference in either the magnitude or duration of normal, smoking, or asthmatic subjects [when exposed to OC]."

³⁰⁵ Travis Memorandum, May 29, 1998, citing E. V. Morabito and B. Doerner, "Police Use of Less-than-lethal Force: Oleoresin Capsicum (OC) Spray," *Policing: An International Journal of Police Strategy and Management*, vol. 20 (1997).

the actual cause of death.³⁰⁶ Further, the U.S. Department of Justice, National Institute of Justice's Office of Science and Technology recently sponsored a medical literature study of the toxicity of pepper spray.³⁰⁷

More than 500 references were considered and 160 were included in an annotated bibliography. Although most published data are from animal studies, the focus of the review was to assess the relevance and health implications of capsaicin, the active ingredient in pepper spray used by police, in law enforcement applications. The author concluded from the material reviewed that oleoresin capsaicin spray as employed by police is safe to use.³⁰⁸ However, as a result of the ACLU-SC's report, the Los Angeles Police Commission mandated a 9-month review of OC use in the department, which was completed in September 1994. One of the findings in the department's report indicated that pepper spray was more frequently used on African American and Latino suspects.³⁰⁹ A synopsis of the LAPD's findings is shown in table 2.1.³¹⁰

A 1995 LAPD policy guideline on OC spray use provided that the spray "may be used where . . . [an officer] reasonably anticipates physical resistance such as [when confronted by] a fight-

TABLE 2.1
LAPD Pepper Spray Incidents:
November 1993-July 1994

	Number	Percentage
Total incidents	645	
Type of subjects		
Males	595	92.2
Females	45	7.0
Animals	5	0.8
Race of subjects		
White	140	21.7
Black	258	40.0
Latino	224	34.7
Asian-Pacific Islander	4	0.6
OC was effective	552	85.6
OC was ineffective	93	14.4
Reasons for OC's ineffectiveness:		
Subject too close when sprayed	36	38.7
Alcohol, drugs or mental illness	21	22.6
Spray simply had no effect	27	22.6
Other	9	9.7
Officer discipline cases filed because of OC use	4	0.6
Incidents in which people were sprayed (other than those against who spray was intended for use)	38	5.8

Source: *Fact Sheet Summary on Oleoresin Capsicum, Office of the Chief of Police, Los Angeles Police Department, Sept. 9, 1994.*

³⁰⁶ Geller and Toch, *And Justice for All*, p. 326.

³⁰⁷ Travis Memorandum, May 29, 1998, citing C.S. Petty, *A Review of the Literature Regarding Oleoresin Capsicum*, an unpublished draft report submitted to the National Institute of Justice (Washington, DC, 1997). See generally Travis Memorandum, May 29, 1998. The California Commission on Peace Officer Standards and Training (POST) studied statewide data on OC use and effectiveness between 1992 and 1996. This study includes data from over 23,000 OC use reports, which is being monitored by the California Attorney General's Office.

³⁰⁸ Travis Memorandum, May 29, 1998. See *ibid.*, citing J. Brown, *Comments on the Use of Capsaicin Spray*, an unpublished draft report submitted to the Depot Division, Royal Canadian Mounted Police (Ottawa, 1997). "In a separate independent study commissioned by the Canadian Police Research Centre, the research and development arm of the Royal Canadian Mounted Police, it was concluded that there was no evidence for intrinsic carcinogenicity, especially as capsaicin is used by law enforcement in pepper spray." *Ibid.*

³⁰⁹ *But see* Travis Memorandum, May 29, 1998. Jeremy Travis, director, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, stressed that "[o]ther factors such as the demographic characteristics of the population, rates of offending, suspect resistance, and other "control" variables must be taken into account before drawing such a conclusion."

³¹⁰ *Pepper Spray Update*, p. 6.

ing stance or verbal threats and challenges, combined with physical evasion by [a] suspect."³¹¹ One year later, the Office of Inspector General's review of the department's use of force incident reports revealed a decline in use of the baton, while use of pepper spray had increased.³¹² The inspector general also later indi-

³¹¹ LAPD, Training Division, Commander C. F. Dinse and Sgt. Greg Dossey, "Use of Force Lecture," May 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 1b, vol. 1, item #7 (hereafter cited as "Use of Force Lecture—5/95").

³¹² Katherine Mader, inspector general, Los Angeles Police Commission Office of the Inspector General, testimony, *L.A. Hearing*, Sept. 12-13, 1996, vol. 1, p. 129 (hereafter cited as Mader Testimony). See also LAPD, *Use of Force Handbook*. "The use of OC chemical agent should be considered in situations when an officer's attempts at verbalization are not effective and the officer reasonably believes and can articulate that approaching the suspect would escalate the incident to a higher level of force. Moreover, OC may be used to overcome and control a suspect's uncooperative or aggressive actions if verbalization is not successful. Verbal threats of violence by a suspect do not alone justify the use of OC." *Ibid.*, p. 8.

cated, however, that her office would have to determine whether officers were using pepper spray as a punitive measure, and whether it was being employed in appropriate circumstances.³¹³

The department's practice of hogtying, or "hobbling," is another method of subduing suspects that can have the same effect of inflicting excessive force, particularly when it is inappropriately applied or combined with use of pepper spray.³¹⁴ Hobbling is used to secure a suspect's ankles, knees, or elbows for de-cuffing and for physically carrying an individual.³¹⁵ According to a 1994 LAPD Training Division lesson plan:

The Ripp Hobble is designed to secure the ankles, knees, or elbows of a violent or potentially violent arrestee. The Hobble can be used as a Total Appendage Restraint Procedure. An arrestee can be controlled and transported in an upright seated position.

The Hobble is made of one-inch wide polypropylene webbed strapping with a tested strength of 700 pounds. Each Hobble has a one-inch wide steel alligator-jawed, friction-locking clip and bronze snap. The Hobble should always be carried in the fully opened position.

Warning: Never leave any arrestee in a chest down or side down position. Death may occur from positional restraint asphyxia.³¹⁶

The department further advised that individuals who are "hobbled" should not be left unmonitored by an officer, and that Hobble straps should not be encircled around an arrestee's neck or left unsecured.³¹⁷ The procedure also requires the strap between the individual's arms and legs have some degree of slackness, so that

the arrestee can be situated in a seated position.³¹⁸

Notwithstanding these safeguards suspects remain susceptible to asphyxia, and fatalities have occurred throughout the United States due to injuries associated with the procedure.³¹⁹ It has been reported that since 1992, the city of Los Angeles has spent more than \$2 million settling cases relating to the department's practice of hobbling suspects.³²⁰ In order to reduce the city's level of civil liability, in July 1997 the Los Angeles Police Commission prohibited the LAPD from using the hobble restraint.³²¹ Later the same month, the Los Angeles City Council consented to pay a \$750,000 settlement to the family of Bruce Klobuchar, a 25-year-old black man, whose death was partially attributed to restraint asphyxia from the hobble procedure.³²²

³¹⁸ Matt Lait, "Controversial Police Restraint to be Banned," *Los Angeles Times*, July 4, 1997, p. 1-B ("because the strap is connected by the wrists to the feet behind the back, a suspect who tries to kick ends up harming his own wrists") (hereafter cited as "Controversial Restraint").

³¹⁹ *Ibid.*; Carla Crowder, "APD Mandates End to Hogtying," *Albuquerque Journal*, Nov. 15, 1995, p. 1-A (reporting that "[t]he Albuquerque Police Department abandoned its policy of hogtying suspects . . . after learning that the restraint caused the recent death of an Albuquerque man. . . . [who t]he Office Medical Investigator determined . . . 54 died from 'positional asphyxia' associated with being hogtied"); Rob Johnson, "Case of Man who Died After Hogtie," *The Commercial Appeal*, July 26, 1997, p. 14-A (discussing "[a] civil rights suit filed by the family of [a] Memphis, Tennessee] man who died after being hogtied in the back seat of [a] police cruiser . . . scheduled for a [F]ederal jury trial in September"). See also ACLU-SC, *Pepper Spray Update*, p. 5.

In positional asphyxia, a person suffocates when placed face down or even on his or her side with the hands and feet bound. Suffocation can occur because a person will normally use his or her feet to support the body's weight when lying in that position. However, if the hands and feet are bound, and the person is lying face down, the body's full weight presses down on the lungs and chest cavity and can make it impossible to breathe. If a person is high on drugs, the risks of positional asphyxia can be increased when a person is hog tied.

³²⁰ Lait, "Controversial Restraint."

³²¹ *Ibid.*

³²² Matt Lait, "Council OKs Settlements in Police Suits," *Los Angeles Times*, July 23, 1997, p. B-1. In the Klobuchar case, officers received a call of a violent male disturbing a Sun Valley neighborhood. Officers who encountered Klobuchar said he appeared to be incoherent, agitated and under the influence of drugs. Unable to restrain him with electrical darts and pepper spray, they finally swarmed him and managed to restrain him with the hobbling procedure. Minutes later, as Klobuchar—whose mother is a former LAPD officer—lay on his side, officers noticed he was not breathing.

³¹³ Mader Testimony, *L.A. Hearing*, vol. 1, p. 129.

³¹⁴ See ACLU-SC, *Pepper Spray Update*, p. 5; Diane Weathers, "The Other Side of Johnnie Cochran," *Essence*, November 1995, p. 86. Johnnie Cochran won a significant settlement for the family of a black man who died due to suffocation after being shot by a Taser, then hog-tied in violation of the department's policies).

³¹⁵ LAPD—Training Division Lesson Plan, Sergeant Glen Hees, "Ripp Hobble Restraint Device, March 1, 1994," *L.A. Hearing*, subpoena duces tecum document, Exh. 1b, vol. 1, p. 1 (hereafter cited as "Ripp Hobble").

³¹⁶ *Ibid.*, p. 1 (emphasis in original). For a Total Appendage Restraining Procedure "[w]hen confronted with a combative or violent arrestee, officer's may, at their discretion, utilize OC Gas, a Taser or a team takedown technique to control the arrestee and take the arrestee to the ground." *Ibid.*, p. 5.

³¹⁷ *Ibid.*, p. 7.

Although the department is currently restricted from employing the hobble procedure, some police officers contend that violent or overly aggressive suspects will be more likely to be injured if the LAPD employs alternative restraint methods.³²³ Similarly, when former Police Commissioner Benjamin Ward prohibited the New York City Police Department from employing hogtying methods in February 1987, Phil Caruso, president of the Police Benevolent Association, objected to his mandate and planned to file an injunction to prevent implementation of the order.³²⁴ Mr. Caruso "issued a statement calling the new procedure 'arbitrary action' that imposed 'restrictions upon police officers' authority to use necessary and reasonable force to subdue and restrain violent offenders." He further maintained that "[t]he right of a police officer to protect him or herself and other citizens should never be infringed upon, especially when such an action is taken to mollify a radical element."³²⁵

The Use of Deadly Force

Few would contend that police officers enjoy the luxury of a sheltered occupation. The nature of their profession requires them to be prepared to confront unanticipated threats to their lives, the lives of civilians, and to their fellow officers. When these challenges arise, sometimes a law enforcement officer's only appropriate response is the use of deadly force. For example, in February 1997 the LAPD, local firefighters, Los Angeles County Sheriff's deputies, and Federal Bureau of Investigation agents responded to a violent bank robbery in the North Hollywood sec-

He died a short time later, and the [county] coroner attributed his death to "intoxication of multiple drugs and restraint asphyxia."

³²³ Lait, "Controversial Restraint." (According to LAPD Sergeant Randy Minini, who trains officers in restraint procedures, without use of this procedure, "[t]hey [police officers] may have to escalate into a higher level of force. . . [w]e'll probably see more injuries to suspects and more injuries to officers").

³²⁴ Todd S. Purdum, "Ward, Citing Suspect's Death, Issues Ban Against Hogtying," *New York Times*, Feb. 18, 1987, p. 1, sec. A ("Five days after the death in police custody of . . . [Wajid Abdul-Salaam] whose shackled hands and feet were trussed behind his back, Police commissioner Benjamin Ward issued an order yesterday banning the practice").

³²⁵ *Ibid.* (Hog-tying had never been approved by the New York City Police Department, but it was reported that some officers used the technique).

tion of Los Angeles.³²⁶ Before the incident was contained, two masked suspects had wounded 5 civilians and 11 police officers.³²⁷ Law enforcement officers also observed that the suspects were armed with AK-47s (automatic weapons) and probably wore protective body armor to deflect gunfire.³²⁸ Although the two suspects eventually were killed during the shoot-out, it was noted that the LAPD and other law enforcement agents were not immediately successful in ending the attack because their arsenals lacked comparable weapons.³²⁹

Recently, the Federal Legislature and the department took measures to avoid future situations like the North Hollywood incident. Specifically, the Congress is currently considering a proposed bill, "the James Guelff Body Armor Act of 1997," which would prohibit the mail order sale of body armor.³³⁰ In addition, the LAPD supplemented its weapon supply by purchasing a large number of U.S. Army surplus M-16 weapons.³³¹ Notwithstanding these developments, the scope of the department's authorization for using any deadly weapon is defined by Federal, State, and local mandates.

³²⁶ Jim Newton and Beth Shuster, "The North Hollywood Incident: LAPD Commander Turned Holdup 'Bedlam' Into Order," *Los Angeles Times*, Mar. 4, 1997, p. 1-A (hereafter cited as "The North Hollywood Incident").

³²⁷ Greg Sandoval, "Police Feted for NoHo Gun Battle Heroism," *Los Angeles Times*, June 30, 1997, p. B.

³²⁸ See Newton and Shuster, "The North Hollywood Incident."

³²⁹ *Ibid.*

³³⁰ H.R. 959, 105th Cong., 1st Sess. (1997). The bill would amend title 18 of the United States Code by adding the following new chapter;

"Chapter 44A—Body Armor

"941. Unlawful acts

"Except as provided in subsection (b) of this section, it shall be unlawful for a person to sell or deliver body armor unless the transferee meets in person with the transferor to accomplish the sale, delivery, and receipt of the matter.

"Subsection (a) does not apply to body armor used by law enforcement officers. . . .

"(d) Whoever knowingly violates this section shall be fined under this title or imprisoned not more than two years, or both."

See Jeff Brazil and Steve Berry, "Officer's Death Fuels Gun Debate," *Los Angeles Times*, Sept. 18, 1997, p. 1-A.

³³¹ *Ibid.*

1. *Applicable Standards for the Use of Deadly Force.* In contrast to legal standards for employing nondeadly force, law enforcement authorities have received more detailed judicial guidance on the appropriate uses of deadly methods to apprehend violent and aggressive suspects. The 1985 U. S. Supreme Court case of *Tennessee v. Garner*³³² remains controlling Federal authority. In *Garner*, the Court was asked to decide the constitutionality of a Tennessee statute that stated, “[i]f, after notice of the intention to arrest the defendant, he either flee[s] or forcibly resist[s], the officer may use all the necessary means to effect the arrest.”³³³ The Court examined whether deadly force could be employed to avert the escape of an unarmed alleged felon.³³⁴ It concurred with the view of the court of appeals that an alleged suspect’s fourth amendment protections are invoked under these circumstances.³³⁵ Specifically, the Court recognized that when police officers use deadly force to apprehend a suspect, a fourth amendment “seizure” has taken place. As a result, deadly force is only constitutional if it is “reasonable.”³³⁶ The Court also “conclude[d] that such force may not be used unless it is necessary to prevent the escape *and* the officer has probable cause to believe that the suspect poses a significant threat

of death or serious physical injury to the officer or others.”³³⁷ Explaining that contemporary legal and technological developments had altered the original common law context of Tennessee’s rule,³³⁸ the *Garner* Court effectively eliminated the prevailing “fleeing felon” common law rule, which had permitted law enforcement authorities to use deadly force to subdue suspected escaping felons.³³⁹

In addition to the Federal standards developed in *Garner*, law enforcement authorities in the State of California are also guided on the use of deadly force by various provisions of the California Penal Code. Section 196 of the code provides:

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent Court; or,
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Section 197 also justifies homicide when committed by any person in any of the following cases:

³³² 471 U.S. 1 (1985). In *Garner*, two Memphis, TN, police officers responded to a complaint of a suspected burglary. When they arrived on the scene, a neighbor informed them that she had heard the sounds of someone breaking into an adjacent house. While Officer Wright contacted the police dispatcher, Officer Hymon arrived in the backyard of the neighboring house in time to see a fleeing suspect, Edward Garner, attempt to climb a 6-foot high fence. The officer observed that the suspect did not have a weapon. When the officer shouted, “police, halt,” the suspect began to scale the fence. Officer Hymon concluded that if the suspect climbed the fence, he would avoid capture. The officer then shot Garner in the back of the head. He later died at a hospital. Ten dollars and a purse were recovered from his body. Garner was a 15-year-old eighth grader, who was 5 feet 4 inches in height and weighed approximately 110 pounds. *Id.* at 3–4.

³³³ *Id.* at 4–5 (citing TENN. CODE ANN. § 40–7–108 (1982)).

³³⁴ 471 U.S. at 3.

³³⁵ See U.S. CONST. amend. IV. The fourth amendment provides in pertinent part: “[t]he right of the people to be secure in their persons. . . against unreasonable searches and seizures, shall not be violated.” (emphasis added).

³³⁶ *Garner*, 471 U.S. at 6–7; see also Williams, *Non Deadly Force*, p. 89 (noting that determining whether a suspect’s seizure meets the constitutional standard of “reasonableness” requires additional policy guidance from police departments).

³³⁷ 471 U.S. at 3 (emphasis added). The Court found that “Officer Hymon could not reasonably have believed that Garner—*young, slight, and unarmed*—posed any threat. Indeed, Hymon never attempted to justify his actions on any basis other than the need to prevent an escape. . . . Hymon [also] did not have probable cause to believe that Garner, whom he correctly believed to be unarmed, posed any physical danger to himself or others.” *Id.* at 21.

³³⁸ *Id.* at 14–15. When the common law rule was established, more crimes were punishable by death, arresting officers were more at risk since deadly force could be imposed only by hand-to-hand combat with simple weapons, and it was not permitted to use deadly force to subdue a misdemeanor.

³³⁹ *Id.* at 12, 15 (citing 2 M. Hale, *Historia Pacitorum Coronae* 85 (1736)): “[I]f persons that are pursued by these officers for felony or the just suspicion thereof. . . shall not yield themselves to these officers, but shall either resist or fly before they are apprehended or being apprehended shall rescue themselves and resist or fly, so that they cannot be otherwise apprehended, and are upon necessity slain therein, because they cannot be otherwise taken, it is no felony.”

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Section 835a provides:

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.³⁴⁰

California's State courts have examined these sections of the California Penal Code in greater detail. In *Kortum v. Alkire*,³⁴¹ the court of appeals of California determined that police officers could only use deadly force when apprehending a suspected fleeing felon. However, the nature of the crime must be "a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another."³⁴²

Another source of the LAPD's guidelines on the use of deadly force is its *Handbook*. It describes three instances in which the department authorizes officers to use deadly force. Specifically, the situation must "reasonably appear necessary to":

- protect the officer or others from an immediate threat of death or serious bodily injury, or
- prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, or
- apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious

bodily injury to others if apprehension is delayed.³⁴³

• **Racism and Bias**

Public testimony elicited by the Christopher Commission indicates that minority civilians have been susceptible to discriminatory treatment and harassment by the LAPD.³⁴⁴ In response to such allegations, the department initiated several measures to alleviate both the public's perception and the actual existence of racism and bias within the LAPD.³⁴⁵ As an initial step, Chief Williams issued a public statement to the department that his administration expressed a "zero tolerance" for any act of dis-

³⁴³ LAPD, *Use of Force Handbook*, pp. 16-17. The *Handbook* further provides: "Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results. Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable." *Ibid*.

³⁴⁴ *Christopher Commission Report*, pp. 73, 75 (summarizing testimony on use of the "prone-out" tactic, excessive force incidents, and random stops of minorities); see also Dean E. Murphy, "Rights Study Cites Serious Police Abuse in L.A.—Law Enforcement: Amnesty International Finds an 'Unchecked' Pattern of Excessive Force by Officers," *Los Angeles Times*, June 27, 1992, p. 1-B (summarizing findings of Amnesty International). The group found widespread abuse within Los Angeles law enforcement: "[T]he report refers to alleged incidents where [LAPD] officers or [Los Angeles County Sheriff's] deputies struck people on the head with metal flashlights and lead-filled straps, police dogs attacked suspects who had surrendered or posed no threat, and officers unnecessarily fired Taser guns at suspects not resisting arrest. The report suggests that African-Americans and Latinos bear the brunt of police excesses in the Los Angeles area and maintains that most of the offenses are committed by whites. It also criticizes the virtual lack of prosecutions by state and federal authorities of offending officers and deputies." *Ibid*.

However, the report "brought a sharp rebuke from both Sheriff Sherman Block and outgoing Police Chief Daryl F. Gates. Police Chief-designate Willie L. Williams declined comment, saying he had not reviewed the report. . . . [Chief] Gates, speaking to reporters outside the Parker Center press office, characterized members of the human rights group as 'a bunch of knucklehead liberals' who 'attack everything that is good in the country. . . and good in the world.'" *Ibid*.; Cf. Kenneth B. Noble, "Race Issue Rattles Celebrity Haven—Lawsuit Accuses Police in Beverly Hills of Harassing Blacks," *New York Times*, Apr. 3, 1996, p. 14-A (describing similar allegations of racial abuse by police officers and a variety of community responses).

³⁴⁵ Williams Testimony, *L.A. Hearing*, vol. 1, p. 118. In 1994 the LAPD developed an in-service training program, which included a cultural diversity curriculum. The LAPD's efforts to address racism and bias are discussed in greater detail in a subsequent section of this report.

³⁴⁰ CAL. PENAL CODE §§ 196, 197, 835a (West 1970).

³⁴¹ 69 Cal. App. 3d 325, 138 Cal. Rptr. 26 (1977).

³⁴² 69 Cal. App. 3d at 333. See also *Long Beach Police Officers Assn. v. City of Long Beach*, 61 Cal. App. 3d 364, 373, 132 Cal. Rptr. 348 (1976) (holding that "[t]he justifiable homicide sections provide a defense to the officer in a criminal prosecution for homicide. The regulations in no way remove this defense. They merely provide cautionary guidelines for the officer").

crimination.³⁴⁶ He indicated that since his appointment as chief of police, he has informed the public, the LAPD's rank and file members, and the department's management of this philosophy.³⁴⁷ Further, the department's personnel evaluation system is being reviewed in order to ensure that there is an evaluation mechanism that examines possible biased conduct by police officers.³⁴⁸

Chief Williams testified:

We have focused, first of all, on dealing with racial and ethnic tensions inside the workplace, dealing with individual employees, dealing with groups. We have examined how these issues impact our responsibility as individuals, and how they impact our employees as groups, . . . what are the responsibilities of management. . . and individual employees in resolving tensions and issues that may arise.

At the same time, we have also focused on ethnic and racial tensions by looking at the department as an area that must deliver services throughout this community, and how we as an organization can serve the most diverse community in this city better. . . .

Through the utilization of various ethnic community forums and advisory groups, I, along with other managers have opened the Los Angeles Police Department to the various ethnic communities that bring richness to this great city. My door and the department's door are wide open for input, comment, criticism, and critique. . . . During the past four years, we have utilized the various ethnic communities . . . in developing our training, plus participating in the various training sessions.³⁴⁹

There is evidence that the LAPD seeks to improve its relationships with its diverse communities. According to former Commissioner Raymond Fisher of the Los Angeles Board of Police Commissioners, Community Police Advisory Boards (CPABs) were established to strengthen the relationship between the department and

minority community residents.³⁵⁰ Each police division has a CPAB composed of civilians selected from various communities to work with police officers.³⁵¹ In addition, several witnesses maintained there was some correlation between how well a police force understood the importance of cultural diversity and its ability to implement successful community policing initiatives. For example, Inglewood Police Chief Oliver Thompson, past president of the National Organization of Black Law Enforcement Officers (NOBLE) stated:

There's a tremendous trust gap between law enforcement and the general populace. . . because a number of minorities, black and brown, have had problems with the police. . . . [T]here's a distrust factor; there's this discrepancy factor; there's this "will I be treated correctly?". . . . [T]he police many times do not live where they police. They are a combat army that comes in, and they take care of business, and then they go back to the so-called safer suburbs—when you have all of that, minorities. . . and people of color are definitely going to have a problem with how they look upon policing services. . . . [But] when you bring that community in and you're willing to sit down with them and you respect that community, that they have sense and intelligence. . . and they know how to eradicate problems within their community, you're going to be much more richer for it.³⁵²

Angela Oh maintained that the department has initiated some measures to better its association with Asian Pacific Islander residents.

I think we have seen some effort. In the Korean community, anyway, there is a fairly close working relationship. In the Korea Town area here in Los Angeles, there's a [police] substation. . . . They [community based organizations (CBOs)] can also be used as recruitment resources for the LAPD. . . . I think the CBOs are in the best position to locate some of those individuals.³⁵³

³⁴⁶ Williams Interview. In an interview with Commission staff, Chief Williams indicated that he informed the department that discriminatory behavior and retaliation would not be tolerated. According to Chief Williams, this was the first time such a position statement had been made by a police chief in the LAPD.

³⁴⁷ Williams Testimony, *L.A. Hearing*, vol. 1, p. 117.

³⁴⁸ *Ibid.*, p 147.

³⁴⁹ *Ibid.*, pp. 116–18.

³⁵⁰ Fisher Interview. See also subsequent section on Community Relations/Community Policing in this chapter.

³⁵¹ *Ibid.*

³⁵² Chief Oliver Thompson, Inglewood Police Department, past president of NOBLE, testimony, *L.A. Hearing*, Nov. 13, 1996, vol. 3, pp. 16–17, 21–22 (hereafter cited as Thompson Testimony).

³⁵³ Angela E. Oh, Esq., Beck, DeCorso, Weksman, Barrera & Oh, testimony, *L.A. Hearing*, vol. 1, Sept. 12–13, 1996, pp. 253–54 (hereafter cited as Oh Testimony).

Robin Toma of the Los Angeles Police Commission's Asian Pacific Islander Advisory Council, agreed with this view.

[T]he Asian Pacific Islander Advisory Council has been . . . [trying] to bridge that gap of communication. So we regularly meet with . . . not only Chief Williams and his command staff, but also with the [P]olice [C]ommission and police commissioners to discuss problems that we are hearing about in the community. . . . We are assisting in [the] recruitment of APIs [Asian Pacific Islanders]. We also are trying to organize community forums where the community can come and voice their concerns directly and be educated about what the LAPD thinks that the problem is and perhaps look at ways [we can work together].³⁵⁴

In addition, Mr. Toma noted that minority community groups play an instrumental role in improving relationships with the department, particularly when the police are involved in controversial situations with a person of color. For example, the Asian Pacific Islander Advisory Council played an instrumental role in responding to the 1996 incident involving Tong Sik Chong, an 81-year-old, non-English speaking man who became lost while attempting to visit a family member.³⁵⁵ As a result of its involvement, the council is now a member of a department committee that is examining police department language policies.³⁵⁶ Furthermore, Joseph Gunn, assistant deputy mayor of the City of Los Angeles, indicated that the Chong case prompted the

³⁵⁴ Toma Testimony, *L.A. Hearing*, vol. 1, p. 254.

³⁵⁵ Toma Interview. See K. Connie Kang, "Family Grieves for Man They Say Police Failed to Protect," *Los Angeles Times*, Apr. 24, 1996, p. 3-B. Mr. Chong became confused, arrived at the wrong person's home and began banging on the gate to gain entry into the house. The LAPD arrived and took Mr. Chong to a precinct. When his family discovered he was missing, they alerted the authorities and filed a missing person report. In the meantime, however, Mr. Chong had been released from custody in the middle of the night. Department authorities contended that he was transported to a homeless shelter, while his family maintained that Mr. Chong was abandoned in a dangerous neighborhood. Mr. Chong was found later beaten and robbed. Afterwards, his health deteriorated and he died. During his interview with Commission staff, Mr. Toma stated that the department should address the reasons why it failed to use its available language resources, such as bilingual officers and employees and an AT&T language line, to communicate with Mr. Chong in order to determine his identity.

³⁵⁶ *Ibid.*, p. 3. For additional information, see subsequent chapter relating to the relationship between immigrants and law enforcement agencies.

Los Angeles Police Commission and the LAPD to "adopt the most comprehensive language policy of any police department in the nation."³⁵⁷

A review of the department's statistics on complaints of biased remarks based on race, gender, sexual orientation, and ethnicity yields conflicting results. First, according to Chief Williams' testimony, within the department there were 12 complaints of gender bias, 31 allegations of "ethnic remarks," and 1 discrimination complaint in 1995.³⁵⁸ Up to the time of this hearing in September 1996, there was one allegation of gender bias, and 18 complaints of "ethnic remarks."³⁵⁹ Conversely, however, the Police Commission's Office of the Inspector General (OIG) determined that there were 86 complaints of "ethnic remarks" in 1995.³⁶⁰ The inspector general noted there was a possibility that data on use of "ethnic remarks" were included in other categories of complaints.³⁶¹ Commission staff

³⁵⁷ Gunn Letter, May 15, 1998.

³⁵⁸ Williams Testimony, *L.A. Hearing*, vol. 1, p. 150.

³⁵⁹ *Ibid.*, p. 150. Chief Williams added that these figures represent the complaints filed by individuals who were confident enough in the LAPD's complaint filing system to report allegations.

³⁶⁰ Mader Testimony, *L.A. Hearing*, vol. 1, p. 185.

³⁶¹ *Ibid.*, p. 185; Police Commission, "OIG Six Month Report," Attachment K: "Intradepartmental Correspondence from the Office of the Inspector General to the Board of Police Commissioners, Regarding an Audit of Classification Categories Assigned to Complaints Involving Allegations of Ethnic Remarks," dated Dec. 30, 1996. The report stated: "During this audit, questions arose concerning the total number of 'ethnic remark' complaints made during the 1995 calendar year. According to Department figures, this number was identified as 31 by Chief Willie Williams at a recent public hearing [held by the U.S. Commission on Civil Rights]. The discrepancy between the Department's figures and [OIG] staff's totals appears to be caused by the number of misclassified remarks. The Department figures include the total number of cases *adjudicated* as opposed to the total number of cases *initiated*. This audit used the total number of ethnic remarks initiated in 1995. [OIG] [s]taff believes that the use of adjudicated cases provides erroneous number as it is likely to include cases initiated in earlier calend[a]r years. The use of initiated cases will increase the Department's ability to compile more accurate and complete data concerning the frequency of this type of employee misconduct and is a better indicator of the Department's conduct within a given year." *Ibid.*, p. 6; see *generally* *ibid.*, pp. 42-44. In 1995 the OIG also performed an audit of the department's adjudication of complaints of "ethnic remarks" and determined that the LAPD should recategorize ethnic remarks so that they could easily be audited. In addition, it observed that complaints regarding the use of ethnic remarks were sustained at a low rate.

TABLE 2.2
1991–1996: “Discrimination,” “Gender Bias,” “Ethnic Remark,” Allegations

Year	Discrimination	Gender bias	Ethnic remarks	Sexual	Total
1991	10			18	28
1992	1			29	30
1993		6	76		82
1994	5	15	63		83
1995	1	19	55		75
1996		1	37		38
Total	17	41	231	47	336

“Note: There were no Gender Bias or Ethnic Remark allegations for 1991 through mid 1993. Gender Bias and Sexual were combined.”

Source: LAPD, 1991–1996 Discrimination, Gender Bias, Ethnic Remark Allegations, L.A. Hearing—subpoena duces tecum document, Exh. 1e. vol. 3–4.

review of table 2.2 (supplied by the LAPD) yielded yet another account of discrimination-related complaints in the department for the 5-year period of 1991 through 1996.

The difficulty in interpreting the LAPD’s complaints data is due to several factors. Primarily, it is unclear how the department defines each category of allegations. Depending on the criteria, some types of complaints could overlap into others. For example, “discrimination” allegations might possibly be included in “gender bias,” “ethnic remark,” or “sexual” complaint categories; and “gender bias” and “sexual” complaints might be interchanged. This possibility might account for the department’s statement that “there were no Gender Bias or Ethnic Remark allegations for 1991 through mid 1993.” Secondly, the “sexual” complaint could either mean allegations of discrimination due to one’s sexual orientation or complaints of sexual harassment. Lastly, it is uncertain whether the allegations originate from the public, and/or the department’s civilians, or its supervisory or rank-and-file officers. However, it is clear that further definitions are needed to ensure that the LAPD captures an accurate reflection of the variety of its discrimination complaints.

An additional obstacle still exists that diminishes the LAPD’s efforts to determine accurately the quantity of discrimination complaints within the department as well as its initiatives to improve relationships with minority civilians. Although LAPD employees have an affirmative duty

to report and prevent instances of misconduct,³⁶² the “code of silence” among law enforcement officers lingers as a particular disincentive for police officers to report fellow officers who commit acts of bias or excessive force.³⁶³ Thomas Saenz, re-

³⁶² LAPD, *Manual of the Los Angeles Police Department*, (1994) [excerpt], L.A. Hearing, subpoena duces tecum document, Exh. 1j, vols. 13–14, § 210.46, p. 99 (hereafter cited as *LAPD Manual*).

“The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an employee to exercise courage, integrity, and decisiveness. Department Manual Section 3/815.05 requires that when an employee who is not a supervisor becomes aware of possible misconduct by another member of this Department, the employee shall immediately notify a supervisor. Furthermore, an employee who observes serious misconduct shall take appropriate action to cause the misconduct to immediately cease. The fact that a supervisor is present and not taking appropriate action to stop the misconduct does not relieve other employees present from this obligation.

“An employee’s obligation to report and prevent misconduct begins the moment the employee becomes a member of the Los Angeles Police Department. Police officers, because of their status as peace officers, have an even greater responsibility to report and prevent misconduct. Experience, rank, or tenure are not factors in knowing the difference between right and wrong, and they do not provide an excuse for failing to take appropriate action. Although supervisors are responsible for investigating allegations of misconduct, all Department employees are responsible for preventing and reporting misconduct. . . .”

See generally *ibid.*, § 805.25. “Misconduct—Defined: Commission of a criminal offense[;] Neglect of duty[;] Violation of Department policies, rules, or procedures[;] Conduct which may tend to reflect unfavorably upon the employee or the Department.”

³⁶³ Williams Testimony, L.A. Hearing, vol. 1, pp. 151–52. According to Chief Williams, the “Code of Silence” interferes with the comfort levels of both sworn officers and nonsworn police department staff to report incidents, due to fear of reprisal. It also affects whether members of the public are

gional counsel of the Mexican American Legal Defense and Educational Fund (MALDEF), explained:

I've heard from other officers often, discouragingly enough, instances . . . occur in training where racial epithets are used or [other] stories involving racial epithets And those officers don't feel comfortable coming forward and complaining about them because they've seen the experience of those who do come forward. Their advancement in the department generally stops at that point. And I am aware of officers who have made names for themselves from bringing these issues to light, and their careers have suffered because of it.³⁶⁴

Until the LAPD and other law enforcement agencies identify a viable way to diffuse the capacity of the "code of silence" to hamper police accountability policies, the identity and the actual number of individuals who commit discriminatory and excessive force acts will remain unknown.

• *Civilian Complaints and Officer Discipline* Background

As previously discussed, the Christopher Commission identified the department's civilian complaint system as a source of criticism from local residents. Since that time, the establishment of the Office of the Inspector General (OIG) in the Los Angeles Police Commission has satisfied an important reform measure to serve as a

confident enough to file complaints against the police. See also Detective Leonard Ross, president, Oscar Joel Bryant Foundation, testimony, *L.A. Hearing*, Sept. 12-13, 1996, vol. 1, pp. 323-25, 347-48 (hereafter cited as Ross Testimony). Mr. Ross described several incidents where LAPD police officers allegedly used racial epithets and the lack of police management response. Toma Interview. Mr. Toma noted that the code discourages conscientious police officers who would ordinarily report abusive officers from doing so. Penny Harrington, director, National Center for Women & Policing, testimony, *L.A. Hearing*, Sept. 12-13, 1996, vol. 1, p. 342. Ms. Harrington maintained that female officers do not feel comfortable filing grievances when they have been sexually harassed by their fellow officers. Horowitz, "Show of Force," pp. 34-35.

³⁶⁴ Thomas A. Saenz, regional counsel, Mexican American Legal Defense and Educational Fund (MALDEF), testimony, *L.A. Hearing*, Sept. 12-13, 1996, vol. 1, pp. 344-45 (hereafter cited as Saenz Testimony). But see Gunn Letter, May 15, 1998. Assistant Deputy Mayor Joseph Gunn maintained that the "code of silence" is a myth, since police officers do not hesitate to report incidents of excessive force to their superior officers.

mechanism to monitor the LAPD's civilian complaint process and other policies.

Civilian complaints about alleged police behavior are channeled through a number of sources, such as the Police Commission, the OIG, a toll-free telephone number, the department's Internal Affairs Division (IAD), and various police subdivisions.³⁶⁵ Usually, the complaints are forwarded to the IAD, which assigns an internal tracking number to each complaint and then determines whether the allegation requires immediate investigation.³⁶⁶ Previously in 1991, IAD examined approximately 7 to 10 percent of civilians' complaints, while local police divisions investigated the remaining allegations.³⁶⁷ One year later, IAD investigated approximately 5 to 6 percent of all complaints.³⁶⁸ In that year, Chief Williams required that allegations of corruption, excessive force and serious abuse (relating to race, sexual orientation, or sexual harassment) be forwarded to the IAD.³⁶⁹ The IAD staff size was then expanded to handle the additional workload, and the division was decentralized into three Los Angeles locations.³⁷⁰ Currently,

³⁶⁵ Mader Interview.

³⁶⁶ *Ibid.*; Police Commission, "OIG Six-Month Report," p. 24. "Internal Affairs is required to complete investigations within one year of the discovery of the incident in order to impose discipline." *Ibid.*

³⁶⁷ *Ibid.*, p. 25.

³⁶⁸ Williams Interview. Chief Williams explained during an interview with Commission staff that the rest of the complaints were the responsibility of the commanding officers in the civilian's or the accused officer's district. In these cases, the commanding officers often designated a supervisor (usually the accused officer's supervisor) to investigate the situation. Equal employment opportunity complaints were handled in another unit.

³⁶⁹ *Ibid.*; see also LAPD, "Office of the Chief of Police—Special Order 20, Procedures for Reporting Use of Force Incidents-Revised, Sept. 9, 1994," *L.A. Hearing*, subpoena duces tecum document, Exh. 1k, vol. 15(1), p. 1. Special Order 20 describes the department's policies for implementing a divisional Use of Force Board.

³⁷⁰ LAPD, "Office of the Chief of Police - Special Order 20, Procedures for Reporting Use of Force Incidents-Revised, Sept. 9, 1994," *L.A. Hearing*, subpoena duces tecum document, Exh. 1k, vol. 15(1), p. 4. Officers in the patrol districts are no longer responsible for Internal Affairs duties. Thus, patrol supervisors have more time to perform their regular tasks. Chief Williams anticipated that by restructuring, the department would facilitate the ability of supervisors to confront potential problems immediately and, in turn, to decrease the number of civilian complaints. Williams Testimony, *L.A. Hearing*, vol. 1, pp. 198-99 (testifying that he has an aggressive 4-year decentralization and expansion

IAD manages approximately 40 percent of civilian complaints.³⁷¹ Chief Williams also indicated that he anticipates that IAD will investigate 70 percent of the department's complaints in the future.³⁷²

Overview of the Civilian Complaint Process

In order to initiate a complaint against a department employee, a member of the public can forward a written complaint, contact the LAPD by telephone, or appear in person at one of the LAPD's divisions.³⁷³ If a department employee receives the written complaint from a civilian, the document must then be immediately forwarded to his or her supervisor or watch commander.³⁷⁴ In those situations where a community member arrives at one of the department's divisions, he or she should be referred to a supervisor in order to provide the nature of the allegations.³⁷⁵ If the individual is unable or unwilling to do so, the LAPD employee must provide the complainant with a "Complaint of Employee Misconduct" form that reflects the complainant's spoken language, a preaddressed business reply envelope marked "ATTN: Internal Affairs Division," and a Personnel Complaint Information pamphlet which is printed in the individual's spoken language.³⁷⁶ Once IAD receives a copy of the complainant's "Complaint of

plan for the IAD and noting there had been a 61 percent staffing increase since June 1992); *but see* Newton, "Chief's Balancing Act," (reporting that former president of the Los Angeles Police Protective League, William C. Violante, maintained that a better option to increasing IAD staffing would be to increase training resources for police officers in order to prevent future disciplinary problems).

³⁷¹ Police Commission, "OIG Six Month Report," p. 25.

³⁷² Williams Testimony, *L.A. Hearing*, vol. 1, p. 198.

³⁷³ Williams Interview.

³⁷⁴ LAPD, *LAPD Manual*, § 815.35, pp. 284–85. The section also describes the responsibilities of watch commanders, supervisors, and commanding officers, and the Internal Affairs Group. Supervisors and watch commanders send those letters that allege acts of misconduct to their commanding officer. The commanding officer is obligated to ensure that the Internal Affairs Group receives a copy of the letter and to assign a supervisor to conduct a preliminary investigation. Lastly, the Internal Affairs Group assigns an Internal Affairs number to each letter of complaint and sends a written acknowledgment of receipt of the complaint to the complainant; *see also* *ibid.*, § 810.45, p. 284 (requiring that the Internal Affairs Group also forward a copy of the Personnel Complaint to the complainant).

³⁷⁵ *Ibid.*, § 816.05, p. 285.

³⁷⁶ *Ibid.*

Employee Misconduct" form, it forwards the complaint to an investigative unit for appropriate action.³⁷⁷

If the allegations suggest behavior in which disciplinary action would be a possible outcome if the complaint were sustained, then the complaint is deemed as a "personnel complaint."³⁷⁸ "A personnel complaint is defined as an allegation of misconduct of an employee received from any source."³⁷⁹ Further, "[w]hen the allegation is determined to be a complaint against Department policy or procedure and the matter cannot be explained to the reporting person's satisfaction, the person shall be referred to the organizational unit having jurisdiction over the subject matter."³⁸⁰ If the nature of the allegations would subject the LAPD to extreme criticism or liability, the supervisor of the department of the employee(s) in question immediately notifies "[t]he concerned employee's watch commander, or OIC [Officer in Charge], who shall notify the employee's commanding officer, [and the] Internal Affairs Group."³⁸¹

After the department's investigation has been completed, the OIG reviews the IAD's reports for administrative oversight purposes and more important to ensure that the findings are complete.³⁸² If the inspector general disagrees with the resolution of the complaint or finds some irregularity, she contacts the IAD or the Police Commission for further inquiries.³⁸³

Obtaining and Resolving Civilian Complaints

Katherine Mader's testimony before the Commission indicated that OIG staff has met privately with members of the public and with

³⁷⁷ *Ibid.*, § 816.20, p. 285.

³⁷⁸ *See* LAPD, *LAPD Manual*, § 810.10, p. 283.

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*, § 810.30, p. 283. In addition, "[w]hen a personnel complaint is received from a person who is intoxicated, the complainant shall be reinterviewed at the earliest opportunity after the complainant has regained sobriety." *Ibid.*

³⁸¹ *Ibid.*, § 810.40, p. 283. "When the alleged misconduct is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the concerned supervisor shall orally report to the employee's commanding officer, who shall orally report to the Commanding Officer, Internal Affairs Group." *Ibid.*

³⁸² Mader Testimony, *L.A. Hearing*, vol. 1, p. 196.

³⁸³ *Ibid.*, p. 196; LAPD, *LAPD Manual*, § 830.10, p. 287. The chief of police or the director (acting for the chief of police) administers disciplinary action. *Ibid.*

LAPD police officers, who are hesitant to initiate a complaint at a police division location.³⁸⁴ She also noted that several barriers still exist that do not facilitate the swift accumulation and resolution of civilian complaints. The OIG identified the following difficulties: the length of time required to investigate increasingly complex cases; staff "burn-out"; and the formation of special task forces and data collection projects that consume a large portion of IAD's resources.³⁸⁵

In July 1996, the American Civil Liberties Union of Southern California (ACLU-SC) conducted a study entitled *Reform Delayed: Five Years After the Christopher Commission*, which examined the LAPD's civilian complaint system and other reform efforts.³⁸⁶ ACLU-SC staff interns presented themselves as friends of individuals who sought information about the civilian complaint filing process.³⁸⁷ According to the ACLU-SC report, their research demonstrated that civilian complaint forms were not readily accessible to the public in a number of the LAPD's local stations. Moreover, "[i]n the Devonshire Division, a heavily white area, complaint forms were only available in Spanish, Korean and Cantonese; in the Southeast Division, a majority Latino area, the forms were offered only in English. Only four of the city's police stations had forms available in all four languages."³⁸⁸ The study also noted that some officers provided misinformation to the ACLU-SC's researchers instructing them that civilian could not initiate complaints by telephone, and that a complainant's immigration status or affiliation with a gang would affect the response to a complaint.³⁸⁹

³⁸⁴ Mader Testimony, *L.A. Hearing*, p. 173.

³⁸⁵ Police Commission, "OIG- Six Month Report," p. 25. Eleven full-time employees were needed for the Mark Fuhrman Task Force investigation.

³⁸⁶ Jim Newton, "LAPD Reform Falls Short, Study Says," *Los Angeles Times*, July 10, 1996, p. 1-B (hereafter cited as Newton, "LAPD Reform"); Police Commission, "OIG Six Month Report," p. 7.

³⁸⁷ Newton, "LAPD Reform."

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.* See also Toma Interview. Mr. Toma was employed as a staff attorney for the ACLU-SC when an initial study was conducted of the department's civilian complaint system. During his interview with Commission staff he indicated that civilians who wish to file a complaint should not be initially examined for outstanding warrants or intimated by being required to file a complaint in the same station

In response to the ACLU's findings, Katherine Mader and Chief Williams met to discuss complaint procedures.³⁹⁰ Subsequently, Chief Williams mandated that all LAPD divisions provide complaint and commendation forms, and required division captains to ensure that employees assigned to positions accessible to the public were prepared to respond accurately to questions about the complaint procedure.³⁹¹ In order to ensure compliance, the chief required that rotating commanders audit each division's adherence to his orders on a daily basis.³⁹² The inspector general also audited 19 police divisions later that year. She determined that as of December 17, 1996, most of the divisions had available complaint forms:

In order to be in 100 percent compliance, facilities were required to have, accessible to the public, complaint forms and posters in four languages, information pamphlets and self-addressed reply envelopes in two languages, and employee commendation forms. Twelve of the nineteen facilities had 100 percent of the above items. The remaining seven facilities had at least nine of the above-mentioned items. The facilities which did not have all of the items had ordered the missing items and showed order forms to the auditor. These results were markedly improved from earlier audits.³⁹³

John Mack, president of the Los Angeles Urban League, also maintained that public access to the department's civilian complaint system has improved due to several factors: First, it became possible for individuals to file complaints at a number of locations. Second, the LAPD's assistant chief is now responsible for supervising the civilian complaint process. Third, there was

where the employee who is the subject of the complaint is employed.

³⁹⁰ Police Commission, "OIG Six Month Report," p. 8.

³⁹¹ Newton, "LAPD Reform."

³⁹² Police Commission, "OIG Six Month Report," p. 8

³⁹³ *Ibid.* Attachment D of the OIG Six Month Report provides additional details. The OIG also examined the department's responses to civilian complaints received by mail. Handwritten letters were mailed to 14 department divisions, which either complained of an alleged rude encounter with a police officer, or of an alleged incident at another police division. Half of the letters were written in Spanish and the others in English. Overall, the OIG found that with the exception of two divisions, the department promptly issued a courteous response and forwarded the complaints to the appropriate division. See *ibid.*, p. 9.

a gradual improvement in the department's institutional mindset towards the concept of civilian complaints. Finally, there was now input from community residents in the civilian complaint process.³⁹⁴

The OIG also met with community organizations' representatives to obtain their impressions of the department's civilian complaint process and then informed the Los Angeles Board of Police Commissioners of the results.³⁹⁵ Ms. Mader discussed those difficulties that members of the public were having with the civilian complaint process and indicated that local residents were unfamiliar with the complaint procedures and were not informed of the status of their complaints.³⁹⁶ She also made the following recommendations:

- that a simple and direct message that informs the public of their right to file a complaint be advertised on posters, which should be displayed prominently in police stations;
- that complaint forms should be numbered, in order to facilitate monitoring the complaints;
- that after the complaint has been filed, the complainant be given a document that describes the investigatory process;
- that complainants be informed by telephone or in writing about the status of their allegations on a regular basis, because most complainants believe their complaint was dismissed because they have not been contacted by the department for a lengthy period of time;

³⁹⁴ Mack Interview. See "Metropolitan Digest—Los Angeles County News in Brief: Los Angeles Panel Backs Plan to Allow Civilians on LAPD Boards," *Los Angeles Times*, July 2, 1994 (hereafter cited as "L.A. Panel Backs Plan"). A committee of the Los Angeles City Council endorsed an ordinance to permit civilians to serve on the LAPD's Board of Rights disciplinary board. *But see* Harkness Testimony, *L.A. Hearing*, vol. 1, pp. 162, 192. According to Mr. Harkness, increasing the public's access to civilian complaint forms will also generate more complaints against police officers. He indicated that police officers will be hesitant to perform their jobs if complaint forms are located in police substations. Ms. Mader disagreed with this view by indicating that other cities have these forms readily available without a significant increase in civilian complaints. Mader Testimony, *L.A. Hearing*, vol. 1, p. 126. Ms. Mader remarked that a lingering problem with the civilian complaint system was the negative attitudes of some LAPD staff towards those civilians who wish to file complaints.

³⁹⁵ Police Commission, "OIG Six Month Report," Attachment F.

³⁹⁶ *Ibid.*; Toma Interview.

- that the final resolution of civilians' complaints be provided to complainants with greater specificity, as opposed to a one sentence summary of the outcome;
- that, upon request, local residents be supplied with the generic summaries of specific imposed discipline that are regularly prepared by IAD, so that the public can evaluate if the LAPD was disciplining wayward officers (these summaries are not confidential documents; they are usually forwarded to the department's divisions and read during roll-call).³⁹⁷

The California Penal Code provides some prohibitions on filing complaints against police officers. Specifically, section 148.6 states, "[f]iling false allegations of misconduct against peace officer: (a) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 . . . of Title 3 of Part 2, knowing the report to be false, is guilty of a misdemeanor."³⁹⁸ Chief Williams indicated that in situations where a member of the public truly believes a police officer was guilty of committing an act of misconduct and the subsequent investigation reveals that the officer's actions were legal and justified, some police officers contend that the complainant should be charged with filing a false complaint under this section.³⁹⁹ The officers' rationale is based on their view that although they were exonerated from the allegations, they are required to cooperate in the investigation of the incident and a record of the complaint is still included in the their personnel files.⁴⁰⁰ Hence, Chief Williams maintained that this provision sometimes acts as a disincentive to civilians who may consider filing complaints against police officers.⁴⁰¹

One witness before the Commission, Ramona Ripston, executive director of the ACLU-SC, offered several impressions of the LAPD's civilian complaint system:

³⁹⁷ Police Commission, "OIG Six Month Report," Attachment F.

³⁹⁸ CAL. PENAL CODE § 148.6 (West 1970) (Subsection B of this section requires the complainant to read, understand, and sign a statement detailing this provision).

³⁹⁹ Williams Interview.

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid.* Mr. Robin Toma, however, stated that most potential complainants are interested in merely filing a complaint, not creating false allegations. Toma Interview.

Over the last 12 months, two extremely critical reforms were supposed to have taken place [in the IAD]: First, the division was to expand from its current strength of about 130 [employees] to 229. Second, the division was supposed to use many of these new positions to decentralize and take the process of investigating officer misconduct closer to many of our communities.

Sadly, I must report to you today that twice in the last 18 months, opportunities to add 20 investigators to the strength of IAD have been thwarted—either as a result of indecisive action by the LAPD or in the [Los Angeles] City Council. As a result, the strength of IAD today remains where it was nearly two years ago—132 people. And while the division has opened field offices in two of the four bureaus of the LAPD, these facilities are so inadequately staffed that the basic purpose for the expansion—permitting investigations to be undertaken in the communities themselves—remains unfulfilled.

We [the ACLU-SC] believe that the remaining two decentralized bureau IAD offices will physically open later this year, but without any prospect of having adequate numbers of personnel assigned to them. This has occurred despite what we understand to have been the best efforts of Cmdr. J. I. Davis, commanding officer of [the] Internal Affairs Group, and Capt. Margaret York, commander of [the] Internal Affairs Division.

While it is difficult to assign personal responsibility for this inaction, I suspect that blame for our failure must be shared by the LAPD, the Police Commission, the city Council and the Mayor. The net result is that a cornerstone of reform—introduction of an adequately sized, easily accessible IAD—remains a promise of change that is so far unkept.⁴⁰²

In contrast, Chief Williams maintained that although a reduced IAD budget would have an impact on the number of investigations conducted by the department, it would not negatively affect the quality of complaint investigations.⁴⁰³ He emphasized that he would not jeopardize the LAPD's ability to conduct internal affairs investigations, but that restricted financial resources must also be allotted to support field training and police academy training.⁴⁰⁴

⁴⁰² Ramona Ripston, executive director, American Civil Liberties Union of Southern California (ACLU-SC), written statement submitted at *L.A. Hearing*, pp. 8-9 (hereafter cited as "Ripston Written Statement").

⁴⁰³ Williams Testimony, *L.A. Hearing*, vol. 1, pp. 199-200.

⁴⁰⁴ *Ibid.*, pp. 199-200.

Chief Williams added that his budgetary decisions had been supported by the City Council, the mayor, and the Board of Police Commissioners.⁴⁰⁵

Determining the Volume of Civilian Complaints

There are conflicting methods of determining the department's actual number of civilian complaints, which in turn produce varying interpretations. The IAD's methodology indicates that the number of formal complaints (generated from outside of the department) decreased from 717 in 1991 to 496 in 1995.⁴⁰⁶ In contrast, the OIG observed that this data does not reflect all sources of civilian complaints. Specifically, the department's calculations exclude those complaints that do not result in a formal personnel action. The OIG indicated that "the number of public complaints which end up as formal personnel investigations is definitely declining. *That does not necessarily mean that the total number of complaints from the public is declining.*"⁴⁰⁷

Employee Discipline

1. *Internal LAPD Procedures.* Once the department's investigation of alleged acts of employee misconduct is completed, within 30 days after the date of the initiation of the complaint, the complaint is classified as either "exonerated," "unfounded," "not resolved," "sustained," "misconduct not based on the complaint," or as a "miscellaneous memorandum."⁴⁰⁸ An "exonerated" result indicates that the alleged act occurred,

⁴⁰⁵ *Ibid.*, pp. 197-98.

⁴⁰⁶ Police Commission, "OIG Six Month Report," pp. 11-13. Formal personnel complaints are classified with a "1.81" designation. The total number of complaints per year also include allegations generated from within the LAPD: In 1991 there were 2,051 complaints and in 1995 there were 973. *Ibid.*; see also Jim Newton, "LAPD's Claim of Progress Questioned," *Los Angeles Times*, Jan. 11, 1997, p. 1-B. *But see* Newton, "LAPD Reform Falls Short," (reporting that some civil rights and community organizations have observed no decrease in the quantity of civilian complaints about the department).

⁴⁰⁷ Police Commission, "OIG Six Month Report," p. 13 (emphasis in original).

⁴⁰⁸ LAPD, *LAPD Manual*, § 820.01, p. 286. "The investigation shall be considered complete when the accused employee's commanding officer meets with the employee to afford him or her the opportunity to review the investigation and letter of transmittal." *Ibid.*; see generally *ibid.*, § 820. 01 for guidelines on complaints designated as "sustained."

but the officers' actions were appropriate and conformed with department policy and applicable legal standards.⁴⁰⁹ An "unfounded" classification represents a finding that there was no act of misconduct.⁴¹⁰ "Not resolved" indicates that the evidence in the investigation is not sufficient to prove or disprove the complaint.⁴¹¹ "Sustained" allegations are upheld when the investigation concludes there was an act of misconduct.⁴¹² A "misconduct not based on the complaint" classification occurs when the investigation reveals that the alleged misconduct was not part of the original complaint.⁴¹³ Lastly, the "miscellaneous memorandum" designation is made in specific circumstances: when a complaint is filed against a non-LAPD employee; when it cannot be determined whether an alleged incident occurred, and if it did transpire, whether the source(s) of the complaint were department employees; and/or when the officer's actions were legally justified.⁴¹⁴ After one of these determinations has been made, the LAPD employee in question is notified of the investigation's results.⁴¹⁵

⁴⁰⁹ LAPD, "Internal Affairs Division: Report on Administration of Internal Discipline," *L.A. Hearing*, subpoena duces tecum document, Exh. 1u, vol. 19(2) (hereafter cited as "IAD: Report on Discipline").

⁴¹⁰ *Ibid.*

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ LAPD, *LAPD Manual*, § 820.20, p. 287.

⁴¹⁴ Williams Interview. Chief Williams provided the following example of when an officer's actions are legally justified: "Officer Smith sees Civilian driver Jones going through an intersection, while the traffic signal is red. The officer issues a traffic ticket to the driver. However, Civilian Jones then files a complaint against Officer Smith, because he did not appreciate the fact that he received a traffic ticket (although the fact that the signal was red was not in dispute). In order to avoid having an account of Civilian Jones' unjustified complaint in Officer Smith's personnel record, the miscellaneous memo is used." Williams Testimony, *L.A. Hearing*, vol. 1, p. 154. The LAPD is currently reevaluating its use of the "miscellaneous memorandum" procedure which constitutes a final adjudication of a personnel complaint.

⁴¹⁵ LAPD, *LAPD Manual*, § 820.11, p. 286. *See also* *ibid.*, § 820.07. This section describes the procedure for when an administrative investigation focuses on alleged criminal misconduct by an employee:

"Commanding officers adjudicating personnel complaints shall prepare an undated letter, on Department letterhead, to the complainant from the concerned employee's commanding officer. The letter shall advise the complainant of . . . [t]he completion and closure of the investigation; [t]he classification of the complaint including an explanation of such classification; [t]he commanding officer's insight into

The department also examines serious allegations of misconduct against police officers before a "Board of Rights" internal review board.⁴¹⁶

Misconduct is deemed to be "serious" when the commanding officer recommends:

- For Sworn Personnel—That the matter be adjudicated by a Board of Rights or that the employee be suspended.
- For Civilian Personnel—That the employee be discharged or suspended.
- For Probationary Employees—That the employee be terminated or suspended.⁴¹⁷

Specifically, a Board of Rights hearing is a fact-finding, administrative proceeding that employs fundamental rules of order, instead of legal rules of evidence.⁴¹⁸ Its primary function is to determine the truth of the allegations, develop and review the complete facts in the complaint, issue findings, determine a penalty, and submit rec-

the adjudication of the matter; [for sustained complaints] inform the complainant [of the] . . . appropriate disciplinary action. . . , without indicating the specific penalty; and [t]he name and phone number of the commanding officer who can be contacted for additional information.

"The completed letter, signed by the commanding officer and ready to mail shall be forwarded with the personnel complaint through the chain of command for review. Following the final adjudication of the complaint, [the] Internal Affairs Group shall ensure that the letter is mailed to the complainant."

Ibid., § 820.11.

⁴¹⁶ *See* *ibid.*, § 830.30, pp. 287–88.

"Misconduct for which discipline may be administered by commanding officers includes, but is not limited to, the following: failure to qualify, failure to appear in court at time subpoenaed, failure to appear for scheduled medical examination, tardiness, uniform defects, minor mishandling of equipment, violation of divisional orders of internal nature, violation of standard operating procedures of internal nature, [and] minor misconduct from sources outside the Department.

"Note: A commanding officer may cause other appropriate action, such as medical examination, professional counseling, or assistance, to be taken. Such action may also be initiated on other than sustained complaints."

⁴¹⁷ *Ibid.*, § 820.12, p. 287. This section also describes the commanding officer's duty to notify the accused employee of his or her right of representation, and the commanding officer's recommended penalty; and to provide civilian employees with copies of supporting documents that support prior poor performance. This section also indicates that special procedures are followed in emergency circumstances.

⁴¹⁸ LAPD, *Board of Rights Manual* (September 1995), *L.A. Hearing*, subpoena duces tecum document, Exh. 1j, vol. 13–14, pp. iv–v.

ommended disciplinary options to the chief of police that reflect the evidence presented at the hearing.⁴¹⁹ Recommended penalties must be decided upon by a majority vote of the board.⁴²⁰ In cases relating to unauthorized use of force, the board can also determine whether the accused officer requires training and counseling.⁴²¹

Members of the Board of Rights can be selected from all sworn officers who are at least at the rank of captain.⁴²² In addition, a civilian board member is selected from three possible candidates supplied by the Police Commission.⁴²³ The accused police officer has the right to have any LAPD officer (below the rank of captain) serve as his or her defense representative.⁴²⁴ The defense representative must be familiar with the board's procedures and is responsible for reviewing the evidence and planning a defense, preparing a list of defense witnesses, requesting documents to be subpoenaed, advising the officer of his or her rights, contributing to the selection of board members, notifying the officer of the time of the hearing, advising the board of the need for applicable logistical support (i.e., an interpreter, hearing reporter, etc.), and examining the officer's file for procedural requirements.⁴²⁵

After the hearing, and solely upon a finding of guilty, the board can examine the officer's

personnel record in order to devise an appropriate penalty.⁴²⁶ The Los Angeles City Charter limits the range of possible penalties to:

- Reprimand: Reprimand without further penalty
- Suspension: Suspension for a definite period not exceeding six (6) months with total loss of pay, and with or without demotion in rank or reprimand, or both.
- Demotion: Demotion in rank, with or without suspension for a period not exceeding six (6) months with total loss of pay, or reprimand, or both.
- Removal: Removal from office or position.⁴²⁷

Once a penalty has been agreed upon, the board can suggest the need for additional testimony or other information. It then sends a certified copy of its decision to the chief of police.⁴²⁸

2. Is Discipline Equally Distributed? The Christopher Commission noted that the public was concerned about whether the LAPD could appropriately discipline its officers, particularly those accused of using excessive force or improper tactics.⁴²⁹ During that time:

of the 3,419 allegations of excessive force or improper tactics initiated by members of the public from 1986 through 1990, only 103 (3.0%) were sustained. Of the 2,152 allegations involving excessive force, only 42 (2.0%) were sustained.⁴³⁰

In order to reexamine this issue, figure 2.6 illustrates the number of employees involved in all complaints (including unauthorized force allegations) for 1992, and the number of sustained dispositions.⁴³¹ Figure 2.6 demonstrates that for the majority of months in 1992, a significant number

⁴¹⁹ Ibid., pp. vi, § 140.75. See also Beth Shuster, "Veteran LAPD Officer Aided Fugitive Son," *Los Angeles Times*, Mar. 27, 1996, p. 3-B.

⁴²⁰ LAPD, *Board of Rights Manual*, § 272.90.

⁴²¹ Ibid., §277.40.

⁴²² Ibid., §§160, 170. Members can be eliminated on the ground of prejudice. Also, the following staff are excluded from participating on a Board of Rights: the chief of police; any assistant chief; the chief of staff; the commanding officer, Bureau of Special Investigation; commanding officer, Internal Affairs Group; captains assigned to the Internal Affairs Group; the employee relations administrator; commanding officer, Human Resources Bureau; and the commanding officer, Personnel Group.

⁴²³ Ibid., §180.60; Los Angeles City Charter §202(10).

⁴²⁴ Ibid., §190.

⁴²⁵ Ibid., §180.60. "The complaint must have been filed within one (1) year from the time it was discovered by the Department and brought to the attention of the Chief of Police. . . . Furthermore, the complaint must have been filed with the Police Commission within five (5) days after the order of relief from duty or order of suspension and/or demotion had been served upon the accused." Ibid. See also *ibid.*, §212 (rights of the accused), §§212-256 (describing the hearing procedure).

⁴²⁶ Ibid., §§268.20, 268.80.

⁴²⁷ Ibid., §272.30. See Los Angeles City Charter §202(3) & (4).

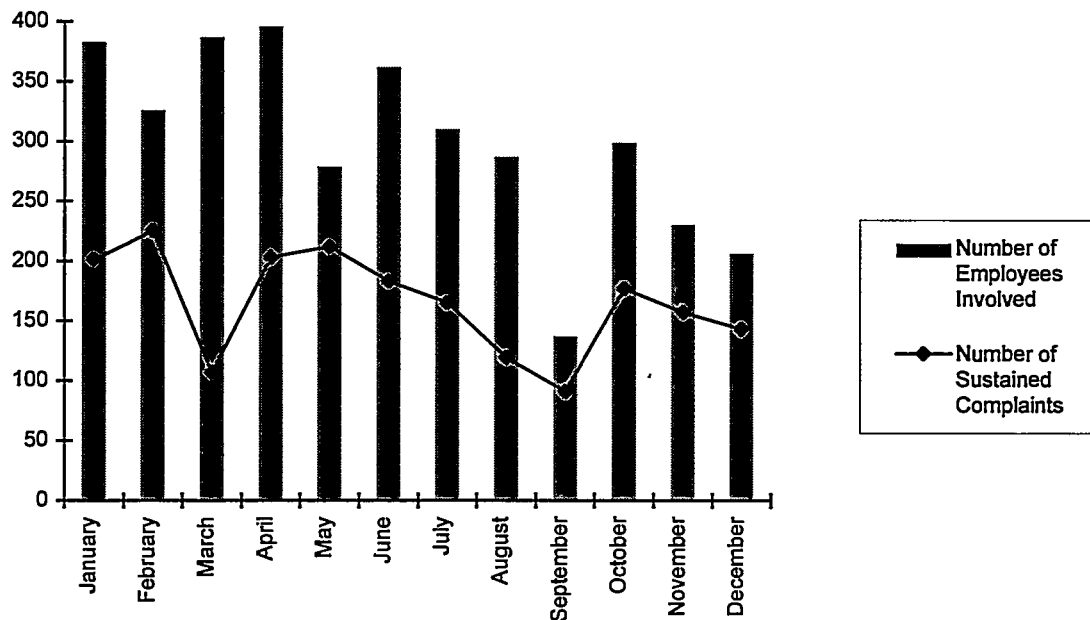
⁴²⁸ Ibid., §279.20. "If the recommendation is sensitive in nature, it may be reported orally to the Commanding Officer, Internal Affairs Group. . . . Notwithstanding the above, any additional recommendations regarding the accused officer should generally be stated on the record." Ibid., §280.

⁴²⁹ *Christopher Commission Report*, p. 153.

⁴³⁰ Ibid., p. 153.

⁴³¹ The department provided a full year of "Internal Affairs Division: Report on Administration of Internal Discipline" data forms for 1992. In addition, figure 2.6 reflects the number of department employees involved in complaints for each month. It does not reflect the *number* of adjudicated complaints for each month, since more than one employee may be alleged to be involved in a single complaint.

FIGURE 2.6
IAD Complaint Dispositions for 1992



Source: LAPD, Internal Affairs Division—Report on Administration of Internal Discipline, L.A. Hearing—subpoena duces tecum document, Exh. 1u, vol. 19(2) (for the months of January 1992 through December 1992).

of LAPD employees found to be involved in various complaints, received a disposition of “sustained.” If the data for 1992 is representative of subsequent years’ complaint dispositions, then the department has made some progress in fairly reviewing allegations filed against its employees.⁴³²

In 1995, Cliff Ruff, then president of the Los Angeles Police Protective League, asserted that police management officials receive more lenient forms of discipline than rank-and-file officers those at the rank of lieutenant or below) for the same infraction.⁴³³ (The OIG subsequently examined the issue and determined that a followup study should be conducted.⁴³⁴ Inspector General

Mader also observed that the department’s morale is hindered by the perception of a double standard, since rank-and-file officers view command staff and the disciplinary system with less respect.⁴³⁵ Moreover, the inspector general testified that “the morale in the police force is di-

“LAPD spokesmen point out that the punishment for lying swings vastly depending on the severity of the case and the record of the officer involved. An officer caught fudging on a minor issue might simply get a reprimand. But an officer who covers up a sordid episode involving excessive force or courtroom perjury or corruption could be fired.

“In [Chief] Williams’ case, the Police Commission issued a reprimand last month after concluding that the chief had lied to them about accepting free hotel rooms in Las Vegas. Mayor Richard Riordan supported that decision, upholding the official rebuke.

“Then, without reading the commission’s file on [Chief] Williams, the City Council voted 12 to 1 to overturn the chief’s reprimand. Declaring victory, [Chief] Williams said the council’s action affirmed his integrity and cleared his name. But where [Chief] Williams saw vindication, some rank-and-file officers saw discrimination. To be sure, many of the cases recorded by the LAPD’s Internal Affairs Division under the category of ‘false and misleading statements’ actually involve serious misconduct as well. . . . It’s back to a double standard,’ Ruff said. ‘A police officer cannot . . . appeal to the City Council on a reprimand.’” Ibid. p. 34.

⁴³² See generally Williams Testimony, L.A. Hearing, vol. 1, p. 178. In 1994 Chief Williams requested that the IAD record when employees obtain three or more public complaints. No determination was made regarding the disposition of the complaints (whether they were classified as not resolved, sustained, exonerated, etc.). This information was provided to management staff).

⁴³³ Stephanie Simon, “Penalties More Severe in LAPD Ranks, Cases Show,” *Los Angeles Times*, June 23, 1995, p. 1-A.

⁴³⁴ Police Commission, “OIG Six Month Report,” p. 34.

⁴³⁵ Police Commission, “OIG Six Month Report,” p. 34.

rectly proportional to how. . . [police officers] believe that complaints against them are being handled. If they feel that they're being handled objectively and fairly, I think morale will go up."⁴³⁶

The OIG's review of use of the miscellaneous memorandum classification indicated that this type of complaint disposition should be abolished because it is susceptible to subjective application.⁴³⁷ Quoting Mark Epstein, special counsel to the Police Commission, Ms. Mader indicated that under the miscellaneous memorandum system "for all practical purposes, it is as if . . . allegations were never made and an investigation never occurred."⁴³⁸ Specifically, the OIG found that command staff received more miscellaneous memorandums than rank-and-file and civilian employees.⁴³⁹ The LAPD's command staff, however, disputed the OIG's findings arguing that the application of miscellaneous memorandums depends upon a variety of factors (i.e., "those of the rank of captain and above generally receive different types of complaints than those in the lower ranks, [command staff] generally have more experience and control themselves better").⁴⁴⁰ Still, the OIG indicated that rank-and-file officers do not have similar access to specific details about allegations against their peers.⁴⁴¹ As a result, abolishing the miscellaneous memorandum process might contribute significantly in improving officer morale.

Testimony from the hearing also addressed the issue of pending State legislation that would prohibit law enforcement agencies from taking any action against police officers if the agencies' investigation into alleged act(s) of misconduct is not completed within one year.⁴⁴² In addition, the proposed legislation authorized removing

references to "unfounded" complaints from police officers' personnel records.⁴⁴³

Hearing witnesses differed on the long term effect the proposed legislation would have on the department's employee discipline system. Mark Epstein, special counsel to the Police Commission, contended that while expedient investigations were important, if inquiries into complaints against police officers require more than a year to complete, it would be not be appropriate to ignore the findings.⁴⁴⁴ Further, he maintained that previous allegations of infractions provide LAPD supervisors with essential information to determine whether counseling or other nonpunitive action may be necessary should an officer develop a pattern of behavior.⁴⁴⁵ Similarly, Chief Williams stated that the department and the Board of Police Commissioners did not support proposed legislation⁴⁴⁶ that would permit retention of only "sustained" complaints in an officer's record because law enforcement agencies should be permitted to review complaint-related information that might affect an officer's performance.⁴⁴⁷

In contrast, Bill Harkness, president of the Police Protective League, expressed his concern that supervisors may have varying interpretations for the reasons why unfounded complaints remain in an officer's personnel record.⁴⁴⁸ Mr. Harkness disagreed with the chief's view that an examination of an officer's "unfounded" and "exonerated" complaints might assist in determining whether there is a behavioral problem. He emphasized that if police officers have emotional difficulties, they have access to department psychologists on a round-the-clock basis.⁴⁴⁹

⁴³⁶ Mader Testimony, *L.A. Hearing*, vol. 1, p. 155.

⁴³⁷ See Police Commission, "OIG Six Month Report," pp. 34-36. In his interview with Commission staff, Mr. Epstein also discussed the findings of the *Five Year Report*. Epstein Interview.

⁴³⁸ Police Commission, "OIG Six Month Report," p. 34.

⁴³⁹ *Ibid.*

⁴⁴⁰ *Ibid.*, p. 36.

⁴⁴¹ *Ibid.*

⁴⁴² Jim Newton, "Bills Seek to Alter Way Police are Monitored," *Los Angeles Times*, June 30, 1996, p. 3-A (hereafter cited as "Bills Seek").

⁴⁴³ *Ibid.*

⁴⁴⁴ Epstein Testimony, *L.A. Hearing*, vol. 1, p. 168.

⁴⁴⁵ *Ibid.*, p. 168.

⁴⁴⁶ Williams Testimony, *L.A. Hearing*, vol. 1, pp. 169-70.

⁴⁴⁷ *Ibid.* Commenting on department's use of the miscellaneous memorandum procedure, Chief Williams previously stated:

"We have worked with the Commission, the Inspector General and our staff to try to identify how to protect the rights of the employees, because I don't really believe that every complaint, particularly if it's not involving that employee, should be a part of their record. . . but should it or should it not be a part of their record when you're evaluating them for promotional opportunities is yet to be discussed." *Ibid.*, pp. 153-54.

⁴⁴⁸ Harkness Testimony, *L.A. Hearing*, vol. 1, p. 169.

⁴⁴⁹ *Ibid.*, pp. 174-75.

Further, Mr. Harkness stated that a police officer's morale is negatively affected by lingering references to his or her "unfounded" and "exonerated" complaints of misconduct, particularly since complainants tend to fabricate allegations about personnel complaints.⁴⁵⁰

Conversely, Inspector General Mader contended that even if an officer had a number of complaints that were not "sustained," one should not assume that the alleged incidents did not occur.⁴⁵¹ More than likely, this circumstance indicates that an independent witness was not available to substantiate the allegations.⁴⁵² Furthermore, she maintained that the public's interest could be threatened if references to all complaints (except for sustained allegations) were removed from police officer's files, since the Christopher Commission recommended that the department monitor officers who show indications of potential problems.⁴⁵³

⁴⁵⁰ *Ibid.*, pp. 159, 174-75. *See also* *ibid.*, p. 161. Mr. Harkness emphasized the need for police officers to do their jobs, and to not be apprehensive of being sued or imprisoned for misconduct allegations. He referred to the officers involved in the Rodney King beating as an example.

⁴⁵¹ Mader Testimony, *L.A. Hearing*, vol. 1, pp. 155-56.

⁴⁵² *Ibid.* *See also* Police Commission, "OIG Sixth Month Report," pp. 30-31:

"Since identified in the Christopher Commission Report, the lack of standards to evaluate who is an independent witness has continued. . . . [M]any personnel investigations result in 'unresolved' findings, even though witnesses to the alleged misconduct exist. Witnesses are frequently discounted because they are related to or a friend of the complainant. While some potential witnesses may be biased and their observations discounted, the credibility of their statements should not be immediately discounted without a more thorough evaluation of factors affecting their credibility.

"Recommendation

"The court system has used a checklist for years for judges and juries to evaluate the credibility of witnesses. The same or a similar checklist should be developed immediately to guide commanding officers who adjudicate complaints. Additionally, a training program taught by either the City Attorney or District Attorney on how to evaluate credibility should be immediately initiated."

⁴⁵³ *Ibid.*, pp. 155-56. *See also* Thompson Testimony, *L.A. Hearing*, vol. 3, p. 26. Thompson stated: "You have to [monitor complaints against police officers] to make sure that the officers are responding correctly. . . . [I]f you don't have a monitoring system, if you aren't investigating religiously citizen complaints, not to hang an officer, but to ensure that your department is doing things the correct way, it can cause a demise of an organization. . . . [I]t's greatly needed—computerization in that particular area." *But see* Gunn Letter, May 15, 1998. "Not Sustained as an adjudication is exactly what it says, there are not enough facts to

Following the Commission's hearing, the Public Safety Officers Procedural Bill of Rights Act was signed by the Governor of California on July 27, 1997.⁴⁵⁴ The act does not make a direct reference to the removal of "unfounded" complaints from police officers' personnel files, but instead prohibits punitive action against officers or denials of promotions based upon alleged infractions where investigations of a complaint lasted longer than 1 year.⁴⁵⁵

determine if the act did or did not occur. It doesn't vindicate the officer and at the same time it doesn't find him guilty. Should a police officer have less rights than any other citizen?"

⁴⁵⁴ A.B. 1436, 1997-98 Reg. Sess (Ca. 1997).

⁴⁵⁵ *Id.* The act provides:

". . . that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

"This bill would prohibit any punitive action, or denial of promotion on grounds other than merit, from being undertaken for any act, omission, or other allegation of misconduct occurring on or after January 1, 1998, if the investigation of the allegation is not completed within one year of the public agency's discovery of the allegation of an act, omission, or other misconduct, except in specified circumstances. It would also provide that if, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline on a public safety officer, the public agency shall notify the public safety officer in writing of its intent to impose discipline, including the date the intended discipline will be imposed, within 30 days of its decision"

Id. The act amends section 3304 of the of the California Government Code, and lists the exceptions to the 1-year limitation period:

"This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year *except* in any of the following circumstances:

"If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

"If the public safety officer waives the one-year time period in writing. . . .

"If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

"If the investigation involves more than one employee and requires a reasonable extension.

"If the investigation involves an employee who is incapacitated or otherwise unavailable.

• **Community Relations/Community Policing**

The Christopher Commission indicated that the department should begin initiating a "community policing model" and philosophy of policing that focused upon including the input of neighborhood residents in resolving those concerns that potentially contribute to crime.⁴⁵⁶ Inglewood's Police Chief, Oliver Thompson, past president of the National Organization of Black Law Enforcement Executives, reinforced this concept in his testimony that "[community policing] must be the philosophy of the persons of the head of the organization, the department head. . . . [T]he community must take charge of the policing services that they have within their midst."⁴⁵⁷

The LAPD has also acknowledged the need for a change in policing philosophy. In December 1993, Chief Williams issued Administrative Order No. 10, which informed the department of the creation of police and community partnerships.⁴⁵⁸ During this time, the department ob-

tained grant funding to form the National Institute of Justice Partnerships for Community Policing Grant Implementation Committee. Among other things, the Committee created policy and operational guidelines for establishing Community-Police Advisory Boards (CPABs).⁴⁵⁹ Administrative Order No. 10 explained the role of CPABs and their responsibilities toward the public and to the department.⁴⁶⁰ In addition, the order required each area commanding officer to appoint an Area Community-Police Advisory Board to serve as a working group.⁴⁶¹ The order

"If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

"If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer." (emphasis added).

⁴⁵⁶ *Christopher Commission Report*, p. 100.

⁴⁵⁷ Thompson Testimony, *L.A. Hearing*, vol. 3, p. 15. See Chief of Police Oliver Thompson, Inglewood Police Department, past president of NOBLE, telephone interview, Aug. 21, 1996 (hereafter cited as Thompson Interview). Chief Thompson explained during his interview that NOBLE has provided training and other written resources on community policing. In addition several of its members, including former New York Police Chief Lee Brown, have performed training for various organizations across the country. Chief Thompson also explained that the Community Policing Consortium (which is composed of members from NOBLE, the Internal Association of Chiefs of Police (IACP), the National Sheriff's Foundation, and other organizations) had a mandate for its members to travel to approximately 12 cities to provide training in community policing in 1997.

⁴⁵⁸ LAPD, "Office of the Chief of Police—Administrative Order No. 10, December 3, 1993," *L.A. Hearing*, subpoena duces tecum document, Exh. 1i, vol. 10-12, p. 1 (hereafter cited as "Admin. Order No. 10"). In January 1993, Chief Williams initially informed the LAPD of the creation of the department's Partnerships for Community Policing plan. Chief Williams explained that the "plan is designed to implement change by focusing on three of the most important issues facing the Department today:

"1. Rebuilding our patrol force and rejuvenating the Basic Car Plan;

"2. Developing a strategic plan in order to develop goals and strategies for the future; and

"3. Rebuilding public confidence in the Police Department through the development of police community councils for all 18 geographic Areas."

Ibid.

⁴⁵⁹ *Ibid.*, p. 1. Administrative Order No. 10 explains:

"It is the responsibility of Community-Police Advisory Boards to:

"Assist Department leaders, through community input, to make quality decisions. They should advise and inform the Department of community problems and concerns and provide input to decision making;

"Help identify short-term and long-term concerns of the community and help identify priorities and solutions;

"Mobilize community resources and strengthen ties within the community;

"Coordinate with other governmental agencies and community organizations and service centers to resolve community problems;

"Communicate information on the role and operations of the Police Department to the community; and

"Assist in Community-Police Problem Solving to analyze problems, recommend solutions, and review the progress or results of recommended strategies. (Community-Police Problem Solving is Problem-Oriented Policing Adapted to the Los Angeles Police Department's needs.)"

Ibid., p. 4. The mission of the Partnerships for Community Policing Plan "is to work in partnership with all of the diverse residential and business communities of the City, wherever people live, work, or visit, to enhance public safety and to reduce the fear and incidence of crime. . . ." *Ibid.*, p. 2; Fisher Interview.

⁴⁶⁰ Admin. Order No. 10, *L.A. Hearing*, subpoena duces tecum document, Exh. 1i, vol. 10-12, p. 2. "[T]he role of Community-Police Advisory Boards is to advise and inform Area commanding officers of community problems and concerns. . . . [E]ach Advisory Board will focus and mobilize community and police resources to solve the problems and concerns that have been identified. Areas will provide feedback to the community regarding Area operations and needs relative to these concerns." *Ibid.*

⁴⁶¹ *Ibid.*

also detailed the criteria for selecting members of advisory boards:

Commanding officers have the authority to appoint members of Advisory Boards. Selection should be made on the basis of a wide range of community input and not be restricted to those who openly support the department. . . . Members should be respected in the community, and have the ability to work well in a group setting. Members should also have the ability and willingness to inform the public or their constituents of activities of the Board. . . . Along with geographic concerns, commanding officers should consider the diversity of the Area, such as ethnic, religious, business, and community affiliations, when forming Advisory Boards.⁴⁶²

In the fall of 1995, Chief Williams devised a 5-year strategic plan that centered on providing various services to the community and to the department, and improving the LAPD's technology and long term capital programs.⁴⁶³ The 5-year plan was created with the assistance of local business representatives, residents, and civic leaders.⁴⁶⁴ In addition, Chief Williams issued a series of management papers to the Police Commission and the department that described community policing and its goals.⁴⁶⁵ One of these documents emphasized four elements—"problem solving. . . partnership with the community . . . community identified problems. . . [and] department-wide orientation"—which are essential to the philosophy of community policing.⁴⁶⁶ The document indicated that:

⁴⁶² Ibid., pp. 2-3.

⁴⁶³ Williams Interview.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid. See LAPD, "Office of the Chief of Police, Management Paper No. 2—Community Policing, Apr. 7, 1995," *L.A. Hearing*, subpoena duces tecum document, Exh. 1I, vol. 10-12 (hereafter cited as "Management Paper No. 2"). Chief Williams defined community policing as: "a partnership between the police and the community. It is a partnership in which the police and the community share responsibility for identifying, reducing, eliminating and preventing problems which impact the community. By working together, the police and the community can reduce the fear and incidence of crime and improve the quality of life in the community. In this effort the community and police, as partners, identify and prioritize problems of crime and disorder and share responsibility for development and implementation of proactive problem-solving strategies to address the identified issues. The strategies used combine the efforts and resources of the police, the community and local government." Ibid., p. 1.

⁴⁶⁶ LAPD, "Management Paper No. 2," p. 2.

community policing will not occur overnight, nor does it offer a "quick fix" solution to all community problems. Community Policing alone cannot solve complex social problems such as gangs and homelessness. It can however, have a demonstrated impact on crime problems, the signs which generate the fear of crime, and can improve the quality of life in our City. It requires a long-term commitment by police, the community, and other City agencies to work together. . . . Community Policing is not "soft" on crime. It does not take law enforcement out of the role of the police officer. Police officers will continue to arrest people who break the law. . . . Community Policing, in fact, is tougher on crime because it encourages officers to focus enforcement efforts on community identified problems. It also encourages strategies that can deal with problems through other community based resources.⁴⁶⁷

The LAPD also implemented an 8-hour "Community/Police Problem Solving" (CPPS) training program in order to orient police officers, civilian supervisors, and department staff to the concept of community policing.⁴⁶⁸ As of August 1996, approximately 4,000 of the department's 12,000 employees had participated in CPPS training.⁴⁶⁹

Responses to the Department's Community Policing Efforts

There have been various reactions to the department's efforts to implement community policing strategies. According to Raymond Fisher, former commissioner of the Los Angeles Police Commission, some rank-and-file officers have resisted this change in policing philosophy. Fisher also indicated that there has been both support and resistance from police officers who have worked in the field for a significant period of time.⁴⁷⁰ Although Chief Williams and other

⁴⁶⁷ Ibid., p. 4. In his interview with Commission staff, however, Chief Oliver Thompson contended that some of his peers in California mistakenly believe that community policing does not aggressively address crime.

⁴⁶⁸ Williams Interview; LAPD, "Community-Police Problem Solving Lesson Plan," *L.A. Hearing*, subpoena duces tecum document, Exh. 1i, vol. 10-12.

⁴⁶⁹ Williams Interview.

⁴⁷⁰ Fisher Interview. See Connell, "Christopher Spotlight Shifts," p. 1 (referring to the importance of rank-and-file officers supporting community based policing). Chief Thompson attributed some police officers' attitudes of superiority over civilians to a continuing reliance on traditional policing methods. He indicated that officers holding this view cannot be changed. Chief Thompson suggested that when police officers exhibit this attitude, police management should reinforce the department's philosophy of community-

upper management LAPD officials have endorsed community policing concepts and policies, Commissioner Fisher suggested that it will take some time before the concept becomes an integral part of the department.⁴⁷¹

Chief Oliver Thompson, past president of NOBLE, indicated that local Los Angeles residents have been receptive towards endorsing community policing. However, he also noted that the LAPD's community policing training programs require cooperative support from the Los Angeles City Council, local politicians, the mayor of Los Angeles, as well.⁴⁷²

The department's community policing strategies may also be hindered by previous strained relationships between the local residents and law enforcement officers. In an interview with Commission staff, John Mack, president of the Los Angeles Urban League stated that African Americans in Los Angeles were initially skeptical of community policing efforts, due to their adversarial relationship with some members of the department.⁴⁷³ Similarly, Dr. Armando Morales, professor at UCLA's Psychiatric and Biobehavioral Sciences Department also supported this observation.

[T]he concept of community policing is more theory than actual practice. . . . It is a beautiful concept. . . . the general definition, is that there's a partnership between the community and the police, and that jointly they work together towards trying to resolve what the crime problems might be in a given community. . . . That particular model tends to work much better in the middle class community, but community policing, to work in the inner city, in the poor communities, there has to be something that occurs before they get to the level of community policing, which is, you first

based policing for all officers. Those who do not adhere to the department's overall community-policing philosophy, should not be involved in law enforcement at that department. Although Chief Thompson acknowledged that allowances should be made for some differences in opinion on policing strategies, he maintained that the nature of the relationship between today's society and the police requires community policing philosophies. Thompson Interview.

⁴⁷¹ Ibid. Chief Thompson commended Chief Williams' efforts to institute a community policing model in the LAPD. However, he indicated that Chief Williams' initiatives are hampered by the fact that his prior policing experiences are not from the LAPD and because of the established traditional policing model that exists within the department. Thompson Interview.

⁴⁷² Thompson Interview.

⁴⁷³ Mack Interview.

have to have police community relationships. . . . Then you can move towards a concept of community policing.

[S]o far, what I see going on, not just here in Los Angeles, but in many parts of the country with police agencies, is the adopted concept of community policing, which works in the middle class communities, but they've gone away from the old efforts of community relations.⁴⁷⁴

Another witness emphasized that the LAPD's current community policing approaches should also concentrate on developing more "cultural competency" towards local minority groups.⁴⁷⁵ Attorney Angela Oh explained that law enforcement agencies need to use available resources, such as academic institutions and private industries, in order to facilitate communication with its communities, which will ultimately strengthen its relationships with local residents.⁴⁷⁶ Other observers of the department's community policing efforts also stress the need for more community education on this policing strategy in public meetings. Some residents may view the police department's presence with suspicion and would benefit from additional efforts to exchange information with them on community policing initiatives.⁴⁷⁷

⁴⁷⁴ Armando Morales, Ph.D., professor, UCLA Psychiatric and Biobehavioral Sciences Department, testimony, *L.A. Hearing*, vol. 1, pp. 212-13 (hereafter cited as Morales Testimony). In addition, Dr. Morales explained, "in the early 1970's, former [C]hief Davis decided to move more towards a particular model of community policing, that rather than having an independent unit within the department that specialized in police community relations, that the whole department was the group that should have the responsibility of establishing good relationships with the community."

⁴⁷⁵ Oh Testimony, *L.A. Hearing*, vol. 1, pp. 228-29.

⁴⁷⁶ Ibid., p. 229. Ms. Oh referred to AT&T's telephone language line as one method for the department to gain access to interpreters who speak various languages that might be spoken in a particular community. See also Robin Toma, Esq., Letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, Dec. 17, 1996, "Corrected Hearing Transcript and LAPD Language List," p. 1. Mr. Toma indicates that a previous controversy relating to the Chong incident (see previous section on "Racism and Bias" in this chapter) "centers on why officers have no guidance or training on when and how to access the LAPD's existing language resources available to them in the form of bilingual officers and employees, and via the AT&T language line, which already contracts with the LAPD."

⁴⁷⁷ Morales Interview; Toma Interview. Mr. Toma indicated that CPABs do not routinely have open public meetings on community policing programs. Oh Interview. Ms. Oh dis-

Lastly, the LAPD was cited for its positive efforts to involve community members in community policing strategies in the Wilshire Division, the South Bureau area, the Hollenbeck/East Los Angeles sections, and the Valley. According to the president of the Los Angeles Urban League, because residents of the Wilshire Division and South Bureau areas have participated on police advisory groups and in other activities, they generally see the value of developing a working relationship with the LAPD.⁴⁷⁸ Similarly, in the Hollenbeck/East Los Angeles and Valley areas, a responsive community/police relationship has developed primarily due to aggressive community policing initiatives.⁴⁷⁹

- **Recruitment, Retention, and Psychological Testing of Candidates and Field Training Officers**

Previously, the Christopher Commission had criticized the department's preemployment screening procedures for not ensuring that a candidate's emotional and psychological impairments were identified prior to employment.⁴⁸⁰ Such information is particularly important to obtain for police officer candidates. The *Christopher Report* recommended that background investigators' prescreening procedures should also include a review of a candidate's past behavior, particularly any violent tendencies or inability to interact with other people.⁴⁸¹ In addition, the Christopher Commission was concerned about the field training officer (FTO) appointment system, since its findings indicated that a significant number of police officers were promoted to FTO positions, who had obtained sustained personnel complaints of excessive force and "code of silence"-related violations.⁴⁸²

In response, the LAPD has participated in a cooperative effort with the City of Los Angeles Personnel Department to examine the psycho-

cussed the need for additional efforts to include input from immigrant populations.

⁴⁷⁸ Mack Interview. In his interview with Commission staff, Mr. Mack indicated that the South Bureau includes a large portion of South Central Los Angeles. It is mainly a black and Hispanic community. The Wilshire Division is a more diverse area that also includes Asians and whites.

⁴⁷⁹ Fisher Interview.

⁴⁸⁰ *Christopher Commission Report*, pp. 110–11.

⁴⁸¹ *Ibid.*, p. 111.

⁴⁸² Rohrllich, "LAPD Seeking." See *Christopher Commission Report*, pp. 126–29.

logical instruments used for prescreening police candidates.⁴⁸³ Specifically, in September 1995, the Los Angeles City Council adopted a motion to require the Personnel and Police Departments to appoint a panel of experts to review the department's psychological assessment tools and practices, in order to "weed out" racism and other hostile behavior in the LAPD."⁴⁸⁴

Dr. Armando Morales testified that psychologists administer a number of tests to police officer candidates, such as the Minnesota Multiphasic Personality Inventory Test (MMPI), which was performed on candidates at the time of the *Christopher Report*.⁴⁸⁵ He advised that some of these tests may be culturally biased, which could adversely affect minority candidates' test performances.⁴⁸⁶ Dr. Morales maintained that the best indicator of potential future violent behavior is past history of aggression.⁴⁸⁷

Similarly, other authorities contend that there are inherent problems in using psychological tests to screen out candidates who would not become model police officers.⁴⁸⁸ Some of these barriers include utilizing tests that cannot predict future behavior, determining measures of ideal police behavior, assuming that noteworthy

⁴⁸³ Williams Testimony, *L.A. Hearing*, vol. 1, p. 120.

⁴⁸⁴ LAPD, "Jan. 9, 1996 Memorandum to Commissioner Herbert Boekmann, Personnel System Task Force Members, from Donna L. Denning, regarding Psychological Review Panel," *L.A. Hearing*, subpoena duces tecum document, Exh. 1k, vol. 15(1), attachment (hereafter cited as "Denning Memorandum")(citing Verbal Motion) (emphasis in original). "Currently, the Personnel and Police Departments are working to develop their recommendations, which first will be submitted to the Personnel and Public Safety Committees of [the] City Council and then must be approved by full Council." *Ibid.*, p. 1.

⁴⁸⁵ Morales Testimony, *L.A. Hearing*, vol. 1, p. 214; Morales Interview.

⁴⁸⁶ Morales Testimony, *L.A. Hearing*, vol. 1, p. 214. Dr. Morales explained during an interview with Commission staff that the MMPI is a general test that can indicate possible serious psychological or psychiatric problems, such as suicidal, schizophrenic, or depressive tendencies. According to Dr. Morales, the test is not necessarily culture-or bias-free, since its structure is based on white, middle class people in the Midwest. In his view, Latino and African American candidates may score higher in areas that the MMPI suggests is indicative of troublesome behavior, when actually the scores reflect flaws in the test design. Morales Interview. Recruitment and retention of minority and female candidates is discussed in more detail in a subsequent chapter of this report.

⁴⁸⁷ Morales Testimony, *L.A. Hearing*, vol. 1, p. 215.

⁴⁸⁸ Geller and Toch, *And Justice for All*, p. 161.

police performance is primarily due to preexisting personality characteristics.⁴⁸⁹

In reference to FTOs, Chief Williams explained that as part the department's former selection process, candidates took an examination for the Police Officer "P3" position.⁴⁹⁰ After the candidate was certified and placed on the P3 selection list, "commanding officer[s] would advertise when there were P3 or field training officer positions available, and they [the FTO candidate]. . . would go in for an interview and be selected."⁴⁹¹ A new process has changed this procedure. Currently, FTO candidates can volunteer to be "P3"s, undergo an interview and a background check (i.e., whether the candidate has been involved in personnel complaints, whether these complaints have been adjudicated, and their status).⁴⁹² The FTO candidates then participate in a structured skill training program that determines the temperament and skill levels for FTO duties.⁴⁹³

Chief Williams also described the selection criteria for FTO positions:

The overall criteria includes your time on the job, your personnel evaluations, recommendations of your staff in command. . . . [We] look at the officer's entire personnel package, the type of complaints that have come in, the scope and depth of those, the adjudication of those complaints. . . . We then look at. . . [whether] there [have] been any complaints or issues involving civil liability, and whether that was appropriate or not appropriate. . . . They then have to go into the selection process, where people from our training division, including behavioral scien[tists] and others, have structured a second selection process. . . . You then go through the training. If they do not pass this training and . . . fail, [they] are not going to be selected or certified and allowed to be a field training

officer. . . . You will be given a second opportunity within a year, after counseling to discuss the deficiencies or corrections, and then given a second opportunity within a time frame to attempt to be a field training officer.⁴⁹⁴

However, Bill Harkness, president of the Police Protective League, indicated that there are a number of qualified FTOs who are currently assigned to desk jobs, because their commanders maintain that they would cause difficulties in field positions.⁴⁹⁵ "Seasoned officers are sitting right now, that deserve to be training officers, that. . . [have] taken promotion laurels, and that are getting put high up on the [FTO selection] list by their supervisors, and then this department is routinely denying them because they've had a personnel complaint in their history that's maybe five years old."⁴⁹⁶ He added that junior officers are being promoted into FTO positions, and are being asked to train more senior officers.⁴⁹⁷ Previous department policies required 5 years of experience on the force in order to qualify for a FTO position.⁴⁹⁸ Mr. Harkness indicated that he had personal knowledge of two junior officers in FTO positions who are assigned to an LAPD division in a particularly dangerous area.⁴⁹⁹

• *Personnel Issues*

The Christopher Commission observed that the department's promotion system used a Civil Service Interview Board's review of a candidate's background, which often did not include the individual's entire complaint history and disciplinary record.⁵⁰⁰ According to Chief Williams, however, the LAPD recently changed its promotional process from the former "pay grade ad-

⁴⁸⁹ Ibid., pp. 161–62. See also *ibid.*, p. 162. The authors note: "There is considerable agreement on the need to take into account of situational factors as well as individual differences among police officers. These situational factors include the informal socialization that begins at the inception of recruit training and includes the climate of the department as a whole. These factors at present have a generally unplanned impact on the recruit from the time of selection through training and probation." *Ibid.*, p. 162.

⁴⁹⁰ Williams Testimony, *L.A. Hearing*, vol. 1, p. 144.

⁴⁹¹ *Ibid.*

⁴⁹² *Ibid.*

⁴⁹³ *Ibid.*, p. 145. There are plans to require those individuals who have been FTOs for a number of years to participate in training programs to ensure that they have the appropriate skills.

⁴⁹⁴ *Ibid.*, pp. 145–46.

⁴⁹⁵ Harkness Testimony, *L.A. Hearing*, vol. 1, p. 157.

⁴⁹⁶ *Ibid.*, p. 158.

⁴⁹⁷ *Ibid.*, p. 157. Mr. Harkness described the actions of a junior officer who was present at the beating of Rodney King. According to Mr. Harkness, the junior officer pulled Mr. King into the street by his ankles and watched senior officers beat Mr. King. The junior officer was required to go before the Board of Rights and was given a 4-day suspension. The junior officer, who had been in the LAPD for about 4 years, was eventually promoted to a FTO. See *ibid.*, pp. 158–59.

⁴⁹⁸ *Ibid.*, p. 157.

⁴⁹⁹ *Ibid.*

⁵⁰⁰ *Christopher Commission Report*, pp. 139–42.

vancement” system, which was directly controlled by supervisors and managers.⁵⁰¹ The department then hired a personnel department specialist from the City of Los Angeles Department of Personnel to implement a pay grade advancement system that corresponds to the city of Los Angeles’ pay structure. The city of Los Angeles’ pay structure system rates employees as “outstanding,” “satisfactory,” or “unsatisfactory.”⁵⁰² In addition, the LAPD also hired a full time behavioral psychologist to investigate allegations of bias, and to examine its recruitment, training, and pay grade advancement systems.⁵⁰³

The Departure of Chief Williams: A New Era for the LAPD

In February 1997, the LAPD was again in the middle of a leadership controversy. Although Chief Williams maintained that the department’s number of civilian complaint statistics had declined, and despite a public approval rating of 66 percent, his management performance was criticized by the Police Protective League and the Police Commission.⁵⁰⁴ In addition, a survey of 24 of the department’s highest ranking officers revealed their dissatisfaction with the LAPD’s 1995 5-year strategic plan, “Commitment to Action.”⁵⁰⁵ Some of their concerns included:

- the sense that department resources are being misused and that police support functions are being cut too short to beef up patrol operations. . .
- “action teams” created to guide and report on the implementation of the strategic plan have done virtually nothing. According to the [survey and

the] report, “a brief telephonic survey of 65 of the 67 Action Teams revealed that only three teams actually met.”

- “Most of the command staff focused on quality community policing as the department’s top priority. . . . However, there was agreement that a definition of community-based, problem-oriented policing for Los Angeles has not yet been established.”⁵⁰⁶

The Police Commission ultimately relied upon several criteria to evaluate Chief Williams’ performance and, in March 1997, voted to deny him another term as chief of the LAPD. The Police Commission based its determination upon factors such as Chief Williams’ inability “to consistently maintain the [department’s] reform process or to effectively provide a direction”; [and] the Board’s lack of confidence in “Williams’ commitment to civilian oversight and his willingness to communicate with them in a timely manner.”⁵⁰⁷ In addition, the Police Commission maintained that Chief Williams had not received the support of high-ranking police commanders, and had not instituted a sufficient number of “on the street” policing programs.⁵⁰⁸

The Police Commission’s decision evoked a range of responses among the local Los Angeles community.⁵⁰⁹ Similarly, support for Chief Wil-

⁵⁰¹ Williams Interview. Chief Williams explained that the pay grade advancement system included merit positions that were based on performance. Prior to the Christopher Commission’s findings and recommendations, the LAPD’s rank-and-file officers did not trust this system. According to Chief Williams, they felt in order to obtain a higher title, an individual’s performance was irrelevant. Instead, officers believed that they had to have some personal connection to influential officials.

⁵⁰² Williams Interview.

⁵⁰³ Ibid.

⁵⁰⁴ Lou Cannon, “Another Los Angeles Police Controversy,” *Washington Post*, Feb. 15, 1997, p. 3A. The second 5-year term of the chief of police position is now renewable at the Police Commission’s discretion, due to the passage of Charter Amendment F in 1992.

⁵⁰⁵ Jim Newton, “Most Top Brass Criticize LAPD Strategic Plan,” *Los Angeles Times*, Feb. 27, 1997, p. 1A.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ted Rohrlich, “Police Reform Effort Gave Panel New Clout,” *Los Angeles Times*, Mar. 11, 1997, p. 1A; Patrick McGreevy, “Panel Dumps Chief,” *Daily News of Los Angeles*, Mar. 11, 1997, p. 1N. The Police Commission’s action was immediately supported by Mayor Riordan. During testimony before the Commission, however, Mayor Riordan expressed his satisfaction with Chief Williams’ performance in monitoring the department’s responses to the Christopher Commission’s recommendations. See Riordan Testimony, *L.A. Hearing*, vol. 1, p. 112.

⁵⁰⁸ B. Drummond Ayres, Jr., “Los Angeles Police Chief Will Be Let Go,” *New York Times*, Mar. 11, 1997, p. 12A; Hector Tobar and Beth Shuster, “The Williams Decision: Police Upbeat, Some Activists Voice Concern,” *Los Angeles Times*, Mar. 11, 1997, p. 1-A. (hereafter cited as “The Williams Decision”). “Other officers said that Williams rarely did the small things to show support for front-line troops. He almost never attended station roll calls, for example. ‘He was not a very visible chief for the troops,’ said one command officer who requested anonymity. ‘I can’t recall one roll call he attended here. . . .’” Ibid.

⁵⁰⁹ “Commission Rejects LAPD Chief Williams,” *The Ethnic News Watch-Los Angeles Sentinel*, Mar. 19, 1997, p. 1-A (hereafter cited as “Commission Rejects”). “He’s getting the job done and they don’t like how he’s doing it,” said Richard Washington, 42, a black customer at a Crenshaw restaurant.” Ibid. “The Williams Decision.” “Lupe Vargas, an

liams also varied on the Los Angeles City Council. In addition, the City Council could supersede the Police Commission's vote, if 10 out of the 15 council members consented to consider the question.⁵¹⁰ During that time, Councilman Richard Alatorre contended: "If he hasn't made any real progress toward—and articulated—a vision for the department in five years, we're going to wait five more years for that vision to be articulated? I don't think we can afford to wait."⁵¹¹

Although the chief disagreed with the Police Commission's findings and initially threatened to sue the city if he was not reappointed to another term, he eventually accepted a severance package and resigned from his position.⁵¹² As a result, in August 1997, Mayor Riordan appointed LAPD Deputy Police Chief Bernard C. Parks to serve as the department's new chief of police.⁵¹³

The mayor's choice of a new police chief was warmly received by various racial and ethnic groups in Los Angeles.⁵¹⁴ Chief Parks who "has spent his entire 32-year police career in the LAPD, is known as a tough disciplinarian who believes in giving unit commanders broad responsibility and holding them accountable for results."⁵¹⁵

Ultimately, the mandate to "protect and serve" the Los Angeles community, will not rest solely on the shoulders of the department's new chief of police. It will be necessary to obtain cooperative efforts from not only the department's civilian and sworn employees, but also the Police Commission, community members, the Police Protective League, and the Los Angeles City Council, in order to realize and implement fully the reforms of the Christopher Commission.

Eastside neighborhood activist at the Ramona Gardens housing projects—where residents have clashed with police—gave Williams credit for setting a conciliatory tone, but little else. 'I don't think he could have possibly have control over every police officer. . . . But I also didn't see any noticeable change in officer[s] attitudes from Gates to Williams. Some officers continue to mistreat the residents and get away with it.' Ibid.

⁵¹⁰ "Commission Rejects."

⁵¹¹ Ibid. *But see* *ibid.* "Councilman Nate Holden, the chief's strongest advocate in City Hall, called the commis[s]ion's action 'a dirty trick on the chief and the people of Los Angeles.' Holden, along with Councilwoman Rita Hall, another strong Williams ally, want[ed] the City council to review the commission's action." Ibid.

⁵¹² Meir J. Westreich, Joseph H. Duff, and Gloria Romero, "Perspective on the LAPD—The City Should Not Pay the Chief to Leave," *Los Angeles Times*, Mar. 5, 1997, Op. Ed. desk, p. 9B; Jeff Wilson, "L.A. Police Chief Settles for \$375,000 Severance," *USA Today*, Apr. 23, 1997, p. 3A.

⁵¹³ Lou Cannon, "Riordan Names Black Officer to Head LAPD," *Washington Post*, Aug. 7, 1997, p. 3A.

⁵¹⁴ Ibid. "Councilman Richard Alatorre, considered the most influential Latino politician in the city, called Parks' selection 'a great day for Los Angeles.'" Ibid.

⁵¹⁵ Ibid. *See also* Lou Cannon, "LAPD Prepares to Hail New Chief," *Washington Post*, July 1, 1997, p. 4A. The Los Angeles Police Protective League, however, supported Deputy Chief Mark Kroeker, another candidate for the new Chief of Police, in part because of his support of "312," a union proposal to change the present shifts of five eight-hour days to three 12-hour shifts. [Deputy Chief Kroeker was] backed by many Latinos, who make up 40 percent of the city's population, for promoting multicultural programs, including a pilot project where LAPD officers lived and trained in Mexico. Ibid.

Chapter 3

Racial and Gender Bias in the Los Angeles Police Department

No one today would seek to have what was all too common 25 years ago, a police force with few, if any, women, blacks, Hispanics, or Asian Americans. We now know that police forces that reflect the communities they serve are better able to do their jobs. But this wisdom we take for granted today is a product of federal civil rights efforts.¹

Section I: Overview

Introduction

The issue of racism and gender bias within the LAPD is not new. Following the Los Angeles riots of 1965, the Governor's Commission on the Los Angeles Riots, known as the McCone Commission, issued a report on the underlying causes of the riots. The report found "a deep and longstanding schism between a substantial portion of the Negro community and the Police Department. 'Police brutality' has been the recurring charge."² As the previous chapter indicates, events in recent years have rendered evidence suggesting that this schism continues. From King to Fuhrman, the issue of bias within the

LAPD has garnered national attention.³ Indeed, police leadership has acknowledged a need to deal with the bias that exists.⁴

In addition to the tensions between the minority community and the local police department, the Christopher Commission found that minority officers were subject to racial slurs and comments and to discriminatory treatment within the LAPD.⁵ Furthermore, some off-duty minority officers had experienced unjustified stops by police not resulting in an arrest or otherwise involving any infraction or illegal activity by the officers.⁶ In two incidents, the African American officers identified themselves as LAPD officers whereupon the white officers allegedly responded that the identification could be stolen and would have to be checked.⁷

In *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department's Implementation of Independent Commission Recommendations*, discussed in the

¹ Steven H. Rosenbaum, cochair of the Civil Rights Division's Initiative on Police Misconduct at the U.S. Department of Justice, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, Sept. 12-13, 1996, vol. 1, p. 38 (hereafter cited as *L.A. Hearing*).

² December 2, 1965 Report, p. 27. Incidents of civil disorder in other cities also have been attributed to poor police-community relations. For example, the Florida Advisory Committee to the United States Commission on Civil Rights stated, "[a]ccording to most of the community leaders [present at the forum], the incidents which led to the riots of 1980, 1982, and 1989 [in Miami] show a common pattern of abuse, disrespect, insensitivity, poor police practices and outright errors on the part of the affected police officers. Time and again, said the leaders, this has led to loss of lives, property, and respect from the black community for police departments all too often seen as the invading enemy." Florida Advisory Committee to the United States Commission on Civil Rights, *Police-Community Relations in Miami* (November 1989), p. 16.

³ Chief of Police Willie Williams has said, "Every hour ... on the national and international news, the Los Angeles Police Department is being painted with a broad brush as racist, as being anti-Semitic and as being brutal." David Ferrell & John L. Mitchell, "Tapes Mean More Hard Questions for LAPD," *Los Angeles Times*, Aug. 18, 1995, p. A-1.

⁴ The former president of the Police Commission stated that the Fuhrman tapes precipitated a "sense of commitment from both the Police Commission and the chief to do what we can to deal with racism, and a recognition that those issues exist both inside and outside of the Police Department." Gayle Pollard Terry, "Deirdre Hill, Heading the Police Commission During a Time of Troubles," *Los Angeles Times*, Sept. 24, 1995, p. M-3.

⁵ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. xiii (hereafter cited as *Christopher Commission Report*). The Christopher Commission recognized that although the relative number of officers using racial slurs is small, their behavior has a large impact because it conveys the message that such conduct is tolerated by the department. *Ibid.*

⁶ *Ibid.*, p. 77.

⁷ *Ibid.*

previous chapter, an assessment of the status of the Christopher Commission's reforms found that the department was making some strides in implementing the Christopher Commission's recommendations aimed at eliminating racial and gender bias. For example, the report noted that the LAPD is making progress toward increasing the general percentages of minorities on the force.⁸ Testimony from witnesses at the Commission's hearing also evidenced progress in eradicating racial and gender bias. For example, Mayor Richard Riordan stated that "our department today is racially, ethnically, [and] sexual orientation[-wise], much more sensitive than it's ever been . . . there's a respect for each other, working together with each other. . . ."⁹

Among other things, however, the *Five Years Later* report noted that "[o]ur examination of personnel complaints filed in recent years by one officer against another provides troublesome indications that racial, ethnic, and gender tensions within the LAPD are growing."¹⁰ This chapter explores in greater detail the source and nature of such tensions among fellow officers.

Gender Bias

Internal LAPD studies indicate significant numbers of women within the department who feel that sex discrimination and harassment are problems facing the LAPD. For example, a 1987 study revealed that between 30 and 36 percent of the female officers felt that they had encountered gender discrimination within the LAPD. Seventy percent felt they were "not being judged by ability," 76 percent had experienced problems with "sexist remarks," and 55 percent indicated having a "partner with a negative attitude about

personal competence passed on verbally."¹¹ More recently, the Los Angeles City Commission on the Status of Women conducted a survey of the city's female work force regarding their experience with sexual harassment on the job. The 1992 survey results found higher percentages of sexual harassment reported by women in Protective Services, which includes police officers, than in any other city job group, and found that "members of the [LAPD] who were harassed reported more extreme cases of harassment than women in other departments."¹²

Former Chief Willie Williams has expressed strong support for achieving gender equity in the LAPD. In January 1993, Chief Williams reported on efforts for achieving gender balance and gender equality in the LAPD. He outlined efforts to gender-balance the force, eliminate harassment and discrimination, include gender equity as promotion criteria, ensure that policies are effective in handling harassment complaints, and classify gender bias behavior as official misconduct.¹³ Evidence indicates, however, that the department's efforts to achieve gender equity in the LAPD has met with some resistance. In an internal LAPD affirmative action newsletter, Chief Williams wrote: "It has recently surfaced that some employees may be responding to changes in the Department's gender policy with acts of backlash."¹⁴

While Chief Williams' efforts to eradicate gender bias in the LAPD have been appreciated, some note that there is still much to be accomplished.¹⁵ Penny Harrington of the National Center for Women and Policing testified that:

sexism is even more prevalent than racism in policing today. . . . As Director of the National Center for Women, I receive confidential calls from women in the

⁸ Merrick J. Bobb, et al., *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department's Implementation of Independent Commission Recommendations*, May 1996, p. 21 (hereafter cited as *Five Years Later*).

⁹ Richard Riordan, mayor of Los Angeles, testimony, *L.A. Hearing*, vol. 1, p. 71 (hereafter cited as *Riordan Testimony*).

¹⁰ *Five Years Later*, p. 27. Anecdotal evidence from interviews with LAPD employees also indicates growing tension within the department. Dr. Deborah Glaser, psychologist, Los Angeles Police Department, telephone interview, July 19, 1996 (hereafter cited as *Glaser Interview*); Detective Leonard Ross, president, Oscar Joel Bryant Foundation, telephone interview, Aug. 2, 1996 (hereafter cited as *Ross Interview*).

¹¹ The Women's Advisory Council to the Los Angeles Police Commission, *A Blueprint for Implementing Gender Equity in the Los Angeles Police Department* October 1993 (hereafter cited as *Blueprint for Gender Equity*), p. 47.

¹² *Ibid.*

¹³ *Ibid.*, p. 6.

¹⁴ Los Angeles Police Department, "Affirmative Action LAPD Newsletter," Spring 1994.

¹⁵ Penny Harrington, director, National Center for Women and Policing, telephone interview, July 9, 1996 (hereafter cited as *Harrington Interview*). Sergeant Lita Abella, vice president, Los Angeles Women's Police Association, telephone interview, July 25, 1996 (hereafter cited as *Abella Interview*).

L.A. Police Department and also police departments across the United States all the time. And they talk about the suffering that they're going through, the emotional illnesses, the physical problems that they have from the stress on their job.¹⁶

Furthermore, Harrington continued:

there is no commitment from the top level of the LAPD to eliminate sexism. It's just lip service. . . . The chief . . . talks about an equity task force that the Police Commission set up to look at issues of personnel and anything to do with race, sex, any type of protected class. And they make a big deal of this in the report [that Chief Williams gave to the Police Commission]. It met once in October of 1994 and has never met again.¹⁷

In the latter part of 1993, the LAPD initiated an inquiry into working conditions for females in the West Los Angeles area.¹⁸ The inquiry consisted of over 100 interviews among male and female officers and command staff. A LAPD report on gender balance noted that the "inquiry has proven very beneficial to the management of the Department. . . [which has] begun to address several issues raised as a result [of the inquiry]."¹⁹ The investigation determined that the actions of an informal group of men who formed an association called "Men Against Women" (MAW) "inhibited women from safely and effectively performing their duties and created fear in many women that these male officers would not provide back-up if they requested it in the field."²⁰ MAW had initially been investigated in 1985 but no one involved had been disciplined.

¹⁶ Penny Harrington, director, National Center for Women and Policing, testimony, *L.A. Hearing*, vol. 1, p. 264, 266-67 (hereafter cited as Harrington Testimony). Chief Oliver Thompson of the Inglewood Police Department also testified concerning "the pervasive, institutional racism that we find in this business." Oliver Thompson, chief of police, city of Inglewood, California, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, Nov. 13, 1997, vol. 1, p. 13 (hereafter cited as *Los Angeles Mini-hearing*).

¹⁷ *Ibid.*, p. 266.

¹⁸ Los Angeles Police Department, Policies and Procedures for Achieving Gender Balance and Gender Equality in the Department 5 (May 1994), *L.A. Hearing*, subpoena duces tecum document, Exh. 1(r).

¹⁹ *Ibid.*

²⁰ Los Angeles Police Department, Report of the Mark Fuhrman Task Force: Executive Summary 26 (May 5, 1997).

In the 1994 audit, investigators found it "glaringly apparent that much of the conduct described in 1985 had endured."²¹ An internal LAPD task force set up to investigate Mark Fuhrman's allegations of misconduct found, with respect to the hostile work environment for women in the West Los Angeles (WLA) station, that the behavior "was egregious and it is unconscionable that those supervisors and managers responsible for WLA either directly or tacitly allowed this to occur during this period."²² The task force also recognized, however, that efforts are being made at West Los Angeles to deal effectively with the problem.²³

Signs of gender bias within the LAPD have continued even more recently. In July 1997, interim Chief Bayan Lewis said that he was launching a thorough audit of the entire LAPD to ferret out hostile work environments after pictures of scantily clad women and a crudely fashioned "trophy" in the shape of male genitalia were discovered decorating a vice office.²⁴ In May 1997, the Feminist Majority Foundation and the National Center for Women & Policing called for an independent citizen's commission to investigate the problems of gender bias in the LAPD. The organizations alleged that the LAPD has been "incapable of handling these problems internally."²⁵

In May 1994, a group of women police officers filed a class action against the city of Los Angeles in *Tipton-Whittingham v. City of Los Angeles*.²⁶ The suit alleges that:

The LAPD . . . has acted intentionally and with deliberate indifference to the rights of its women employees to be free from unlawful sexual discrimination in the terms and conditions of employment for women. The LAPD has engaged in or tolerated severe and pervasive sexual harassment and sexual assaults of female employees.²⁷

²¹ *Ibid.*, p. 28.

²² *Ibid.*, p. 34.

²³ *Ibid.*

²⁴ Matt Lait, "Vice Unit Pinups Spur Inspections," *Los Angeles Times*, July 2, 1997, p. B-1.

²⁵ Katherine Spillar and Penny Harrington, "Perspective of the LAPD," *Los Angeles Times*, May 16, 1997, p. B-9.

²⁶ Case No. CV 94-3240-WDK (C.D. Cal.).

²⁷ Complaint, ¶1, *Tipton-Whittingham v. City of Los Angeles*, Case No. CV 94-3240-WDK (C.D. Cal., 1994).

The partial resolution of the case is discussed below.

Racial and Ethnic Bias

The revelation of former LAPD Detective Mark Fuhrman's racist comments during the O.J. Simpson trial brought to the fore the existence of racial tension within the LAPD. While many officers thought that Detective Fuhrman's attitude was an aberration, others maintained that such attitudes were widespread.²⁸ Many perceive that racial and ethnic tension within the department is increasing.²⁹ In August 1995, six black civilian detention officers and a black police sergeant filed suit alleging that the city, the police department, and the Police Commission are condoning overt racism and failing to deal with complaints of discrimination.³⁰ In May 1996, the Oscar Joel Bryant Foundation, the black police officer's association, filed a discrimination suit against the Police Protective League.³¹ Furthermore, in *Tipton-Whittingham v. City of Los Angeles*, the female officers also allege that:

The LAPD has engaged in unlawful ethnic or racial discrimination against women employees who are African Americans, Asian Pacific Americans and Latinas. LAPD employees who are women of color have been subjected to discrimination on the basis of their sex, their ethnicity or race, and the combination of both their sex and their ethnicity or race.³²

At the Commission's hearing, Leonard Ross, president of the Oscar Joel Bryant Foundation, detailed an incident where a supervisor at roll-

²⁸ Kenneth B. Noble, "Ex-Detective's Tapes Fan Racial Tensions in Los Angeles," *New York Times*, Aug. 31, 1995, p. A-18 (hereafter cited as "Ex-Detective's Tapes").

²⁹ "Our examination of personnel complaints filed in recent years by one officer against another provides troublesome indications that racial, ethnic, and gender tensions within the LAPD are growing. . . The increasing use of personnel complaints to resolve interpersonal problems between LAPD officers is troublesome and must be investigated and addressed." *Five Years Later*, p. 27. Glaser Interview and Ross Interview.

³⁰ The case was reportedly filed in Federal district court. "Ex-Detective's Tapes." See also Kenneth B. Noble, "Many Black Officers Say Bias Is Rampant in Los Angeles Police Force," *New York Times*, Sept. 4, 1995, p. 6.

³¹ Oscar Joel Bryant Ass'n v. Los Angeles Police Protective League, Case No. BC151088 (Cal. Sup. Ct.).

³² Complaint, ¶1, *Tipton-Whittingham v. City of Los Angeles*, Case No. CV-94-3240-WDK (C.D. Cal., 1994).

call played three scenes from the movie *Pulp Fiction*.³³ In each of the scenes, racial epithets were used. The supervisor received an admonishment but was then "placed in the coveted assignment of adjutant."³⁴ Mr. Ross used this example to underscore what he perceives as the department's insensitivity toward its black officers.³⁵ He also detailed an incident that occurred a few months before the Commission's hearing in which a black probationer's name was placed on a picture of a monkey "and it was posted on the board, and management did nothing."³⁶

Complaints of Bias

Despite the perception of an increased level of bias in the LAPD, formal complaints of bias within the LAPD have not increased dramatically in the last few years. On the contrary, according to documents provided by the LAPD, and as reflected in figures 3.1 and 3.2, complaints of gender bias dramatically decreased in 1996, while complaints of ethnic remarks remained fairly constant.³⁷

Chief Williams testified that in 1995, the LAPD had 12 gender bias complaints and 31 complaints of ethnic remarks being used.³⁸ According to Chief Williams, as of the time of the Commission's hearing in September 1996, the LAPD had received only 1 gender bias and 18 ethnic remark complaints in 1996.³⁹ He pointed out:

That doesn't mean that's all that occurred. We're talking about those people that felt comfortable with our system to come forward. . . . We have to make sure that if there are fewer complaints, there are fewer actions going on, and that . . . the employees are

³³ Ross Testimony, *L.A. Hearing*, vol. 1, pp. 323-25.

³⁴ *Ibid.*, p. 325.

³⁵ *Ibid.*, pp. 323-25.

³⁶ *Ibid.*, pp. 347-48.

³⁷ The numbers for 1996 do not reflect actual numbers because the Commission was provided statistics for 1996 only through the time of the hearing in September 1996. Rather, the numbers for 1996 are projected assuming that complaints are made at the same rate as they were made in the first 8 months of 1996.

³⁸ Chief of Police Willie Williams, Los Angeles Police Department, testimony, *L.A. Hearing*, vol. 1, p. 150 (hereafter cited as Williams Testimony).

³⁹ *Ibid.*

comfortable with the system, [and] that they'll come forward.⁴⁰

As detailed in the previous chapter, Katherine Mader, inspector general of the LAPD, criticized Chief Williams' statistics of discrimination complaints. She noted that the categorization of the complaints is problematic:

His statistics are that in 1995, there were 31 instances of ethnic remarks. What we've done is try to look at those same statistics, and what's been a problem is . . . the statistics are sometimes different, depending upon who you get the statistics from or who's compiling them.

What we have found with ethnic remarks, in fact. . . we found there were 86 complaints of ethnic remarks in 1995, as opposed...[to] the 31 that the police had in his statistics . . . [S]ometimes the ethnic remarks are subsumed in other categories.

And that is something that the Christopher Commission also commented on, that the categorization or the classification of the complaints is a problem. So an ethnic remark might be termed discourtesy, it might be termed unbecoming conduct, but I think that there are a number of ethnic remarks.⁴¹

Commission review of documents produced by the LAPD confirmed the discrepancies described by Ms. Mader. For example, computer printouts were produced that separated complaints from allegations but did not clarify the distinction between complaints and allegations.⁴² When Chief

⁴⁰ Ibid.

⁴¹ Katherine Mader, inspector general, Los Angeles Police Department, testimony, *L.A. Hearing*, vol. 1, pp. 184-85 (hereafter cited as Mader Testimony).

⁴² See Los Angeles Police Department: Department Initiated and Outside Initiated Personnel Complaints By Disposition for Each Complaint for the years 1991 through 1996 and Department Initiated and Outside Initiated Personnel Complaints By Disposition for Each Allegation for the years 1991 through 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(e). Exhibit 1(g) from the Los Angeles Police Department references discrimination complaints that are entirely different from the numbers referred to either by Chief Williams or Ms. Mader. Moreover, there were instances of inconsistent numbers presented. For example, Chief Williams referred to 12 and 1 gender-bias complaints in 1995 and 1996, respectively. Yet the 1996 Second Quarter Gender Balance Report reported 33 and 18 sexual harassment and gender-based complaints for 1995 and 1996, respectively. Los Angeles Police Department, 1996 Second Quarter Gender Balance Report Attachment B, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(r). There are no explanatory notes detailing the discrepancies and it is

FIGURE 3.1
Gender Bias Complaints in LAPD

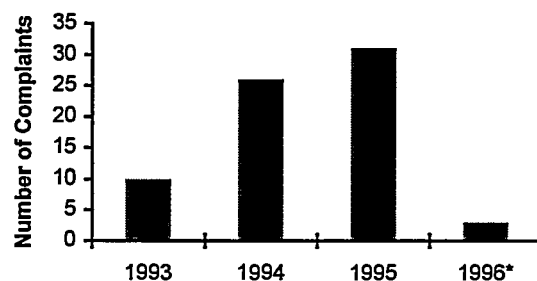
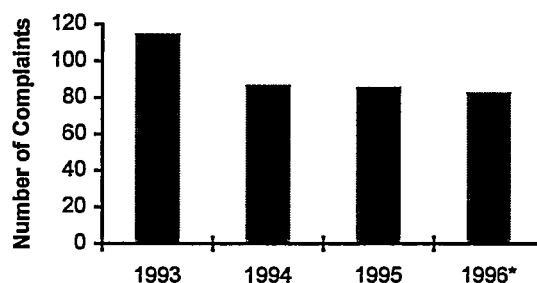


FIGURE 3.2
Ethnic Remark Complaints in LAPD



* Number is partially projected.

Source: Los Angeles Police Department documents: Department Initiated and Outside Initiated Personnel Complaints By Disposition for Each Complaint for the years 1991 through 1996 and Department Initiated and Outside Initiated Personnel Complaints By Disposition for Each Allegation for the years 1991 through 1996, *Los Angeles Hearing*, subpoena duces tecum documents, Exh. 1(e). The numbers provided for sexual harassment and gender-based complaints in Chief Williams' testimony and the documents detailed above are inconsistent with another document provided by the LAPD that lists 18 gender-based complaints for 1996 as of the second quarter of 1996. See Los Angeles Police Department, *Second Quarter Gender Balance Report, Attachment B, Los Angeles Hearing*, subpoena duces tecum document, Exh. 1(r).

Williams referred to statistics at the Commission hearing, he referred to complaints whereas Ms. Mader's numbers included both complaints and allegations.⁴³ Despite the increased total when

unclear which numbers, if any, are correct. The *Los Angeles Times* has also reported on the problematic nature of LAPD statistics where the LAPD could not explain why certain cases might be missing from the official summary. See Jim Newton, "Harassment Complaints Continue to Dog LAPD," *Los Angeles Times*, Dec. 8, 1996, p. A-1.

⁴³ Thus, as Ms. Mader pointed out, the number of ethnic remarks reported as complaints or allegations in 1995 was 86. In contrast, Chief Williams had calculated the number of

the allegations are added, however, Chief Williams' assessment that the numbers are lower in 1996 remains accurate.⁴⁴ Still, Mader's testimony reveals another possible problem with the statistics cited by Chief Williams. The bulk of the complaints are categorized as unbecoming or discourteous conduct.⁴⁵ If, as Ms. Mader suggests, complaints of bias have been subsumed within these categories, the number of complaints of bias that were initiated may be significantly more than reported.

The inspector general's January 1997 report conducted an extensive review of the manner in which allegations of ethnic remarks were adjudicated by the LAPD. The report noted that a total of 55 ethnic remarks were alleged during 1995. Of those 55, 7 cases (13 percent) were classified incorrectly as involving discourtesy or an "improper remark," which artificially lowered the official number of ethnic remarks for tracking purposes. The report recommended that the LAPD make a more concerted effort to categorize ethnic remarks properly. Finally, the report found it "troublesome" that only three charges (6 percent) were sustained. The report recommended that investigators be trained to make effective use of "pattern and practice" evidence and to judge the credibility of witnesses.⁴⁶

Other witnesses at the Commission's hearing indicated that bias is not reflected in complaints made to the department because officers do not come forward.⁴⁷ Penny Harrington of the Na-

ethnic remarks as being 31 because his statistics did not include allegations. The number of gender bias complaints and allegations in 1995 was 31. Chief Williams had indicated the number was 12. Again, his statistics did not include allegations. See figures 3.1 and 3.2.

⁴⁴ As of September 1996, the number of gender bias complaints/allegations was 2 and the number of ethnic remark complaints/allegations was 55. Ibid. Assuming that the number of complaints and allegations increase at the same rate as in the first 8 months of 1996, these numbers will be lower than the numbers for 1995. In the case of ethnic remarks, the numbers will not be significantly lower.

⁴⁵ For example, complaints of discourtesy and unbecoming conduct represent nearly one-third (31 percent) of the complaints listed in the statistics provided for 1996. See *ibid.*

⁴⁶ Los Angeles Board of Police Commissioners, Office of the Inspector General Six-Month Report 43 (January 1997).

⁴⁷ Ms. Harrington testified that officers are afraid of being branded a "troublemaker." Harrington Testimony, *L.A. Hearing*, vol. 1, pp. 267, 342-43. See also Thomas A. Saenz, regional counsel, Mexican American Legal Defense and Educational Fund (MALDEF), testimony, *L.A. Hearing*,

tional Center for Women and Policing pointed out that Chief Williams reported just eight complaints of sexual harassment in 1995.⁴⁸ She noted:

you have a department of a thousand and some people now, and yet a survey done of women police in that department in about 1992 showed that something like 75 percent of the women officers said they had been sexually harassed . . . Well, 75 percent of a thousand women officers isn't eight. And so they don't feel comfortable coming forward.⁴⁹

Similarly, Tom Saenz from the Mexican American Legal Defense and Educational Fund (MALDEF) testified that:

it's a rare officer who, like Mr. Ross, will publicly describe stories like he's described. And I've heard them from other officers often, discouragingly enough, instances like this occur in training where racial epithets are used or stories involving racial epithets are used. And those officers don't feel comfortable coming forward and complaining about them because they've seen the experience of those who do come forward.⁵⁰

According to some, officers are afraid that complaints of bias will lead to decreased promotional opportunities and less favorable assignments.⁵¹ They may even fear for their own safety on the job. Mr. Saenz testified that such fear may include "not being covered when you're out there making a dangerous call, other people won't come and back you up."⁵²

Ms. Mader noted at the hearing that "there is retaliation still going on in subtle ways. And it's

Sept. 12-13, 1996, vol. 1, pp. 344-45 (hereafter cited as Saenz Testimony).

⁴⁸ In fact, Chief Williams reported 12 complaints of gender bias in 1995 to the Commission. See *supra* note 39 and accompanying text. It is unclear, however, what proportion of these complaints can be attributed to sexual harassment.

⁴⁹ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 342. The Executive Summary of the Mark Fuhrman Task Force recognized the hesitation of police officers in coming forward with complaints of sexual harassment and/or discrimination. Specifically, the Summary notes that the disciplinary system "seems to hinder people from coming forth with problems for fear of having to endure the disciplinary process even though one may only be a victim desiring understanding rather than punishment." Los Angeles Police Department, Report of the Mark Fuhrman Task Force: Executive Summary 35 (May 5, 1997).

⁵⁰ Saenz Testimony, *L.A. Hearing*, vol. 1, p. 344.

⁵¹ *Ibid.*

⁵² *Ibid.*, p. 343.

very difficult to ferret out, but that is one thing that I'm very much concerned about and we're going to do something about."⁵³ In January 1997, several female officers, appearing before an L.A. City Council committee hearing on sexual harassment, said that they had been retaliated against for speaking out at a similar hearing the previous month.⁵⁴ One officer alleged that she and others were sent letters signed by "concerned members of the LAPD," which accused them of fabricating sexual harassment complaints against the LAPD.⁵⁵ In response, the Los Angeles Police Commission adopted a policy in July 1997 to prevent department employees with complaints against coworkers from becoming victims of retaliation.⁵⁶

Mayor Riordan testified about his solution for eradicating bias within the police department. He stated that there must be a system of accountability in the department. He suggested that:

instead of spending all your time going after the person who is a racist, if you go after the person they report to, you'll solve that problem in no time. . . . If you get people who are in charge and accountable, they'll make darn sure that as soon as racism raises its ugly head, they'll get rid of it.⁵⁷

⁵³ Mader Testimony, *L.A. Hearing*, vol. 1, p. 129.

⁵⁴ Calvin Milam, "Sexual Harassment," *City News Service*, Jan. 22, 1997. At the same hearing, one 14-year LAPD veteran contradicted the assertions of widespread gender bias. She stated, "not only have I not seen widespread sexual harassment or gender bias, I don't believe it exists." *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ "Official Business: Police Commission Oks Curbs on Retaliation," *Los Angeles Times*, July 23, 1997, p. B-4. The policy provides that commanding officers and supervisors have the responsibility to ensure that subordinates are trained on what constitutes retaliation and take immediate action to stop it. Those found guilty of retaliation will face transfers, warnings, suspensions or terminations. *Ibid.*

⁵⁷ Riordan Testimony, *L.A. Hearing*, vol. 1, p. 80. As noted in the previous chapter, according to news reports, the new LAPD Police Chief Bernard Parks, appointed in August 1997, is known as a "tough disciplinarian who believes in giving unit commanders broad responsibility and holding them accountable for results." Lou Cannon, "Riordan Names Black Officer to Head LAPD," *Washington Post*, Aug. 7, 1997, p. A-3.

Section II: Bias and Employment Issues in the Los Angeles Police Department Recruitment and Hiring

The Christopher Commission recommended that the LAPD improve in the areas of recruiting and promoting women and minorities. As of June 1990, minority officers constituted 37.1 percent of the police force of which 13.4 percent were African American, 21 percent were Latino, and 2.7 percent were Asian.⁵⁸ By December 1995, the percentage of minority officers had increased to 46.2 percent, breaking down as follows: 14.5 percent African American, 27.7 percent Latino, and 4 percent Asian. Females constituted 17 percent of the LAPD force.⁵⁹ Both the mayor and the chief of police testified as to the department's strides in attaining diversity on the police force.⁶⁰

An October 1994 report by the American Civil Liberties Union of Southern California (ACLU-SC) examined integration efforts in 107 police departments and 80 fire departments in Southern California. The report singled out the LAPD as having made positive progress in integration.⁶¹ It noted however that internal tension, both race- and gender-based, continues to afflict the LAPD.⁶² Similarly, the *Five Years Later* report to the Police Commission indicates that progress continues to be made but cautions that it still has room for improvement, particularly with respect to women and Asians on the force

⁵⁸ *Christopher Commission Report*, p. 71.

⁵⁹ Los Angeles Police Department, Sworn & Civilian Personnel by Class, Sex and Descent as of 12/24/95, *L.A. Hearing*, subpoena duces tecum document, Exh. 1p.

⁶⁰ See, e.g., Riordan Testimony, *L.A. Hearing*, vol. 1, p. 70.

⁶¹ American Civil Liberties Union of Southern California (ACLU-SC), *Of the Community and For the Community: Racial and Gender Integration in Southern California Police and Fire Departments* (October 1994), p. I (hereafter cited as *Of the Community and For the Community*). The ACLU-SC used an EEO Index that compares the percentage of members of a racial or gender group in a department to their representation in the population of the community as a whole. For example, a police department with 20 percent African American officers in a city whose population is 40 percent African American would have an EEO Index score of .50. The minimal threshold for acceptable EEO Index representation is identified as .75. The index scores for various groups within the LAPD are as follows: Males, 1.69; Females, .31; Anglo, 1.5; Latino, .61; African American, 1.06; and Asian Pacific Islanders, .43. *Ibid.*, p. 70.

⁶² *Ibid.*, p. 71.

and in providing women and minorities with leadership positions.⁶³

The LAPD has been subject to a consent decree with respect to the hiring of women and minorities since 1980. The consent decree is the result of two cases filed against the city of Los Angeles alleging employment discrimination based on sex, race, and national origin for sworn officer positions with the LAPD. In 1973, Fanchon Blake, a 25-year veteran of the LAPD, filed a complaint that alleged that she had been informed by her commanding officer that she would not be considered for a promotion because she was a woman.⁶⁴ In 1977 the U.S. Attorney General brought another suit against the city of Los Angeles alleging employment discrimination based on sex, race, and national origin.⁶⁵ The two cases were decided as companion cases and resulted in the establishment of a consent decree in 1980. The judicial order, known as the *Blake* consent decree, was designed to ensure that LAPD's new hires reflected the city's diversity. To that end, the consent decree established appointment goals for women, blacks, and Hispanics.⁶⁶ To facilitate meeting the goals, the consent decree mandated the implementation of a recruitment program targeted to women, blacks, and Hispanics.⁶⁷

The *Blake* consent decree set a hiring goal of 20 percent for women. Ms. Harrington criticized the LAPD for its failure to meet that goal:

They had done little to nothing to reach that goal until the Rodney King incident and . . . then as a result of the Women's Advisory Council report and all of that and the push coming from the public, that's why

⁶³ *Five Years Later*, pp. 21–22.

⁶⁴ *Blake v. City of Los Angeles*, 595 F. 2d 1367 (9th Cir. 1979). See also Michael Hooper, "Case Study of A Departmental Response to Affirmative Action Mandates: The Los Angeles Police Department," in *Diversity, Affirmative Action and Law Enforcement*, George T. Felkenes and Peter Charles Unsinger, eds. (Springfield, IL: Charles C. Thomas, 1992) (hereafter cited as Hooper, "Departmental Response to Affirmative Action"), pp. 115–16.

⁶⁵ See *United States v. City of Los Angeles*, 595 F. 2d 1386, 1389 (9th Cir. 1979).

⁶⁶ The goal for females was 20 percent of all sworn personnel. The goals for blacks and Hispanics were to reach their respective proportions in the labor force of the Los Angeles Standard Metropolitan Statistical Area as reported in the latest United States census. Hooper, "Departmental Response to Affirmative Action," p. 116.

⁶⁷ *Ibid.*

the city council went in also and set the higher goal of 43 percent.

They are only at 17 percent after being under a consent decree since 1980. That is very slow progress, in my eyes, especially when there are police departments out there in the United States such as Pittsburgh, Pennsylvania; Madison, Wisconsin; Detroit and all of those are up in the high 20's and the 30 percent. . . I will say that Chief Williams can take pride in making the increase he's made in the time he's been here, but it's not enough. It's a little bit and, you know, it's very, very long overdue as far as women go.⁶⁸

Recently, the department has been criticized for a reduction in the percentage of African Americans hired. Commission review of documents produced by the LAPD reveals that the LAPD's hiring of women and blacks to the entry-level position of police officer declined markedly in the 6-month period preceding the Commission's hearing. As detailed in figure 3.3, female appointments in the period of January 1 through June 30, 1996, were 16.9 percent. This was just over half of the females hired in the period from July 1 through December 31, 1993. Black officers hired in the first half of 1996 were 7.2 percent, which is less than half of the percentage two years earlier. In the latter half of 1993, blacks represented 16.7 percent of all officers hired. On July 16, 1996, City Councilman Nate Holden threatened to ask the Federal Government to halt funding for the LAPD unless it complied in the next class with the African American candidate goals set forth in the *Blake* consent decree.⁶⁹

The NAACP Legal Defense Fund (LDF) prepared a report that detailed the decline in recruiting efforts for black applicants. While the percentage of white applicants has risen to 43 percent as of December 1995 from a base of 40 percent in 1990–91,⁷⁰ the LDF found that the increase in the proportion and number of white

⁶⁸ Harrington Testimony, *L.A. Hearing*, vol. 1, pp. 315–16.

⁶⁹ Calvin Milam, "Holden to Request Cutoff of Federal Funds Unless LAPD Hires More Blacks," *City News Service of Los Angeles*, July 16, 1996.

⁷⁰ *Report of NAACP Legal Defense Fund on Recruitment, Appointment and Training Processes of the Los Angeles Police Department* (August 1996), p. 3 (hereafter cited as *LDF Report*).

applicants has come out of the declining black applicant proportion, which has decreased from 23 percent in 1990–91 to 14 percent in the first half of 1994–95.⁷¹ The LDF reported that:

the declining black application rate is attributable to the LAPD's abandonment, after 1990, of normal recruitment devices for attracting black recruits such as contacting traditional black colleges, developing a working relationship with organizations such as the Urban League or seeking candidates from areas with a high black population such as Oakland, California. . . . The LAPD apparently abandoned normal recruiting of black candidates under the impression that it need not further recruit African American officers because the representation of black officers in the LAPD exceeded the civilian labor force in the County.⁷²

The Asian population also continues to be significantly underrepresented in the LAPD.⁷³ While the representation of Asian Americans on the force increased from 4 percent last year to 5 percent this year, it still lags behind the representation of Asian Americans in the city's population.⁷⁴ After much pressure from the community, the City Council recently raised the hiring goals of Asian American officers from 7 percent to 10 percent of the force.⁷⁵ Robin Toma of the Los Angeles County Human Relations Commission testified that "the Asian Pacific Islander community is in a very bad position because they are 5.2 percent of the L.A.P.D. force and yet comprise 12.5 percent of the relevant labor market. And currently the goal is 10 percent, but by the time that gets reached, . . . the projections show that the Asian Pacific Islander population will be doubled."⁷⁶

⁷¹ Ibid., pp. 2–3.

⁷² Ibid., p. 3.

⁷³ In March 1981, the city of Los Angeles settled a discrimination claim by entering into a consent decree that set hiring goals for women, African Americans, and Latinos. The consent decree did not address increased employment of Asian officers. *Christopher Commission Report*, p. 71.

⁷⁴ Asians represent approximately 10 percent of the population in the city of Los Angeles. *Five Years Later*, p. 21.

⁷⁵ Bonnie Tang, staff attorney, Asian Pacific American Legal Center of Southern California, telephone interview, July 11, 1996 (hereafter cited as Tang Interview).

⁷⁶ Robin Toma, Human Relations Consultant, Los Angeles County Human Relations Commission, testimony, *L.A. Hearing*, vol. 1, pp. 240–41. Others echoed the view that the 2000 census will reveal greater numbers of minorities in Los Angeles. For example, Tom Saenz testified that "when 2002 comes around, they [the LAPD] are going to find themselves

Bonnie Tang of the Asian Pacific American Legal Center of Southern California noted that while the LAPD seems to be doing the right things to recruit Asians to the force (e.g., recruiting in heavily Asian areas, holding Asian Pacific American recruiting fairs, etc.), the LAPD needs to devote more staff and resources to make its recruitment of Asians more effective.⁷⁷ She maintains that previously there were two staff members devoted to recruiting Asian Americans, but there is now only one. Ms. Tang opined that because Asians are not covered by the *Blake* consent decree, the LAPD's efforts at recruiting Asian American officers are not as strong as they should be.⁷⁸ She noted that the LAPD faces obstacles with respect to recruitment within the Asian American community because policing is not considered a traditional career path within that community.⁷⁹

Advocates for female officers also express disappointment with the LAPD's recruiting efforts. During the Commission hearing, Mayor Riordan acknowledged that the city has had trouble recruiting women. He testified, however, that "we've had meetings to try to figure out how to go out and recruit in a broader area."⁸⁰ Penny Harrington of the National Center for Women and Policing (NCWP) notes that, although some improvements have been made in recruiting women, more remains to be done. The LAPD still relies on advertisements in the *Los Angeles Times* and recruitment at military bases that traditionally bring in more men than women. Ms. Harrington has requested that the LAPD track where women candidates are learning about the department so that recruiting can be more effectively tailored to reach potential female candidates. According to Ms. Harrington, the department has not done so.⁸¹ On the positive side, Ms. Harrington noted with approval

very far away from reflecting the numbers of Latinos in the community that they serve." Saenz Testimony, *L.A. Hearing*, vol. 1, p. 319.

⁷⁷ Toma Testimony, *L.A. Hearing*, vol. 1, pp. 240–41.

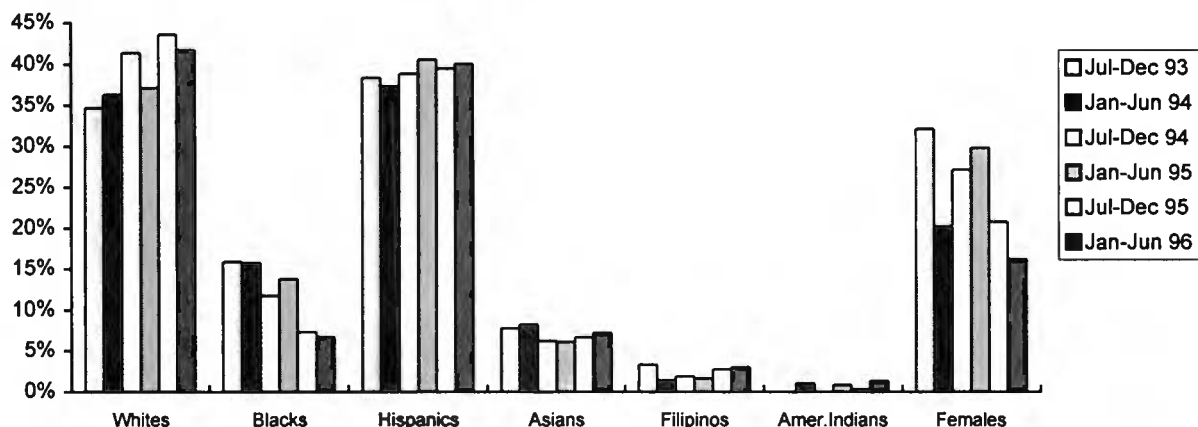
⁷⁸ Ibid.

⁷⁹ Tang Interview.

⁸⁰ Riordan Testimony, *L.A. Hearing*, vol. 1, p. 82.

⁸¹ Harrington Interview. However, Sergeant Abella, who is involved in recruiting women for the LAPD, mentioned in her interview with Commission staff that there is an effort made to track where female candidates are coming from. Abella Interview.

FIGURE 3.3
LAPD Police Officers Hired by Race or Sex



Source: Percentages derived from raw data in Los Angeles Police Department, Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending December 31, 1993; Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending June 30, 1994; Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending December 31, 1994; Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending June 30, 1995; Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending December 31, 1995; Memorandum to Personnel Division from the Police Department re: Cumulative Analysis of Sworn Entry Level Appointment Activity by Occupational Category—Six Month Period Ending June 30, 1996, Los Angeles Hearing, subpoena duces tecum documents, Exh. 1(p).

that the LAPD had changed its recruiting materials in ways suggested by the NCWP.⁸² Moreover, the LAPD makes efforts to recruit at events targeted to women.⁸³

The LDF Report notes that while recruitment numbers for women have generally increased, the high point of 27 percent reached in 1 year falls far short of the 43 percent area female civilian labor force that the City Council has set as the goal.⁸⁴ Commission review of documents produced by the LAPD reveals that the proportion of females taking the written examination for an entry-level police officer position had declined from 1994 through the time of the hearing in 1996. The percentage of women taking the examination in 1994 was 30 percent. In the first

half of 1996, the percentage of women taking the test was only 21.6 percent, as reflected in figure 3.4. The high of 36 percent females taking the police officer examination in the second quarter of 1994 still falls short of the City Council's goal of 43 percent females on the LAPD force.⁸⁵

Ms. Harrington criticized the LAPD for its inability to meet a requirement that all oral interview boards have women on them when they are interviewing for new police recruits.⁸⁶ According to Chief Williams' Gender Balance Report released in September 1996, 79.8 percent of the interview boards included a female.⁸⁷ Ms. Harrington noted, however, that over 20 percent

⁸² Harrington Interview.

⁸³ Ibid. See also, e.g., Los Angeles Police Department, 1996 Second Quarter Gender Balance Report, *L.A. Hearing*, subpoena duces tecum, Exh. 1r.

⁸⁴ LDF Report, p. 4.

⁸⁵ Los Angeles Police Department, Executive Summary: Progress Report of Gender Balance Issues July 1994, *L.A. Hearing*, subpoena duces tecum, Exh. 1(r).

⁸⁶ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 266.

⁸⁷ Los Angeles Police Department, 1996 Second Quarter Gender Balance Report. Ninety-six percent of the police interview boards included minorities. Ibid.

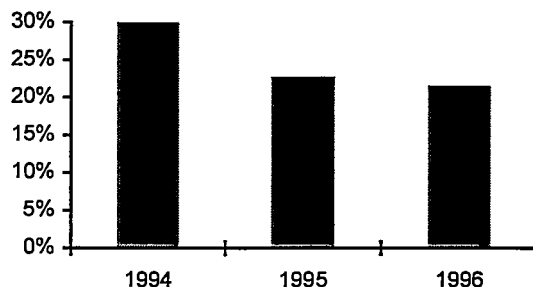
of the boards did not have a woman participating in the oral interview process.⁸⁸ The importance of the composition of the interview boards lies in the weight given to the oral interview. According to Ms. Harrington, the hiring process consists of a series of pass/fail tests (written, physical abilities test) and a scored oral interview.⁸⁹ Thus, in effect, hiring is entirely based on the oral interview. The oral interview panel consists of two police officers and one person from the city. According to Ms. Harrington, former citizen members of the oral interview panels have noted that white men get a score of 100 if they have graduated from high school and have some similar training, like private security or military.⁹⁰ On the other hand, a woman with a college degree and teaching experience gets a score of 70–75.⁹¹ In Ms. Harrington's estimation, the police officers on the oral panel automatically inflate the scores of male candidates in order to ensure that they are competitive.⁹² This creates an artificial disparity between male and female candidates.⁹³ Ms. Harrington attributes the scoring of oral interviews to perceptions among male officers that recruiting standards are lower for women.⁹⁴

Performance of Female Police Officers

Some question the efficacy of increasing female representation on the force.⁹⁵ Penny Harrington testified that the evidence shows that women make excellent police officers.⁹⁶

Indeed, studies have consistently found that women perform as effectively as males in most

FIGURE 3.4
Percentage of Females Taking LAPD
Police Officer Examination



Source: Annual percentages were derived by averaging quarterly percentage figures produced by the Los Angeles Police Department in the following documents: 1996 Second Quarter Gender Balance Report; 1996 First Quarter Gender Balance Report; 1995 Fourth Quarter Gender Balance Report; Executive Summary: Progress Report of Gender Balance Issues September 1995; Executive Summary: Progress Report of Gender Balance Issues June 1995; Executive Summary: Progress Report of Gender Balance Issues March 1995; Executive Summary: Progress Report of Gender Balance Issues September 1994; Executive Summary: Progress Report of Gender Balance Issues July 1994; Executive Summary: Progress Report of Gender Balance Issues April 1994; Executive Summary: Progress Report of Gender Balance Issues January 1994, Los Angeles Hearing, subpoena duces tecum, Exh. 1(t).

aspects of police work.⁹⁷ For example, a 1974 Police Foundation report found:

The men and women studied for this report performed patrol work in a generally similar manner. They responded to similar types of calls for police service while on patrol and encountered similar proportions of citizens who were dangerous, angry, upset, drunk or violent. Both men and women officers were observed to obtain similar results in handling angry or violent citizens. There were no reported incidents which cast serious doubt on the ability of women to perform patrol work satisfactorily.⁹⁸

⁸⁸ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 266.

⁸⁹ Harrington Interview.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Harrington Interview.

⁹⁴ Newspaper articles have reported that male officers resent that recruiting standards are allegedly lower for women who are not required to have the same strength and physical skills as men. See, e.g., David Ferrell & John Mitchell, "Tapes Mean More Hard Questions for LAPD."

⁹⁵ The Christopher Commission noted that "the main obstacle confronting female officers in all major metropolitan police departments continues to be male attitudes toward them, as well as the influence of stereotypical role models in law enforcement." *Christopher Commission Report*, p. 88.

⁹⁶ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 264.

⁹⁷ See U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?*, pp. 7–10 (Government Printing Office, 1981). See also Peter B. Bloch and Deborah Anderson, *Police Foundation, Policewomen on Patrol: Final Report 2 (1974)* (hereafter cited as Bloch & Anderson, *Policewomen on Patrol*); Joyce L. Sichel et al., U.S. Department of Justice, *Women on Patrol: A Pilot Study of Police Performance in New York City*, pp. xi–xiii (1978); Jill A. Shelley, *The New Lone Ranger: Policewomen on Patrol* (unpublished M.S. thesis, University of Cincinnati, 1990) (on file with the University of Cincinnati Library) (hereafter cited as Shelley, *Lone Ranger*).

⁹⁸ Bloch & Anderson, *Policewomen on Patrol*, p. 2.

The Police Foundation report also found that women were less likely to become involved in serious unbecoming conduct.⁹⁹ The report found that one of the principal differences between men and women on patrol was that women made fewer arrests and gave fewer traffic citations as a group than men did.¹⁰⁰ This could have been affected, however, by the fact that new female officers were given assignments other than patrol more often than their male counterparts, and thus, had less opportunity to make arrests and issue traffic citations.¹⁰¹ Further, the Police Foundation study found that the presence of women may defuse violent situations without the resort to the use of force.¹⁰²

Another study evaluated the role of officer gender in violent encounters with citizens.¹⁰³ According to the study, there was no difference in the number of injuries between male/female patrol teams and male/male patrol teams.¹⁰⁴ The data indicated that female officers acted in the same manner as male officers in violent situations.¹⁰⁵ Further, contrary to the myth that a female officer would be more inclined to use a weapon because she lacked physical strength, the study found that female officers were no more likely to use their weapons than male officers.¹⁰⁶ In fact, the study found that the female officer is more likely than a male officer to calm a potentially violent situation and avoid injury to all of the participants.¹⁰⁷ Chief Oliver Thompson of the Inglewood Police Department testified that "if I had my druthers, I would hire a greater number . . . of women officers than I would of men officers because of the less[er] number of citizen complaints, . . . confrontations, the less[er] number of challenges that you have out there in the field."¹⁰⁸

⁹⁹ Ibid., p. 3.

¹⁰⁰ Ibid., p. 2.

¹⁰¹ Ibid.

¹⁰² Ibid., p. 4.

¹⁰³ Sean A. Grennan, "Findings on the Role of Officer Gender in Violent Encounters with Citizens," vol. 15, *Journal of Police Science and Administration* (1987), pp. 78-85.

¹⁰⁴ Ibid., p. 83.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., p. 84.

¹⁰⁷ Ibid.

¹⁰⁸ Oliver Thompson, chief of police, city of Inglewood, California, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality and Discrimination*, Hear-

The Christopher Commission affirmed the academic research that women are less likely to be involved in excessive use of force.¹⁰⁹ The Commission found that there were no female officers among the 120 LAPD officers with the most use of force reports, and that they accounted for 3.4 percent of the officers involved in incidents underlying the 83 most serious lawsuits against the LAPD resolved from 1986 through 1990.¹¹⁰ The Christopher Commission concluded that:

The statistics indicate that female officers are not reluctant to use force, but they are not nearly as likely to be involved in use of excessive force. . . . With some exceptions, female officers interviewed believed they were more communicative, more skillful at de-escalating potentially violent situations and less confrontational. . . . Many officers, both male and female, believe female officers are less personally challenged by defiant suspects and feel less need to deal with defiance with immediate force or confrontational language.¹¹¹

Other studies reveal the female police officer's strength in dealing with rape and battered victims.¹¹² The Women's Advisory Council to the Los Angeles Police Commission also found that women provide more effective responses to violence against women.¹¹³ The significance of this finding lies in the volume of domestic violence calls to police departments. For example, the Police Foundation found that reported spouse

ing Before a Subcommittee of the U.S. Commission on Civil Rights, Los Angeles, CA, Nov. 13, 1997, vol. 1, p. 40 (hereafter cited as Thompson Testimony, *L.A. Mini-Hearing*).

¹⁰⁹ *Christopher Commission Report*, pp. 83-84.

¹¹⁰ Ibid., p. 84.

¹¹¹ Ibid.

¹¹² Clarice Feinman, *Women in the Criminal Justice System* (New York: Praeger Publishers, 1986), p. 96 (cited in Shelley, Lone Ranger, p. 45); Robert J. Homant and Daniel B. Kennedy, *Police Perceptions of Spouse Abuse: A Comparison of Male and Female Officers*, vol. 13, *Journal of Criminal Justice* (1985), p. 45 (cited in Shelley, Lone Ranger, p. 45); Katharine van Wormer, *Are Males Suited to Police Work?*, vol. 3, *Police Studies* (1981) pp. 41, 43.

¹¹³ Women's Advisory Council to the Los Angeles Police Commission, *A Blueprint for Implementing Gender Equity in the Los Angeles Police Department* (October 1993), pp. 7-8.

abuse traditionally ranks among the most numerous calls for service to police departments.¹¹⁴

Finally, another study by Barbara Price found that female police executives as a group "exhibit more strength in leadership-associated personality traits than do male police executives as a group."¹¹⁵ While the study examined selected personality traits associated with leadership, it did not measure successful police performance.¹¹⁶ Moreover, Price cautioned that the small number of departments sampled and the small number of women executives within the departments required caution in interpreting the data.¹¹⁷

Affirmative Action

In November 1996, the voters of California enacted into law Proposition 209, which intends to prohibit affirmative action in specific contexts by State and local governments.¹¹⁸ The initiative provides in relevant part that: "[t]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment."¹¹⁹ The initiative further provides that "[n]othing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section."¹²⁰ Thus, the LAPD's hiring goals under the *Blake* consent decree, which has been in effect since 1980, are not subject to invalidation by Proposition 209.

¹¹⁴ Hubert Williams, *Spouse Abuse Research Raises New Questions About Police Response to Domestic Violence*, Police Foundation Reports (October 1992), p. 1.

¹¹⁵ Barbara R. Price, *A Study of Leadership Strength of Female Police Executives*, vol. 2, *Journal of Police Science and Administration* (1974), p. 224.

¹¹⁶ *Ibid.*, p. 220.

¹¹⁷ *Ibid.*, p. 225.

¹¹⁸ In December 1996, a district court judge issued an injunction barring implementation of the order. In finding that the plaintiffs would likely prevail on their claim, Chief Judge Thelton Henderson cited special burdens that would be imposed on women and minorities by the initiative which likely violated equal protection. *Coalition for Economic Equity v. Wilson*, 946 F. Supp. 1480 (N.D. Cal. 1996). In April 1997, however, the Ninth Circuit lifted the injunction finding "[t]here is simply no doubt that Proposition 209 is constitutional." *Coalition for Economic Equity v. Wilson*, 1997 U.S. App. LEXIS 6512 at *18 (9th Cir. Apr. 8, 1997).

¹¹⁹ CAL. CONST. art. 1, §31(a) (1996).

¹²⁰ *Id.*

The 1994 *Tipton-Whittingham* class action lawsuit, which alleged discrimination against the LAPD, was partially resolved in October 1996 when the City Council approved a portion of a proposed consent decree. The consent decree requires the LAPD to attempt to build a police force that reflects the gender and ethnic makeup of the civilian county labor force.¹²¹ The City Council voted to approve the decree shortly before California voters cast ballots on Proposition 209.¹²² According to news reports, the City Council approved the consent decree prior to Proposition 209's passage so that the hiring goals would be invulnerable from challenge under State law.¹²³ Assuming the consent decree is approved by the court, it is unlikely that Proposition 209 will have an effect on the LAPD's hiring goals.¹²⁴

In general, affirmative action is an important issue among the LAPD officers. For example, in September 1995, the mayor and the chief of police formed a task force to study and make recommendations regarding the attrition rate of police officers.¹²⁵ At the direction of the task force, the LAPD designed and distributed a questionnaire to approximately 2,000 current, retired, and former members. The respondents were asked to rank various issues in order of importance concerning their decision whether to stay at the LAPD, with 1 representing least important and 5 representing most important. On the issue of the impact of affirmative action, nearly 55 percent of the males responding ranked the impact of affirmative action at 4 or 5 in importance in their decision whether to stay

¹²¹ Jim Newton, "Judge Resumes Control of Suit Against LAPD," *Los Angeles Times*, Nov. 20, 1996, p. B-1.

¹²² Jodi Wilgoren and Jim Newton, "Council Votes to Keep LAPD Hiring Goals," *Los Angeles Times*, Nov. 2, 1996, p. A-1.

¹²³ Jodi Wilgoren, "Judge Approves Consent Decree on LAPD Hiring," *Los Angeles Times*, Nov. 6, 1996, p. B-3.

¹²⁴ As of August 1997, the consent decree had not been approved. In June 1997, the judge allowed Lt. Richard Dyer, a white male, to intervene in the case. Lt. Dyer claims that he was discriminated against on the basis of race when he was passed over for promotion. Following Lt. Dyer's entry into the lawsuit, the ACLU, which represented members of the class, began to reconsider the language of the consent decree. Theresa Moreau, "Spurned LAPD Official Claims Discrimination," *Los Angeles Daily News*, July 6, 1997, p. N-1.

¹²⁵ Los Angeles Police Department, Attrition Task Force, Working Committee Report.

TABLE 3.1
Officers' Views on Consent Decree and Affirmative Action

	Least important	2	3	4	Most important
Impact of consent decree					
Male response	12.0%	9.5%	29.2%	22.0%	27.2%
Female response	8.1%	12.8%	41.0%	20.5%	17.5%
Impact of affirmative action					
Male response	11.6%	9.3%	24.8%	19.0%	35.2%
Female response	10.6%	13.4%	34.1%	22.0%	19.9%

Source: Los Angeles Police Department, *Attrition Task Force, Working Committee Report, app. C.*

at the LAPD. Over 40 percent of the women responded to the same issue with a 4 or 5. When asked about the impact of the affirmative action consent decree, 27 percent of the men and 17 percent of the women responded, as shown in table 3.1, that it was most important in determining whether to stay at the LAPD.¹²⁶ The survey does not make clear, however, whether those who responded supported or opposed affirmative action in the LAPD.

Attrition Rates

Historically, the attrition rate for LAPD officers and recruits who are minorities and/or female has differed significantly from that for white males. A 1986 study found that minority academy graduates did not complete their probationary period at twice the rate of that for their white counterparts, male or female.¹²⁷ Statistics revealed that the attrition rate from the LAPD Academy between 1976 and 1980 for female recruits was 55 percent, compared with a rate of 17 percent for male recruits.¹²⁸ Commentators

have noted that inattention to the retention of women and minorities may undermine the goals of a more gender and racially balanced police service.¹²⁹ While the *Blake* consent decree mandated long-term hiring and training, it did not address the related issue of retention.¹³⁰

Advocates for women and minorities continue to express concern that attrition rates for women and minorities are much higher than for white males.¹³¹ A review of documents produced by the LAPD reveals that levels of attrition among minorities are slightly below their representation on the force for the years 1993, 1994, and 1995.¹³² The level of attrition among women was very close to their representation on the force in 1994 and 1995.¹³³ Although statistics for 1996 were only provided through September of that year, women accounted for 12.9 percent of the attrition while representing about 17 percent of

and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 108.

¹²⁹ Bernadette Jones Palombo, "Attitudes, Training, Performance and Retention of Female and Minority Police Officers," p. 82.

¹³⁰ Ibid.

¹³¹ See, e.g., Jim Newton, "LAPD Reform Falls Short, Study Says," *Los Angeles Times*, July 10, 1996, p. B-1.

¹³² See Los Angeles Police Department, *Sworn Attrition by Calendar Years (January 1990 to September 1996)*, L.A. Hearing, subpoena duces tecum document, Exh. 1x; and Los Angeles Police Department, *Sworn & Civilian Personnel by Class, Sex, and Descent as of 12/24/95*; Los Angeles Police Department, *Sworn & Civilian Personnel by Class, Sex, and Descent as of 12/25/94*; Los Angeles Police Department, *Sworn & Civilian Personnel by Class, Sex, and Descent as of 10/31/93*, L.A. Hearing, subpoena duces tecum document, Exh. 1p.

¹³³ Ibid. In 1994 women accounted for 15.1 percent of the attrition rate and 15.6 percent of the force. In 1995 women accounted for 16.8 percent of the attrition and 17 percent of the force.

¹²⁶ Ibid., appendix C.

¹²⁷ Bernadette Jones Palombo, "Attitudes, Training, Performance and Retention of Female and Minority Police Officers," in *Diversity, Affirmative Action and Law Enforcement*, eds., George T. Felkenes and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 83. For whites, 5.5 percent failed to complete probation as compared to 10.7 percent and 12.3 percent of Hispanics and blacks, respectively. In contrast, however, the training academy failure rates for the same time period were 2.6 percent for blacks, 3.4 percent for Hispanics and 13 percent for whites which suggests that minorities are more successful during the training program but less successful during the probationary field operations. Ibid., pp. 83-84.

¹²⁸ Lawrence C. Trostle, "Recruitment, Hiring, and Promotion of Women and Racial Minorities," in *Diversity, Affirmative Action and Law Enforcement*, eds., George T. Felkenes

the force. In the 1996 Second Quarter Gender Balance Report, attrition among females was attributed to a variety of reasons, including perceived hostile work environments.¹³⁴ There was no indication, however, of the extent to which attrition was based upon that factor.

The attrition data also does not take into account the extent to which some of the attrition may be due to routine retirement. Because white males constituted the bulk of the police force until fairly recently, as a group they likely have more tenure than do women and minorities. Consequently, more of their attrition may be attributable to retirement.

At the recruitment level, the LAPD has enjoyed minimal success in attracting women and minority recruits who successfully complete the requisite training. The LAPD provided the National Center for Women in Policing with the attrition rates for LAPD recruits from July 1993 through March 1995. According to these figures, illustrated by figure 3.7, women are leaving the academy at double the rate of males. The attrition rate among all women was 14 percent versus 6.8 percent for all men. When race is also taken into account, the gap widens. For example, black women were leaving the academy at a rate of 26 percent. In contrast, the attrition of white males was 4.1 percent. Attrition for black males and Hispanic males was 8.5 and 8.2 percent, respectively. Thus, in sum, black and Hispanic men are leaving at a rate double that for white males.¹³⁵ The rate at which women leave the academy is more than three times that of white males, and the disparity is even greater for minority women.¹³⁶

Penny Harrington testified that "constant harassment" is a reason for the attrition rates

for women.¹³⁷ She also attributed the disparity between male and female attrition rates to an overemphasis on physicality:

for example, they have a kick test that they came up with just out of nowhere. And all of a sudden these women were going to fail and be washed out of the academy because they didn't pass the kick test. And when we asked what that was, because we'd never heard of it before, they said, well, we have. . . this tackling dummy, and you have to kick it. And then we decide if you've kicked it hard enough. Well, you talk about a subjective test, you know. Well, I think they've done away with the kick test, but I don't know what else they have up there. It's always new things coming in.

There's this tremendous emphasis, if you look at the academy curriculum, about how much time is spent on physical—you know, running up the hill and doing those kinds of things—as compared to mediation, negotiation, those kind of things.¹³⁸

According to some, some local police departments introduce physical agility tests or revise their tests in order to make it more difficult for women to pass.¹³⁹ A 1983 study that measured job performance among female officers of the LAPD concluded that the women officers had achieved job success. The study also noted, however, that:

The emotionally-charged issues of height, physical training, and self-defense scores appear to be meaningless in terms of predicting anything about police patrol performance or peer group acceptability. . . It would appear that physical training scores and, most particularly, the self-defense component of the physical training program at the police academy are still acting as significant, artificial barriers for females' successful completion of academy training.¹⁴⁰

¹³⁴ Los Angeles Police Department, 1996 Second Quarter Gender Balance Report, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(r).

¹³⁵ This disparity reflects an ongoing problem. For example, a Commission publication from 1971 noted that there was "some evidence that minority group members flunk out of the [police] academies in a higher proportion than whites." U.S. Commission on Civil Rights, *Who Will Wear the Badge?* by Richard J. Margolis 13 (1971).

¹³⁶ The *Tipton-Whittingham* case alleges that "[a]cademy training programs result in unlawful disparities in attrition and passage rates between men and women which adversely impact women." Complaint, ¶41, *Tipton-Whittingham v. City of Los Angeles*, Case No. CV 94-3240-WDK (C.D. Cal., 1994).

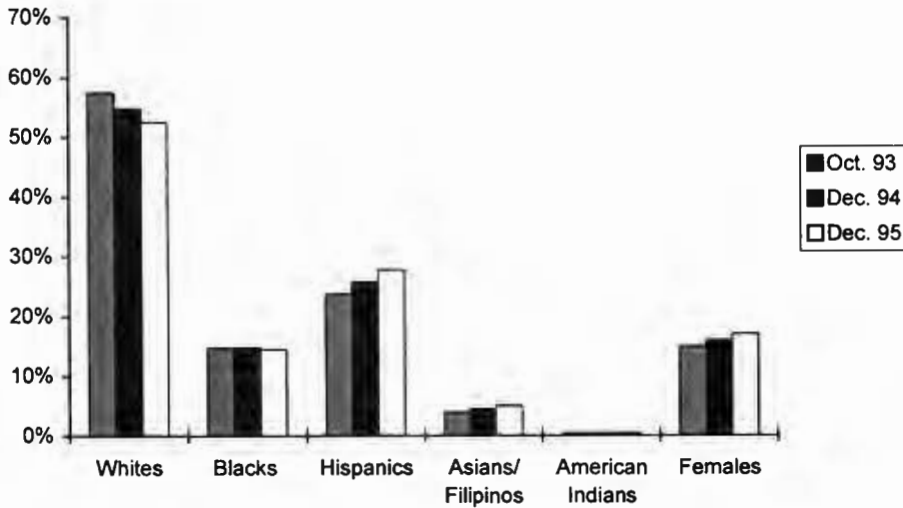
¹³⁷ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 305.

¹³⁸ *Ibid.*, pp. 304-05.

¹³⁹ Clarice Feinman, *Women in the Criminal Justice System* (New York: Praeger Publishers, 1986), p. 93. The Ninth Circuit Court of Appeals noted in *Blake v. City of Los Angeles* that the LAPD had hired thousands of male officers between 1968 and 1973 without the use of any physical agility preemployment testing. As a result, the court stated that the absence of such preemployment testing suggested that a physical agility requirement was not essential to safe and efficient job performance. 595 F. 2d 1367, 1382 (9th Cir. 1979).

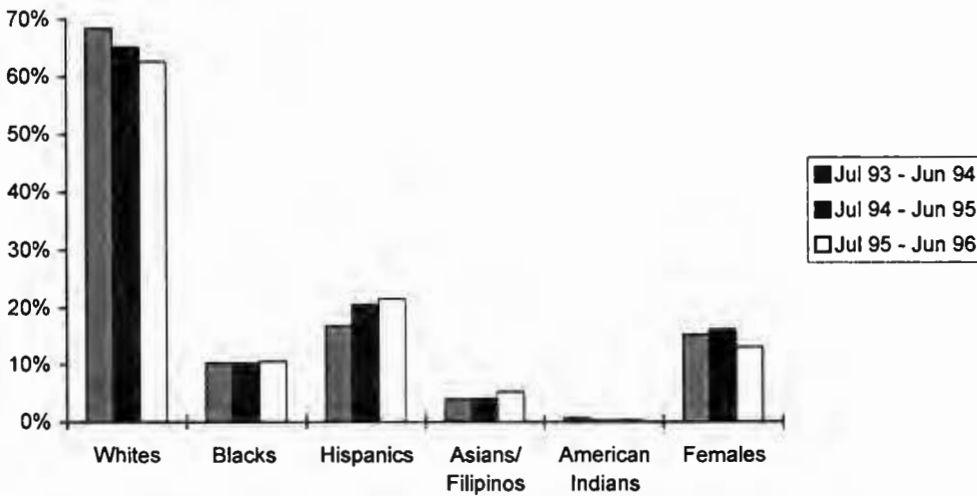
¹⁴⁰ Kenneth G. Hickman, "Measuring Job Performance Success for Female Officers of the Los Angeles Police Department" (Ph.D. dissertation, Claremont Graduate School, 1983), pp. 230-31.

FIGURE 3.5
Profile of LAPD Sworn Personnel by Race or Sex



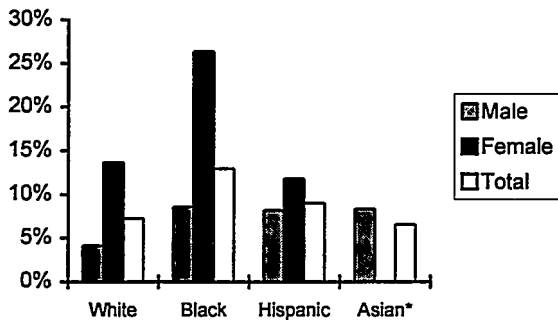
Source: Los Angeles Police Department: Sworn & Civilian Personnel by Class, Sex, and Descent as of 12/24/95; Sworn & Civilian Personnel by Class, Sex, and Descent as of 12/25/94; Sworn & Civilian Personnel by Class, Sex, and Descent as of 10/31/93, Los Angeles Hearing, subpoena duces tecum document, Exh. 1p.

FIGURE 3.6
Profile of Attrition Among LAPD Sworn Personnel



Source: Los Angeles Police Department: Sworn Attrition Data Fiscal Years (July 1989 to June 1996), Los Angeles Hearing, subpoena duces tecum document, Exh. 1x.

FIGURE 3.7
Attrition Among LAPD Recruits at
Police Academy, July 1993–March 1995



Source: The numbers derived are taken from an attachment to a letter to Jackie Goldberg, Los Angeles City Council, from Chief of Police Willie L. Williams (Oct. 19, 1995) provided to the Commission by the National Center for Women in Policing. Native Americans are not included because there was no attrition among this group for the relevant time period. *The numbers for Asians include Filipinos. Los Angeles Hearing, document.

With appropriate training, some of the physical difficulties that female candidates experience at the academy can be alleviated. For example, the LAPD identified a problem regarding female recruits' ability to squeeze the trigger of the semiautomatic pistol. An exercise physiologist developed a prototype exercise device to improve hand/finger strength for shooting. In a sample of 41 women who participated in the exercise, the LAPD reported a 16.6 percent improvement in laser accuracy "after training with the hand strengthening device and an average of nine additional trigger pulls at the completion of the four-week training period."¹⁴¹ Similarly, in a study concerning another training academy, approximately 70 percent of the women dropped out before completion primarily due to ankle injuries. When that academy modified its physical training course requirement from wearing high-top sneakers to low-top sneakers, foot injuries were reduced to almost zero.¹⁴²

¹⁴¹ Los Angeles Police Department, Policies and Procedures for Achieving Gender Balance and Gender Equality in the Department 2-3 (October 1993), *L.A. Hearing*, subpoena duces tecum document, Exh. 1(r).

¹⁴² Bernadette Jones Palombo, "Attitudes, Training, Performance and Retention of Female and Minority Police Officers," in *Diversity, Affirmative Action and Law Enforcement*,

In the early 1980s, the LAPD recognized that female officers were dropping out of the academy at a higher rate than males. In response, the LAPD developed the Crime Prevention Assistance Program (CPAP) to address the high attrition rate.¹⁴³ The CPAP is a preacademy program that includes physical conditioning, psychological preparation, and work assignment experience.¹⁴⁴ The purpose of the program is to improve physical conditioning and provide education about the realities of police work. CPAP is offered to male and female candidates who are already hired and are waiting to begin their recruit training.¹⁴⁵

Upon implementation of CPAP, attrition rates for women reportedly dropped dramatically.¹⁴⁶ According to the LAPD's quarterly gender balance report for the first quarter of 1996, 79.6 percent of the female recruits participated in the CPAP. Attrition rates for these female recruits "continue to be lower than those of their non-CPA trained classmates."¹⁴⁷ Still, as noted

eds., George T. Felkenes and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 70.

¹⁴³ The CPAP originally was formed during 1975 as a program to keep candidates active until they could be placed into a beginning academy class. With the implementation of the *Blake* consent decree, the CPAP was strengthened in the area of physical fitness preparedness. A review of the explanations given by female recruit officers leaving the academy between 1986 and 1989 indicates that the primary reasons CPA-trained female candidates left were academic related. In contrast, most non-CPA trained females left for reasons related to the physical demands of the academy program. Michael Hooper, "Case Study of a Departmental Response to Affirmative Action Mandates: The Los Angeles Police Department," in *Diversity, Affirmative Action and Law Enforcement*, eds., George T. Felkenes and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 119.

¹⁴⁴ Los Angeles Police Department, 1996 Second Quarter Gender Balance Report, pp. 1-2.

¹⁴⁵ The women are paid while participating in the 8-week program. Lawrence C. Trostle, "Recruitment, Hiring, and Promotions of Women and Racial Minorities in Law Enforcement," in *Diversity, Affirmative Action and Law Enforcement*, eds., George T. Felkenes and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 109.

¹⁴⁶ The attrition rate dropped from 56 percent in 1980 when CPAP was initiated to less than 10 percent in 1985. *Ibid.*, p. 110. See also Bernadette Jones Palombo, "Attitudes, Training, Performance and Retention of Female and Minority Police Officers," in *Diversity, Affirmative Action and Law Enforcement*, eds., George T. Felkenes and Peter Charles Unsinger (Springfield, IL: Charles C. Thomas, 1992), p. 70.

¹⁴⁷ Los Angeles Police Department, 1996 First Quarter Gender Balance Report, p. 1. The LAPD was unable, however, to provide the Commission with recent attrition rates of offi-

above, women continue to wash out of the academy at much greater rates than do men.¹⁴⁸

The LAPD also offers a Candidate Assistance Program, which is designed to prepare police officer candidates for the Physical Abilities Test for Police Officer and the physical conditioning curriculum of the academy. The classes are held 2 nights a week for candidates in the police officer selection process. The LAPD has established a goal of 60 percent female participation in the Candidate Assistance Program.¹⁴⁹

In-Service Training

The LAPD has expended considerable effort to improve its training program to counter racial and gender bias. For example, from March 1995 through June 1996, 93 percent of the LAPD's employees attended a sexual harassment training workshop.¹⁵⁰ Forty persons were trained in 1995–1996 to become members of the Sexual Harassment Prevention Training Cadre which then provides training departmentwide.¹⁵¹ Department training takes place for a 3-hour period during which participants view a video and engage in discussion.¹⁵²

The LAPD has also increased cultural awareness training. In 1992 the time allocation for cultural awareness training for recruits was increased from 8 to 24 hours.¹⁵³ In September 1995, cultural diversity training was instituted for all department employees by 18 trainers in 8

hour blocks.¹⁵⁴ In developing the program, the LAPD solicited input from various community groups. Chief Williams testified that “[d]uring the past four years, we have utilized the various ethnic communities . . . as part of assessing our overall quality of training and service delivery... we now involve the ethnic community. . . in developing our training, plus participating in the various training sessions.”¹⁵⁵ He testified that his commitment to training is reflected by the numbers: During the first 6 months of 1996, the LAPD conducted training for nearly 2,400 officers and civilians.¹⁵⁶ As of the date of the Commission's hearing, 51 percent of the LAPD had undergone cultural diversity training.¹⁵⁷

Promotions

Promotions of women and minorities in the LAPD have also come under legal challenge. In a consolidated lawsuit against the department,¹⁵⁸ the Latin American Law Enforcement Association and the Korean American Law Enforcement Association joined in the claims of an individual plaintiff that the LAPD discriminated against minority officers in promotions, pay grade advancement and assignments to “coveted positions.”¹⁵⁹ The case was settled in August 1992 when the court approved the *Hunter-La Ley* consent decree. The consent decree addresses promotion of women and minorities in three main areas.¹⁶⁰ First, the department must strive to

cers who have participated in CPAP because they are not tracked by computer once the officer has entered a recruit class. See Los Angeles Police Department, Response to Request No. 23, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(x).

¹⁴⁸ See note 141 and accompanying figure 3.7.

¹⁴⁹ Prior to 1996, female participation in the Candidate Assistance Programs approximated 60 percent. In early 1996, the female participation rate began dropping below 50 percent. See Los Angeles Police Department, Intradepartmental Correspondence Regarding Candidate Assistance Program, *L.A. Hearing*, subpoena duces tecum documents, Exh. 1(v).

¹⁵⁰ Los Angeles Police Department, 1996 Second Quarter Gender Balance Report 8, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(r).

¹⁵¹ Los Angeles Police Department, History of Police Department Training Regarding Sexual Harassment, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(f).

¹⁵² *Ibid.*

¹⁵³ Los Angeles Police Department, History of Police Department Training Regarding Cultural Awareness/Diversity, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(f).

¹⁵⁴ *Ibid.*

¹⁵⁵ Chief Williams Testimony, *L.A. Hearing*, vol. 1, p. 118.

¹⁵⁶ *Ibid.*

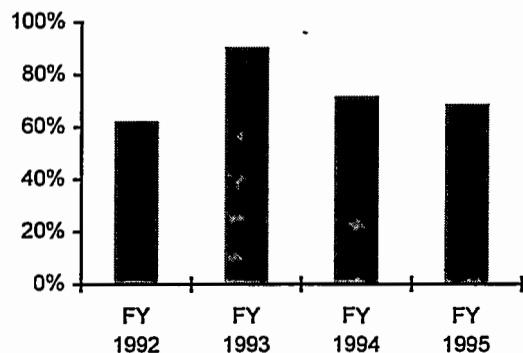
¹⁵⁷ *Ibid.* Bonnie Tang of the Asian Pacific American Legal Center of Southern California audited the training course and seemed favorably impressed with it. Tang Interview. Ms. Tang noted, however, that the class she observed separated itself according to race and ethnicity. For example, the white officers all sat together and the minorities sat with other minorities.

¹⁵⁸ See Judgment and Order Approving Consent Decree and Agreement, *Hunter v. City of Los Angeles; Latin American Law Enforcement Association v. City of Los Angeles*, Case Nos. 92-1897 AWT (CTx) and 92-1898 AWT (CTx) (C.D. Calif., 1992) (hereafter cited as *Hunter-La Ley* consent decree).

¹⁵⁹ “‘Coveted positions’ are those . . . assignments likely to assist an officer in developing the insight and skills necessary to enhance a career path of promotability toward the command and staff ranks.” *Hunter-La Ley* consent decree, ¶ 25.

¹⁶⁰ See Memorandum from Chief of Police Willie Williams to the Board of Police Commissioners (Aug. 30, 1996) (on file with Commission). Unlike the *Blake* consent decree, the

FIGURE 3.8
Achievement of LAPD Promotional Goals
for Minorities and Females



Source: Memoranda from Los Angeles Chief of Police to Board of Police Commissioners: Aug. 30, 1996; Oct. 13, 1995; Sept. 30, 1994; and Dec. 13, 1993. Subpoenaed documents, Los Angeles Hearing.

achieve goals for blacks, Hispanics, Asians, and females in eight ranks.¹⁶¹ Second, the department must achieve goals for so-called "coveted positions" within the department for the same four target groups.¹⁶² Goals for promotions and coveted positions are based on numbers derived from the applicant pools and/or the feeder pools.¹⁶³ Finally, the department must develop programs in areas such as job counseling, standardized selection procedures, and affirmative action training.¹⁶⁴

Witnesses at the Commission's hearing testified to the importance of promoting women and minorities in the LAPD.¹⁶⁵ For example, Bill Lann Lee, then regional counsel for the NAACP Legal Defense and Educational Fund, testified that:

Hunter-La Ley consent decree includes numerical goals for Asian American officers.

¹⁶¹ Ibid. The eight ranks are: police officer III, sergeant I and II, detective I, II, and III, and lieutenant I and II. Ibid.

¹⁶² Ibid.

¹⁶³ See Attachments I-C and II-D to Memorandum from Chief of Police Willie Williams to the Board of Police Commissioners (Aug. 30, 1996).

¹⁶⁴ Memorandum from Chief of Police Willie Williams to the Board of Police Commissioners (Aug. 30, 1996).

¹⁶⁵ See, e.g., Bill Lann Lee, Esq., regional counsel, NAACP Legal Defense and Educational Fund, testimony, *L.A. Hearing*, vol. 1, pp. 317-18 (hereafter cited as Lee Testimony); Saenz Testimony, *L.A. Hearing*, vol. 1, pp. 269-71; Harrington Testimony, *L.A. Hearing*, vol. 1, pp. 288-89.

it not only matters what the total number [of women and minorities in the LAPD] is, but also who makes decisions, who has supervision authority, who has managerial authority, who does the public deal with that makes decisions. And I think that it is a true statement, the LAPD has in some ways made some strides in its representation. But we need more than representation. We need representation that is effective.¹⁶⁶

Documents produced for the Commission by the LAPD reflect that the department has not yet reached the goals set by the *Hunter-La Ley* consent decree since the implementation of the decree in 1992. The LAPD came closest to achieving its promotional goals in fiscal year 1993, when it met the goals for 90.6 percent of the 32 groups.¹⁶⁷ Achievement of promotional goals under the consent decree from 1992 through 1995 are reflected in figure 3.8.

With respect to the goals for coveted positions, the LAPD fell short of its goals in each year since the implementation of the consent decree, albeit the percentages are small. In 1992 the LAPD failed to meet its goals for all four targeted groups.¹⁶⁸ The following year the department fell short of its goals for women by 0.92 percent.¹⁶⁹ In 1994 it fell short by 0.65 percent for Asians and 3.44 percent for women.¹⁷⁰ Again in 1995, the goals for Asians and females were short by 2.82 percent and 2.43 percent, respectively.¹⁷¹

Community organizations involved in the implementation of the promotional goals criticize the LAPD for its lack of responsiveness.¹⁷² While the *Five Years Later* report to the Police Commission indicated that African Americans con-

¹⁶⁶ Lee Testimony, *L.A. Hearing*, vol. 1, pp. 317-18.

¹⁶⁷ The 32 groups represent the eight ranks subject to the *Hunter-La Ley* consent decree multiplied by the four targeted groups, i.e., blacks, Hispanics, Asians, and women.

¹⁶⁸ Memorandum from Chief of Police to Board of Police Commissioners (Dec. 13, 1993). This failure was attributed to the departmentwide promotional freeze imposed on the LAPD at the time. Ibid.

¹⁶⁹ Memorandum from Chief of Police to Board of Police Commissioners (Sept. 30, 1994).

¹⁷⁰ Memorandum from Chief of Police to Board of Police Commissioners (Oct. 13, 1995).

¹⁷¹ Memorandum from Chief of Police Willie Williams to Board of Police Commissioners (Aug. 30, 1996).

¹⁷² Tang Interview; Sgt. Ruben Padilla, president, Latin American Law Enforcement Association, telephone interview, Aug. 1, 1996 (hereafter cited as Padilla Interview).

tinued to make gains in leadership positions, it criticized the LAPD because other minorities and women were clustered in the lower ranks.¹⁷³ In particular, the *Five Years Later* report concluded that it was "a matter of serious concern that women are not represented in the highest ranks of the department."¹⁷⁴ The breakdown of sworn personnel by rank, race and sex as of the Commission's hearing in September 1996 are reflected in figures 3.9 and 3.10. It should be noted that in May 1997, Chief Williams promoted the first female officer to the rank of commander in the LAPD.¹⁷⁵

Tom Saenz of the Mexican American Legal Defense and Educational Fund (MALDEF) blamed the cluster of Latinos in the lower ranks on the LAPD's "consistent refusal to analyze or adjust its practices in light of repeated failures to meet goals that have been set under a court ordered decree."¹⁷⁶ Furthermore, Bill Lann Lee cautioned in his testimony that the gains in promotion and other advancement issues for African American officers are "imperiled by...[the] recent developments on recruitment, appointment and training,"¹⁷⁷ as discussed earlier in the chapter.

Bonnie Tang of the Asian Pacific American Legal Center of Southern California mentioned in her interview with staff that there is anecdotal evidence of racial bias in the promotion tests.¹⁷⁸ For example, she has heard from Asian American officers that they are required to undergo more oral tests for a position than white officers. She noted that, based upon their accounts, where a white officer may undergo one or two interviews, Asian Americans may be subjected to up to 20 interviews for the same position. The evidence remains anecdotal because those who have experienced this alleged bias apparently are unwilling to come forward, fearing that disclosure may have adverse consequences for future promotions.¹⁷⁹

¹⁷³ *Five Years Later*, p. 22.

¹⁷⁴ *Ibid.*

¹⁷⁵ Patrick McGreevy, "Woman Breaks LAPD Barrier," *Daily News of Los Angeles*, May 9, 1997, p. N-1. A commander is three ranks below the chief of police.

¹⁷⁶ Saenz Testimony, *L.A. Hearing*, vol. 1, p. 270.

¹⁷⁷ Lee Testimony, *L.A. Hearing*, vol. 1, p. 261.

¹⁷⁸ Tang Interview.

¹⁷⁹ *Ibid.*

Penny Harrington also cited problems of bias in the promotional system. She noted that the promotional system is entirely internal: the civil service test is developed in-house and oral interview panels consist of LAPD officers.¹⁸⁰ According to Ms. Harrington, scores received from the written tests and oral interviews are banded so that, theoretically, any candidate within the same band could be promoted.¹⁸¹ However, Ms. Harrington explained that the candidates within a band are then ranked based on performance evaluations, seniority, and commanding officers' views of the candidates. The candidates are then selected strictly based on rank order. Ms. Harrington believes that the flexibility intended by banding the test scores is lost and, in its place, subjective, discriminatory factors are allowed to restrict the selection of candidates.¹⁸² She testified to the Commission that "one of the big issues that I have with [the] LAPD, especially on promotion, is that it's 100 percent internal to the police department. And most other major police departments, especially as you get in the higher ranks, bring in external people to do the evaluation, to do the actual promotion exam."¹⁸³

Tom Saenz pointed out that the "rule of three whole scores" is policy in every other city department in Los Angeles except the police department. Under the rule, which was designed to maximize managerial discretion, candidates who score within three points of one another are considered equally qualified for promotion. Saenz testified that "[o]nly in the police department was it not used, and it is now only used during the last six months of a two-year promotional list. And I should say that that's one small aspect of the consent decree, seeking to have the rule of

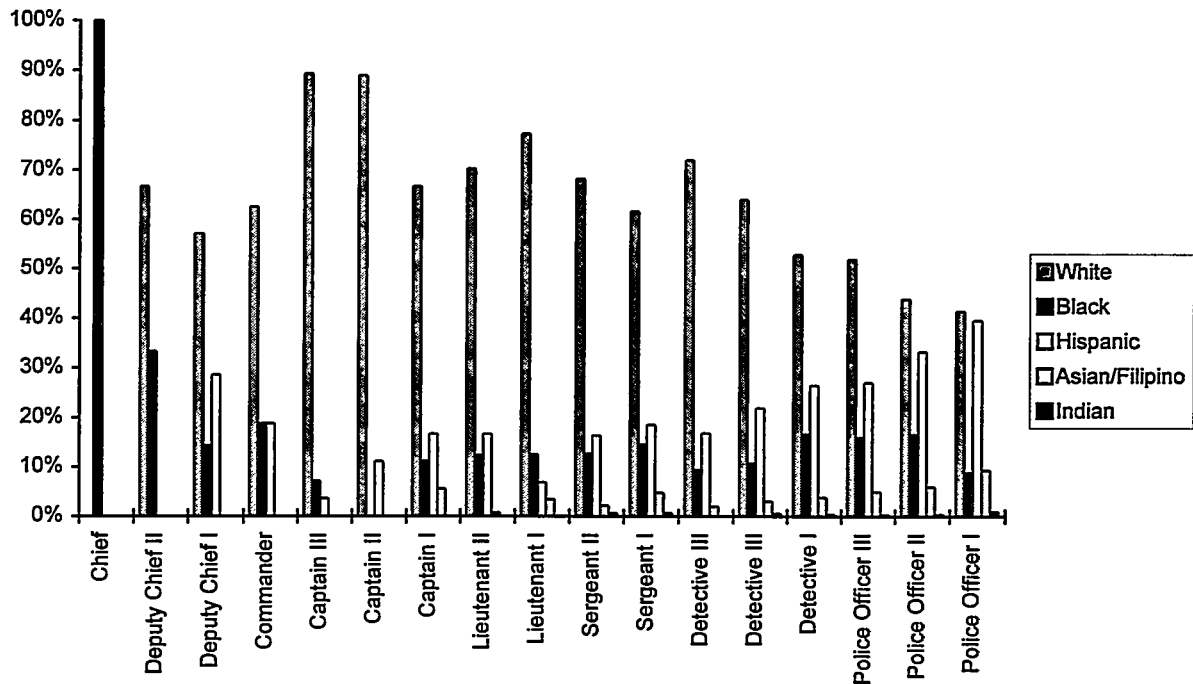
¹⁸⁰ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 336; Harrington Interview.

¹⁸¹ Harrington Interview. Banding is a method used with test scores in personnel selection and is based on the assumption that no test is perfectly reliable. According to the theory, there is no reliable difference between any two scores within a statistically determined band of test scores. Thus, the lowest numerical score in a given band is treated as equal to the highest numerical score in that band. Wayne Cascio, James Outtz, Sheldon Zedeck and Irwin Goldstein, "Statistical Implications of Six Methods of Test Score Use in Personnel Selection," *Human Performance*, vol. 4 (1991), pp. 240, 242.

¹⁸² Harrington Interview.

¹⁸³ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 336.

FIGURE 3.9
Police Rank by Race



Source: Los Angeles Police Department, Sworn Personnel by Rank, Sex & Ethnicity, September 1, 1996, Los Angeles Hearing, subpoena duces tecum document, Exh. 1(q).

three whole scores applied in the last six months.”¹⁸⁴ Bill Lann Lee underscored the impact of using the three whole score band only within the last 6 months of a promotion cycle:

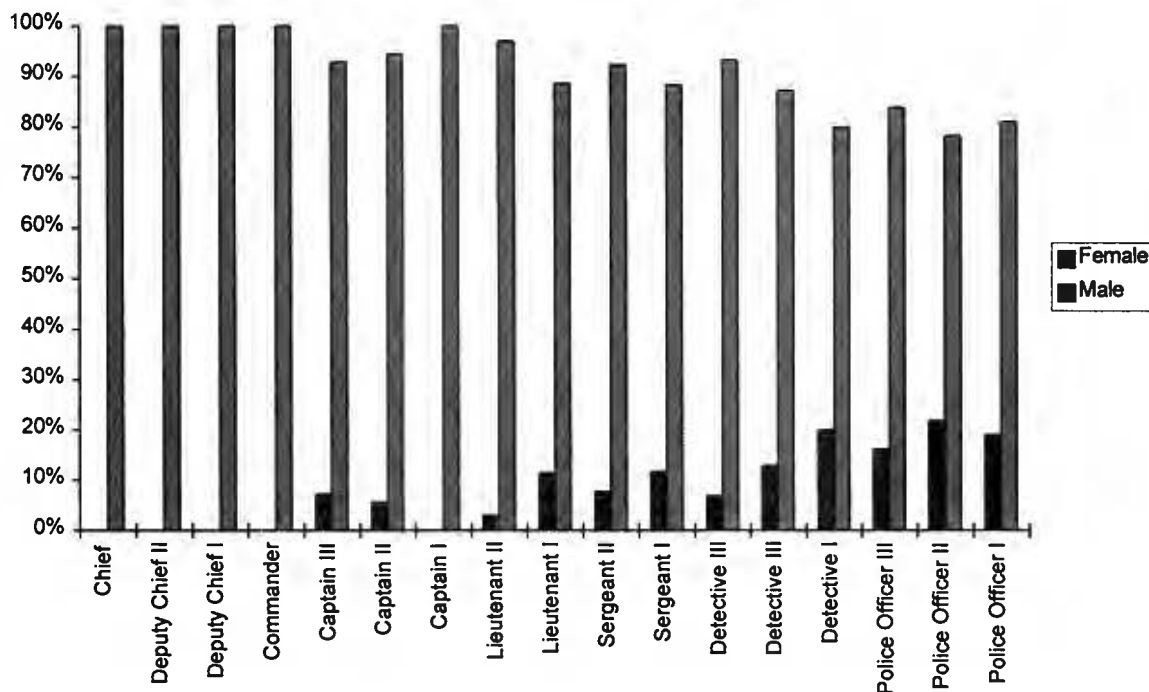
every other department in the city of Los Angeles uses a three whole score for [a] two-year cycle of an exam...because it's frank acknowledgment [that] ...within that three whole score band, those people are equally qualified. It's only in the Los Angeles Police

Department that we have this very restrictive use of three whole score. And unfortunately it does have the impact of pitting minorities and women against each other, cramming everything, in terms of compliance, into the last six months. [It] creates unnecessary conflicts and hampers compliance.¹⁸⁵

¹⁸⁴ Saenz Testimony, *L.A. Hearing*, vol. 1, pp. 293–94. According to the consent decree, the chief of police selects promotion candidates during the first 18 months of a 2-year promotion eligibility list as he had previously, i.e., in order of combined whole score bands, exhausting the candidates in each combined whole score band before selecting candidates from the next lower combined whole score band. In the last 6 months, the chief treats all applicants certified by the City Personnel Department as equally eligible for promotion. Judgment and Order Approving Consent Decree and Agreement, ¶ 36, *Hunter v. City of Los Angeles*; *Latin American Law Enforcement Ass' v. City of Los Angeles*, Case Nos. 92–1897 AWT (CTx) and 92–1898 AWT (CTx) (C.D. Calif., 1992).

¹⁸⁵ Lee Testimony, *L.A. Hearing*, vol. 1, pp. 293–94. Detective Leonard Ross, president of the Oscar Joel Bryant Foundation, also criticized the implementation of the concept of banding in the last 6 months of the promotional eligibility list. He agreed that such restricted use pits minority groups against one another for a limited amount of positions. Ross Interview. According to a news report, an African American officer complained to the Civil Service Commissioners in 1994 that he was “probably one of the first victims of the *Hunter-La Ley* consent decree.” By his estimation, he was the highest scoring minority for the lieutenant’s test but the position went to a “very, very qualified individual who happened to be more minority than I was—an Asian.” Theresa Moreau, “Spurned LAPD Official Claims Discrimination,” *Los Angeles Daily Times*, July 6, 1997, p. N–1.

FIGURE 3.10
Police Rank by Gender



Source: Los Angeles Police Department, *Sworn Personnel by Rank, Sex & Ethnicity, September 1, 1996*, Los Angeles Hearing, subpoena duces tecum document, Exh. 1(q).

Saenz advised the Commission that the LAPD should examine its selection procedures for promotions within the department. He observed that:

the department has never undertaken to analyze whether those promotional examinations . . . are in fact free of bias and discrimination. . . I think that eliminating that bias and discrimination up front would eliminate the need for any of us to be discussing how three whole scores might or might not be applied at the end of a two-year promotional list.¹⁸⁶

The Police Protective League

In September 1995, the Police Protective League, LAPD's union, placed advertisements in the *Los Angeles Sentinel*, a black-owned weekly, and *La Opinion*, a Spanish-language daily, decrying retired Detective Mark Fuhrman's racist

actions.¹⁸⁷ The league's former president remarked afterwards, "if the League does not become more progressive in solving problems of concern to police officers and the community, we will hurt ourselves. . . . We have to participate in weeding out . . . the Fuhrman types, the people who disrespect female officers and those who are heavy-handed."¹⁸⁸ Yet Commission staff interviews with some officer and community organizations revealed the opinion among some that the union played a role in impeding reform within the LAPD and in fomenting tension within the LAPD.¹⁸⁹

¹⁸⁷ "Can the Fuhrman Tapes Trigger Lasting Reform?" *Los Angeles Times*, Sept. 8, 1995, p. B-8.

¹⁸⁸ James Rainey, "Clashes Over Union's Role Reflect Division in LAPD," *Los Angeles Times*, Sept. 18, 1995, p. A-1.

¹⁸⁹ See Ross Interview; Ramona Ripston, executive director, and Allen Parachini, director of Public Affairs, American Civil Liberties Union of Southern California (ACLU-SC), telephone interview, July 25, 1996 (hereafter cited as Rip-

¹⁸⁶ Saenz Testimony, *L.A. Hearing*, vol. 1, p. 293.

For example, the union has funded court challenges to affirmative action and helped to pay for the defense of two white officers accused of beating Rodney King, Stacey Koon, and Lawrence Powell.¹⁹⁰ In August 1994, the Police Protective League filed a grievance against then Assistant Police Chief Bernard C. Parks alleging that Parks engaged in a campaign to force the promotion of women and minorities at the expense of qualified white male candidates.¹⁹¹ In response to the grievance, the Oscar Joel Bryant Foundation issued a statement that read, “[t]he Protective League appears to only challenge processes that may negatively impact its white male officers. . . . If this is the best that the Protective League can do for its minority members, then it is time for minority members to pull out and represent ourselves.”¹⁹²

Detective Leonard Ross of the Oscar Joel Bryant Foundation complained that while the union was willing to incur legal fees for Officers Koon and Powell, it has denied black police officers legal services on a fairly regular basis.¹⁹³ According to Detective Ross, this is one of the stated reasons that the union is being sued for discrimination by the black officers association.¹⁹⁴ Detective Ross also pointed out that after the lawsuit was filed, the Police Protective League offered to pay the legal expenses of five black officers to whom it previously had denied

legal support.¹⁹⁵ Bill Harkness, the president of the Police Protective League, took issue with complaints that the league does not represent minority members. He testified that he himself had an extensive record of aggressively defending black officers.¹⁹⁶

Detective Ross also noted that the union has never had any black leadership on its board.¹⁹⁷ According to Detective Ross, the union counters that the selection of its leadership is a democratic process as all board members are elected. Yet Detective Ross points out that since black officers represent just 13 percent of the vote, they are unable to elect a candidate of their choice because, he believes, the voting is along racial lines. He suggested that it is significant that every time a minority candidate runs for election, voter participation always increases. The Oscar Joel Bryant Foundation has requested that the union fill vacancy appointments with officers who share the foundation’s views and who can then run as incumbents when the vacancy appointments are over. Recently, the league named a white female to a vacancy appointment.¹⁹⁸ According to the *Los Angeles Times*, the league had considered filling the vacancy with a young black motorcycle officer but the officer was unwilling to run for a full term after the vacancy appointment would have expired.¹⁹⁹

ston Interview); John Mack, president, Los Angeles Urban League, telephone interview, July 22, 1996 (hereafter cited as Mack Interview). On the other hand, representatives from the women’s and Latino officer associations expressed their satisfaction with the union. See Abella Interview; Padilla Interview.

¹⁹⁰ Jonathan Kaufman and Dorothy J. Gaiter, “Many Minority Police Doubt That the Force Is Really With Them,” *Wall Street Journal*, Sept. 7, 1995, p. A-1.

¹⁹¹ The grievance alleged that Parks disallowed results of oral tests for detective positions in the Narcotics Group. Because the list of finalists did not include minorities and women, the league contended that Parks rejected the candidates because of their race and gender. James Bolden, “Bernard Parks: Council Backs LAPD Promotional Policies,” *Los Angeles Sentinel*, Aug. 25, 1994, p. A-1 (hereafter cited as “Council Backs LAPD Promotional Policies.”) Parks said that the results were disallowed because the testing procedures were improper. Jim Newton, “City Council Members Back LAPD Official,” *Los Angeles Times*, Aug. 20, 1994, p. B-1.

¹⁹² “Council Backs LAPD Promotional Policies.”

¹⁹³ Ross Interview.

¹⁹⁴ “Can the Fuhrman Tapes Trigger Lasting Reform?” *Los Angeles Times*, Sept. 8, 1995, p. B-8.

Disciplinary System

As detailed in chapter 2, many have expressed concern and dissatisfaction over the LAPD’s disciplinary system. Specifically, there is a sense that officers are subject to widely disparate penalties, even for the same type of offense, based on their race or ethnicity. Detective Ross maintains that minorities are receiving a disproportionate amount of penalties.²⁰⁰ Documents produced by the LAPD for the Commission revealed that for the cases closed between July 1, 1994, and June 30, 1995, blacks received 25 per-

¹⁹⁵ Ross Interview.

¹⁹⁶ Harkness Testimony, *L.A. Hearing*, vol. 1, p. 201.

¹⁹⁷ Ross Interview.

¹⁹⁸ It is the League’s first female director. James Rainey, “Clashes Over Union’s Role Reflect Division in LAPD,” *Los Angeles Times*, Sept. 18, 1995, p. A-1.

¹⁹⁹ *Ibid.*

²⁰⁰ Ross Interview.

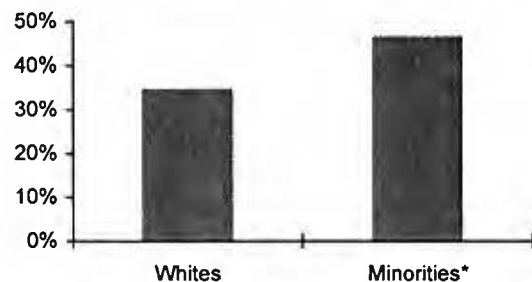
cent of all discipline imposed on sworn personnel.²⁰¹ Yet blacks only represented 14.9 percent of the force as reported in December 1995.²⁰²

Detective Ross testified at the hearing that, in his view, an audit of the LAPD's records on discipline would reveal a significant disparity in penalties administered to minority officers as compared with white officers.²⁰³ A thesis completed in 1993 by a commanding officer analyzed the LAPD's data on penalties administered on sustained complaints. The thesis determined the median penalty for officers disciplined for the first time for 27 different categories of offenses from 1988 to 1992. It then analyzed the percentage of whites who received penalties greater than the median as compared with minorities who received penalties greater than the median.²⁰⁴ The data revealed that minority officers were more likely than white officers to receive penalties higher than the median. Figure 3.11 illustrates that white officers received penalties

higher than the median 35 percent of the time while minority officers received penalties higher than the median penalty 48 percent of the time. Although there was some disparity between the higher penalties accorded whites and minorities, there were not enough cases for the results to be statistically conclusive.²⁰⁵

In her interview with Commission staff, Penny Harrington expressed frustration over what she sees as inconsistent penalties applied to those who engage in gender discrimination or harassment. She maintains that the inconsistent penalties send a message that the leadership is not genuinely concerned with eradicating these problems.²⁰⁶ She also expressed frustration that men who have been reprimanded for sexual har-

FIGURE 3.11
Higher Penalties With Respect to Ethnicity



* Blacks, Hispanics, and Asians. No members from other minority groups were represented in the data used.

Source: The data in this figure are presented in James Voge, "The Administration of Discipline on the Los Angeles Police Department. . . Is It Equitable?" (unpublished thesis, California State University-Los Angeles, 1993) (on file with the U.S. Commission on Civil Rights).

²⁰¹ Los Angeles Police Department, Disciplinary Actions: July 1, 1994, to June 30, 1995 (sworn personnel), *L.A. Hearing*, subpoena duces tecum document, Exh. G. This number was slightly higher than was reported for the 1-year periods ending June 30, 1994, and June 30, 1993, in which blacks represented 23.1 percent and 23.9 percent, respectively.

²⁰² Los Angeles Police Department, Fact Sheet, Annual Three-Year Affirmative Action Goals for 1995/1998, Dec. 6, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. G. Charges of bias in disciplinary cases are not unique to the LAPD. For example, two organizations representing black and Hispanic New York City police officers filed a complaint in early 1997 with the Equal Employment Opportunity Commission alleging that the NYPD brings disciplinary charges against black and Hispanic officers twice as often as against their white counterparts. The organizations released statistics showing that in 1996, members of minority groups accounted for 31.7 percent of the police force but faced 54.8 percent of all departmental disciplinary charges. Michael Cooper, "Two Minority Officers' Groups See Bias in Disciplinary Cases," *New York Times*, Apr. 18, 1997, p. A-30.

²⁰³ Ross Testimony, *L.A. Hearing*, vol. 1, p. 275. The LAPD produced documents from the Internal Affairs Division detailing the penalties administered on sustained complaints. The reports noted that penalties for similar offenses may differ slightly because the penalties are based on a number of factors, including the disciplinary history of the concerned employee. See, e.g., Los Angeles Police Department, Internal Affairs Division, Reports on Administration of Internal Discipline, *L.A. Hearing*, subpoena duces tecum, Exh. 1(t). Since the Commission did not have access to the disciplinary history of the employees, it was unable independently to assess whether penalties were inconsistent along racial and ethnic lines, as alleged by Detective Ross.

²⁰⁴ For the purposes of this analysis, minorities include blacks, Hispanics, and Asians. No members from other minority groups were represented in the data used.

²⁰⁵ According to a statistical test performed by Commission staff, the observed disparity may be due to chance: Chi-squared = 3.08, 1 df p=.08 (n.s.).

²⁰⁶ Harrington Interview. According to the *Los Angeles Times*, Police Commission Inspector General Katherine Mader wrote in a memorandum with respect to sexual harassment and discrimination at the LAPD's West Los Angeles station, "To date, the most serious discipline imposed at WLA for creating a hostile work environment for females has been an 'official reprimand' of one officer." Jim Newton, "Harassment Complaints Continue to Dog LAPD," *Los Angeles Times*, Dec. 8, 1996, p. A-1. Moreover, the complaint in the *Tipton-Whittingham* case alleges that "[o]ffenses against women employees are treated less seriously than offenses against others." Complaint, ¶ 66, *Tipton-Whittingham v. City of Los Angeles*, Case No. CV 94-3240-WDK (C.D. Cal., 1994).

assessment are still promoted in some cases.²⁰⁷ Indeed, an internal LAPD task force noted its concern that an officer was selected for a much sought after specialized assignment after his personal involvement in the "Men Against Women" group was known.²⁰⁸ The task force noted that:

it is time to begin exploring alternatives to deal with interpersonal problems before they arise to the level of serious misconduct. Our disciplinary system was created to deal with corruption and more traditional allegations of police misconduct such as brutality. But in a complex, cultural world, it fails miserably at changing attitudes about co-workers.²⁰⁹

Katherine Mader who was appointed inspector general 2 months prior to the Commission's hearing noted that she was closely observing the department's disciplinary process. She testified that she was particularly concerned with looking at consistency of penalties.²¹⁰ The Office of the Inspector General worked closely with the Disciplinary Task Force set up by the Police Commission. According to the inspector general, one major accomplishment of the task force has been the evaluation and recommendation of changes to the LAPD's *Guide to Discipline*, which attempts to standardize discipline for sustained misconduct.²¹¹ In June 1997, the Police Commission approved the discipline guidelines. At the time of its approval, interim Police Chief Bayan Lewis praised the guidelines, saying "[t]his gives our supervisors something to refer back to instead of going on a gut feeling, which is what they have to do now."²¹² The task force singled out four areas of misconduct as the most serious misbehavior. Considered among the most serious misconduct is discourteous behavior which includes making "derogatory, ethnic or racial remarks, exhibiting racist or sexist behavior or any form of sexual misconduct, including verbal sexual harassment."²¹³

²⁰⁷ Harrington Interview.

²⁰⁸ Los Angeles Police Department, Report of the Mark Fuhrman Task Force: Executive Summary 56 (May 5, 1997).

²⁰⁹ *Ibid.*, p. 35.

²¹⁰ Mader Testimony, *L.A. Hearing*, vol. 1, pp. 128-29.

²¹¹ Los Angeles Board of Police Commissioners, Office of the Inspector General Six-Month Report 47 (January 1997).

²¹² Matt Lait, "LAPD Adopts New Discipline Rules," *Los Angeles Times*, June 25, 1997, p. A-1.

²¹³ *Ibid.*

Following criticism that the LAPD failed to handle domestic violence cases involving its officers the same as for the general public, Ms. Mader announced in May 1997 that she would review how Internal Affairs handled domestic abuse claims against LAPD officers.²¹⁴ Following her review, Ms. Mader concluded that "we found discipline was light for domestic violence when we looked at the underlying facts of investigations. . . . Very few employees were arrested. Very few employees were prosecuted."²¹⁵ Those against whom complaints were sustained often faced only light, in-house discipline.²¹⁶ She praised the department, however, for keeping better records on domestic violence than other law enforcement agencies that she contacted.²¹⁷

In closing, it should be noted that frustration continues to exist among some women and minority police officers on the LAPD and their advocates. Tom Saenz of the MALDEF stated in his testimony that "[t]he department's approach to implementing programs designed to eliminate bias in its employment practices has been characterized by delay, confusion, and yet more delay."²¹⁸ Bill Lann Lee of the NAACP Legal Defense and Educational Fund told the Commission:

the frustration that you probably have picked up that Tom Saenz and I expressed from the implementation of the consent decree, [is that] it's very strange to have this consent decree treated as cavalierly as it has been. It's very odd to have city council inclusion of goals for women just openly flouted like this. That's our department, and I think it's fair to say they need a kick in the head.²¹⁹

Similarly, Penny Harrington told the Commission:

when the chief of police and the police commission and the top management staff come before you—and I don't know if they said it today, but they say it frequently—we have a zero-tolerance policy on sexual harassment and

²¹⁴ Eric Moses, "LAPD Inspector General Outlines Plan to Review Spousal Abuse by Officers," *City News Service*, May 13, 1997.

²¹⁵ Patrick McGreevy, "LAPD Told to Act on Officer Violence Reforms," *Daily News of Los Angeles*, July 23, 1997, p. N-6.

²¹⁶ Matt Lait, "LAPD Abuse Probes of Its Officers Called Lax," *Los Angeles Times*, July 20, 1997, A12. For example, one officer who was found by the department to have raped his girlfriend received only an "official reprimand." He was neither arrested nor criminally charged.

²¹⁷ *Ibid.*

²¹⁸ Saenz Testimony, *L.A. Hearing*, vol. 1, p. 269.

²¹⁹ Lee Testimony, *L.A. Hearing*, vol. 1, p. 300.

discrimination. When they say that and yet their actions or their failure to act shows that that's not the truth, no woman is going to step forward and put her career and her life, in many instances, on the line to complain.²²⁰

On the other hand, other witnesses expressed the positive improvement in the LAPD with respect to racial and gender bias. Mayor Richard Riordan testified that the Los Angeles Police Commission has "a will, a commitment, a drive, to make Los Angeles a city that does not discriminate, that cares about other people, that will not tolerate the type of behavior that went on in connection with

Rodney King. . . I believe we made great strides, but I'll end by saying I believe in constant improvement, I believe that we can always do better, and I believe that we will do better."²²¹ Former Chief Willie Williams stated that the LAPD has addressed gender and racial bias issues "more candidly and more open[ly] than, perhaps, any other organization. We're not perfect, we reflect the society around us, but it is our mission to not just talk about them, but begin to positively impact these areas."²²²

²²⁰ Harrington Testimony, *L.A. Hearing*, vol. 1, p. 268.

²²¹ Riordan Testimony, *L.A. Hearing*, vol. 1, p. 72.

²²² Williams Testimony, *L.A. Hearing*, vol. 1, p. 123.

Chapter 4

Los Angeles Sheriff's Department

Section I: Overview of the Los Angeles County Sheriff's Department

The Los Angeles County Sheriff's Department

The Los Angeles County Sheriff's Department (LASD) is responsible for law enforcement in all unincorporated areas of the county in addition to 39 cities which contract for services.¹ Together, these areas include a population of approximately 2.5 million in a 3,171 square mile area.² The LASD also maintains the county jail system and staffs municipal and superior county courts with bailiffs and process servers.³ The sheriff oversees a department with some 8,053 sworn and 3,803 civilian employees,⁴ making it the third largest urban police force after New York City and Chicago.⁵

The LASD handled a total of 289,880 cases in 1994, of which 124,762 were in one of the following categories: criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, grand theft auto, and arson (Part I Offenses).⁶ The department handled an addi-

tional 112,195 criminal cases in other categories such as forgery, violation of drug and alcohol laws, vandalism, and receiving stolen property.⁷ There were 52,923 noncriminal cases.⁸ The LASD made a total of 94,631 arrests in the same year.⁹

Unlike most metropolitan police departments, the LASD is not under the control of a police commission or a mayor. A police commission, for instance, meets on a regular basis to monitor developments and, with the chief of police, sets policies. The sheriff is an elected constitutional officer who is not under the direction of any other government body and is free to determine the policy and practices of the department.¹⁰ Sherman Block was sheriff of Los Angeles County from 1982 until October 1998, when he died of medical complications. Leroy D. Baca was elected to take his place and was sworn into office on December 7, 1998.¹¹ Sheriff Baca was formerly chief of Field Operations Region II, encompassing Carson, Century, Lennox, Lomita, and West Hollywood stations.

¹ Sherman Block, sheriff, Los Angeles County, telephone interview, July 15, 1996 (hereafter cited as Block Interview). Each of the 39 contract cities determine the level of service that they want from the LASD. James G. Kolts & Staff, "The Los Angeles County Sheriff's Department," July 1992, p. 8 (hereafter cited as *Kolts Report*).

² County of Los Angeles, CA, Sheriff's Department, *Year in Review 1994*, p. 121 (hereafter cited as *1994 LASD Year in Review*).

³ Block Interview.

⁴ LASD law enforcement positions in descending order are classified as follows: "Sheriff, 1; Undersheriff, 1; Assistant Sheriff, 2; Division Chief, 8; Area Commander, 17; Captain, 53; Lieutenant, 309; Sergeant, 938; Deputy Sheriff, 6,558; Deputy Sheriff Trainee, 166." Los Angeles County Sheriff's Department, *Manual of Policy and Procedures*, Apr. 1, 1996, §2-02/000.00 (hereafter cited as *LASD Manual*). The number of sworn personnel date from December 1994. The department also employs some 3,803 civilians. *1994 LASD Year in Review*, p. 118.

⁵ *Kolts Report*, p. 7.

⁶ Within the area policed by the LASD in 1994, there were 422 criminal homicides (which averages out to 1 every 21

hours); 684 forcible rapes (1 every 13 hours); 9,749 robberies (1 every 54 minutes); 1,119 cases of arson (1 every 8 hours); 20,685 aggravated assaults (1 every 25 minutes); 24,135 burglaries (1 every 22 minutes); 24,996 grand auto thefts (1 every 21 minutes); and 42,972 larceny thefts (1 every 12 minutes). *1994 LASD Year in Review*, pp. 120-21.

⁷ A total of 112,195 cases were in the following categories: forgery, fraud, sex offenses, nonaggravated assaults, violation of weapon laws, offenses against the family, violations of drug and alcohol laws, disorderly conduct, vagrancy, gambling, violation of vehicle or boating laws, vandalism, warrants, receiving stolen property, Federal offenses, miscellaneous felonies, and miscellaneous misdemeanors. *Ibid.*, p. 125.

⁸ Noncriminal cases included the following: missing persons, noncriminal juvenile cases, commitments, miscellaneous noncriminal cases, suicide and attempted suicide, mental illness, miscellaneous accidents, and deceased persons. *Ibid.*

⁹ *Ibid.*, p. 121.

¹⁰ *Kolts Report*, pp. 345-46.

¹¹ "Leroy D. Baca, Sheriff Los Angeles County Sheriff's Department," press release, Los Angeles County Sheriff's Department. <<http://www.lasd.org/releases/329a-PromoBaca.htm>>.

The Kolts Report

In the aftermath of the Rodney King beating and investigations into the practices of the Los Angeles Police Department (LAPD), the Sheriff's Department faced increasing public scrutiny for complaints of excessive force and officer misconduct. Spurred by four fatal shootings by LASD deputies in a 1-month period,¹² community associations and individuals demanded an independent investigation of the LASD similar to the one conducted by the Christopher Commission on the LAPD.¹³

In December 1991, the Los Angeles County Board of Supervisors appointed Judge James G. Kolts to review "the policies, practices and procedures of the sheriff's department, including recruitment, training, job performance and evaluation, record keeping and management practices, as they relate to allegations of excessive force, the community sensitivity of deputies and the department's citizen complaint procedure."¹⁴ The inquiry was also prompted by the large sums that the county was paying for claims

against the LASD, including \$32 million over a 4-year period.¹⁵

Judge Kolts and his staff issued a highly critical report in July 1992, finding "deeply disturbing evidence of excessive force and lax discipline."¹⁶ The introduction to the *Kolts Report* states:

this report is a somber and sobering one in terms of the large number of brutal incidents that have been and still are occurring. This Department, like the LAPD, has too many officers who have resorted to unnecessary and excessive force. The Department has not done an adequate job disciplining them. It has not dealt adequately with those who supervise them. It has not listened enough to what the communities and constituencies of the LASD want and expect in their police.¹⁷

The report's principal recommendations included, ending the practice of discouraging members of the public from filing complaints and implementing civilian oversight of the complaint review process; vigorously prosecuting disciplinary cases; implementing a force tracking system; and reforming the canine program.¹⁸ The *Kolts Report* was met with praise as well as criticism from all sides.¹⁹ Responding to accusations that the District Attorney's office was delinquent in prosecuting officers for excessive force, District Attorney Ira Reiner called the report inaccurate and flawed.²⁰ The union representing sheriff's deputies also criticized the report.²¹ The report drew a mixed reaction from the County Board of Supervisors. While Supervisor Gloria Molina reportedly praised the Kolts staff for their work, Supervisor Mike Antonovich said that the report was "a back-door attempt by liberals to undermine law enforcement."²² Some

¹² LASD deputies were involved in four controversial shootings in August 1991. See generally, Shawn Hubler, "Grand Jury to Investigate Shootings," *Los Angeles Times*, Sept. 20, 1991, p. B-1. Arturo Jimenez was shot in the chest three times on August 3, 1991. Deputies said that he assaulted them with a beer bottle and a flashlight. Residents claimed that Jimenez was argumentative but did not strike anyone. Ibid. Keith Hamilton was shot eight times in the back on August 13, 1991. LASD officials initially stated that Hamilton had reached for a knife, but officials later recanted this statement. See Richard Serrano, "Deputies Not Threatened With Knife, Officials Say," *Los Angeles Times*, Sept. 14, 1991, p. A-1. David Angel Ortiz was shot in the lower back, ankle, and back of the neck on August 28, 1991. LASD officials said that Ortiz tried to flee his car after a high speed chase. A witness said that he was shot without provocation. Steve Clemons was shot in the back of the neck on August 28, 1991. LASD officials said that he pointed a gun at them. Witnesses said that Clemons was fleeing when he was shot. See Jesse Katz, "Deputy's Fatal Shot Struck Man in Back," *Los Angeles Times*, Sept. 21, 1991, p. B-1.

¹³ Hugo Martin, "Torres Joins Calls for Investigation of Sheriff's Department," *Los Angeles Times*, Sept. 18, 1991, p. B-1; George Ramos, "Latinos Push Demand for Sheriff's Dept. Probe," Sept. 19, 1991, p. B-3; Antonio Rodriguez and Samuel Paz, "Do We Ask Too Much of the Law, or is Block Blowing a Smokescreen?" *Los Angeles Times*, Sept. 19, 1991, p. B-7. U.S. District Judge Terry J. Hatter, who was hearing a civil rights case against the LASD in *Thomas v. County of Los Angeles*, 987 F. 2d 504 (9th Cir. 1993), favored an independent investigation. Victor Merina and Richard Simon, "Judge Favors an Inquiry into Sheriff's Department," *Los Angeles Times*, Sept. 10, 1991, p. B-1.

¹⁴ *Kolts Report*, p. 1.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., pp. 3-4.

¹⁸ Ibid., pp. 353-54.

¹⁹ Hector Tobar and Kenneth Reich, "Probe Finds Pattern of Excess Force, Brutality by Deputies," *Los Angeles Times*, July 21, 1992, p. A-1 (hereafter cited as Tobar and Reich, "Probe Finds Pattern").

²⁰ Kenneth Reich, "Reiner Assails Kolts Report," *Los Angeles Times*, July 22, 1992, p. B-1.

²¹ Sheryl Stolberg, "Critics Say Kolts Report is Flawed by Bias, Errors," *Los Angeles Times*, July 28, 1992, p. A-1.

²² Tobar and Reich, "Probe Finds Pattern," *Los Angeles Times*, July 21, 1992, p. A-1.

civil liberties groups were disappointed that the report did not go further in holding Sheriff Block responsible for officer misconduct. "What we found incredible was that this organizational dysfunction can be found to exist, but it's as though the chief of the department, the sheriff, had nothing to do with it."²³ Groups also criticized the report for failing to call for stronger reforms such as an independent civilian review board.²⁴

The LASD formed a task force to analyze the 359-page report and its 180 recommendations. In October 1992, the LASD released a 289-page response to the *Kolts Report*. The LASD claimed that 111 of the 180 recommendations had already been implemented or were in the process of implementation prior to the release of the *Kolts Report*; 26 had been implemented or were in the process of implementation since the release of the report; 19 were being studied; and the remaining 24 recommendations would not be implemented.²⁵

The sheriff's cooperation is critical for implementing reforms in the department. As noted in the preceding subsection, although the County Board of Supervisors controls the budget, the

sheriff is an independent elected officer who determines the policies of the department without oversight.²⁶ As Sheriff Block continued to resist calls for an independent civilian review board, County Counsel De Witt W. Clinton reportedly issued a legal opinion stating that the County Board of Supervisors had no authority to create a civilian review board over Sheriff Block's objections.²⁷ The Coalition for Sheriff's Accountability²⁸ insisted, however, that "[i]t is undisputed that the California Constitution, state laws, and the county charter empower the L.A. County Board of Supervisors to establish a body to review civilian complaints against law enforcement officers."²⁹

On January 4, 1993, Sheriff Block and Judge Kolts released a joint statement addressing the implementation of the *Kolts Report* recommendations. Some of the topics addressed included: establishing new programs to increase the hiring and promotion of women, minorities, and gay and lesbian individuals;³⁰ reformulating the canine policy;³¹ establishing an early warning and tracking system;³² sending roll-out teams to all shootings;³³ hiring a civilian ombudsman;³⁴ es-

²³ Sheryl Stolberg, "The Troubled L.A. County Sheriff's Department; Christopher Panel Drew Map that Showed Kolts the Way," *Los Angeles Times*, July 21, 1992, p. A-19 (quoting Gloria Romero, cochair, Coalition for Sheriff's Accountability). Other individuals similarly lay responsibility for the LASD's ineffectiveness on Sheriff Block. One writer wrote: "Although I praise James Kolts and his staff for their probe into the Los Angeles County Sheriff's Department's lax and ineffective discipline, I am deeply disappointed they tiptoed around Sheriff Block and failed to hold him accountable for the wrongdoings of his department." Sgt. Chuck Urso, LAPD, "Kolts Report on L.A. Sheriff Dept.," *Los Angeles Times*, Aug. 2, 1992, p. M-4 (Opinion). Another stated: "While the Kolts report issues a scathing indictment that consistently indicts the management of the sheriff's department, it fails to place the blame where it belongs, on Sheriff Sherman Block." Samuel Paz and Gloria Romero, "Elephant-Size Abuse, Mouse-Size Reform," *Los Angeles Times*, July 22, 1992, p. B-7 (Op-Ed) (hereafter cited as Paz and Romero "Elephant-Size Abuse").

²⁴ "And though acknowledging the existence of scores of rogue deputies within the ranks, a failed and illogical disciplinary system and the lack of uniform tracking of excessive-force complaints, the Kolts report—in contrast to the bold Christopher Commission—fails to call for truly effective independent civilian review body." Paz and Romero "Elephant-Size Abuse."

²⁵ Los Angeles County Sheriff's Department, *A Response to the Kolts Report*, October 1992, Executive Summary, p. 1 (hereafter cited as *LASD Response*).

²⁶ Kenneth Reich and Federick Muir, "Block's Cooperation Key to Reform Measures," *Los Angeles Times*, July 21, 1992, p. A-1.

²⁷ Kenneth Reich, "Block, Kolts Propose to Conduct Review Panel," *Los Angeles Times*, Jan. 5, 1993, p. B-1.

²⁸ The Coalition for Sheriff's Accountability was formed in 1991 after a series of fatal shootings by LASD deputies. Membership included over 40 individuals and organizations. The Coalition for Sheriff's Accountability, *Los Angeles County Sheriff's Department Civilian Review: A Blueprint for Accountability*, Dec. 15, 1992, p. 2 (hereafter cited as *Blueprint for Accountability*).

²⁹ The Coalition for Sheriff's Accountability, *Los Angeles County Sheriff's Department Civilian Review: A Blueprint for Accountability [Supplement]*, Jan. 4, 1993, p. 8 (hereafter cited as *Blueprint for Accountability [Supplement]*). According to the Coalition of Sheriff's Accountability, "Article 11, section 4(h), of the California Constitution provides that Charter Counties have all the powers specified by the Constitution or by state statute. Government Code Section 31000.1 gives this Board of Supervisors power to appoint commissions of citizens to study problems of general or special interest to the Board." *Ibid.*

³⁰ *Joint Statement of Sheriff Sherman Block and Judge James Kolts*, Jan. 4, 1993, p. 1 (hereafter cited as *Joint Statement*).

³¹ *Ibid.*, p. 2.

³² *Ibid.*, p. 3.

³³ *Ibid.*, pp. 3-4.

³⁴ *Ibid.*, pp. 4-5.

establishing a panel of retired judges;³⁵ establishing community advisory committees at the station level;³⁶ and reducing the amount of time a deputy is assigned to custody to a range of 18 months to 2 years.³⁷ Sheriff Block opposed the *Kolts Report* recommendation that a commission be appointed to audit and monitor the department on an ongoing basis³⁸ but agreed to continue cooperating with Judge Kolts or his successor for periodic auditing.³⁹ On January 5, 1993, the County Board of Supervisors voted unanimously to adopt the compromise agreement entered into by Sheriff Block and Judge Kolts.

The County Board of Supervisors appointed Merrick Bobb as special counsel to oversee implementation of the reforms. Under a contract, Mr. Bobb was to audit the LASD for 3 years at 6-month intervals beginning on July 1, 1993.⁴⁰ The contract was due to expire in June 1996, but has been extended through December 1999.⁴¹ Mr. Bobb heads a team of attorneys and experts of 10 to 15 people to carry out the semiannual reviews. A critical provision in the contract provides him with access to LASD employees and records on an attorney client basis.⁴²

The Los Angeles Hearings

In June 1993, the U.S. Commission on Civil Rights held a 3-day hearing in Los Angeles. Part of that hearing examined the policies and practices of the LASD. At the time of the 1993 hearing, reform at the LASD was at an embryonic stage. The effects of recent reforms were too new

to gauge, while other changes had been proposed but not yet implemented. In September 1996, the Commission revisited Los Angeles to conduct a followup hearing on the progress of the reforms in both the LASD and the LAPD. By then, 4 years had elapsed since the *Kolts Report* was issued. In those 4 years, the LASD implemented changes that addressed many of the *Kolts Report* criticisms. Special Counsel Merrick Bobb continues to monitor the progress, commending the department for improvements while calling for action in remaining problem areas.

As detailed more fully below, Sheriff Block testified at the 1996 hearing about numerous changes within the department, including the implementation of a tracking system, procedures for reporting and reviewing the use of force, reform of the canine unit, and efforts to increase the diversity of the department. Other witnesses, however, were skeptical of the effectiveness of the reforms and they testified about deputy misconduct exacerbating racial tensions, problems with filing complaints, and the lack of management at the LASD.

Section II: Current Issues and Reforms in the Los Angeles County Sheriff's Department

Accountability

In many ways, accountability is at the crux of criticisms surrounding the LASD. Although the sheriff is an elected officer, many do not consider the opportunity to vote for sheriff an effective means of controlling misconduct by department deputies. Under this view, the LASD is essentially responsible for policing itself. Although the sheriff has instituted reforms to increase accountability, critics are not satisfied that the department will be able to keep itself in check. This skepticism of police integrity in disciplining its own officers underlies continuing calls for instituting some form of independent oversight.

To instill internal accountability within the LASD, the *Kolts Report* stressed the need to have systems in place so that supervisors could track the use of force and watch for problem areas. Once the LASD has the capability and is in the practice of identifying problem areas, the *Kolts Report* emphasized the need for the department to take appropriate action, such as increasing training, revising departmental policy, or imposing discipline. Sheriff's department ex-

³⁵ *Ibid.*, p. 5.

³⁶ *Ibid.*, p. 6.

³⁷ *Ibid.*, pp. 2-3.

³⁸ "The department disagrees that such a commission is necessary, given that the Board of Supervisors has audit authority. The department will work with the Board as to the best way to implement an audit process." *LASD Response*, p. 277.

³⁹ *Joint Statement*, p. 6.

⁴⁰ County of Los Angeles, Board of Supervisors, Contract for Special Counsel, item 1(A), Jan. 5, 1993 (hereafter cited as Contract for Special Counsel).

⁴¹ Extending Merrick Bobb's appointment was part of a settlement agreement reached in *Thomas v. County of Los Angeles*, 987 F. 2d 504 (9th Cir. 1993).

⁴² Merrick Bobb, special counsel, telephone interview, July 11, 1996 (hereafter cited as Bobb Interview); Contract for Special Counsel, item 1(B).

executives have recognized the need for ensuring accountability within the department. A November 1, 1995, memorandum from the undersheriff and the assistant sheriff sent to division chiefs outlines expectations and suggestions for greater accountability in areas such as force management, the public complaint process, administrative investigations, discipline, and performance evaluations.⁴³ To enhance accountability to the public, the *Kolts Report* recommended better access to the complaint system and some civilian input into the resolution of complaints. The report also stressed the need for continued outside monitoring.

Internal Accountability Tracking System

A key recommendation of the *Kolts Report* was to implement a comprehensive tracking system within the sheriff's department that would combine statistics on civilian complaints, disciplinary measures, and the outcome of any litigation. Such a tracking system would serve multiple purposes. First, it would help detect officers who have a propensity for using unnecessary force. These officers could undergo additional training to preempt more serious incidents that could lead to discharge. Second, a tracking system would enable the LASD to identify situations particularly prone to the use of force and respond by training officers to deal with those situations successfully. Third, a tracking system would identify stations with members disproportionately using excessive force. Fourth, a tracking system would send a message to all personnel that controlling the use of excessive force is a high priority item. Another benefit identified by the *Kolts Report* is that the LASD would have data to counter public perceptions that misconduct is widespread.⁴⁴

The *Kolts Report* recommendation for a tracking system came after a detailed investigation into the LASD's internal procedures for dealing with the use of force by its deputies. The investigation revealed that the LASD had no

system for compiling data on the use of force, potential problem officers, or citizen complaints.⁴⁵ In the joint statement with Judge Kolts, Sheriff Block agreed to "implement an early warning and tracking system that records, integrates, and reports data regarding use of force, citizen's complaints, administrative investigations, criminal investigations or prosecutions, civil claims, civil lawsuits, and disciplinary history."⁴⁶

A system for tracking the use of force is a vital part of reforming the LASD. A computerized system with data in an easily retrievable form can assist managers in gaining information about department operations. One civil rights attorney characterized the tracking system as "absolutely necessary."⁴⁷ Community groups and civil rights organizations are particularly interested in ensuring that the LASD track the use for force by individual deputies and supervise those who have a propensity for using excessive force.⁴⁸ An ongoing concern is the quality of the data, which is affected by how and what information is entered into the system. Once in the system, another issue is how the LASD will make use of the data.⁴⁹ At least one witness stated that the LASD simply ignores the information.⁵⁰

According to Sheriff Block, the early warning system was in the process of development before

⁴⁵ *Ibid.*, pp. 169-76.

⁴⁶ *Joint Statement*, p. 3.

⁴⁷ Carol Watson, attorney, Manes & Watson, testimony, *Racial And Ethnic Tensions in American Communities: Poverty, Inequality And Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, (*L.A. Hearing*) Sept. 12-13, 1996, vol. 2, p. 10 (hereafter cited as *Watson Testimony*).

⁴⁸ For example, Ms. Watson testified: "There are many sources of information that the sheriff's department could use and enter into that tracking system that would enable them to do an adequate job of supervising individual deputies who appear to have a propensity for using excessive force." *Ibid.*

⁴⁹ *Ibid.*; Gloria Romero, Ph.D., assistant professor of Psychology, California State University, Los Angeles, telephone interview, Aug. 19, 1996 (hereafter cited as *Romero Interview*).

⁵⁰ Responding to a question on the effectiveness of a tracking system, Ms. Watson testified, "I think that it could be effective, but they would have to pay attention to it for it to be effective. And that is one of the most serious problems in the sheriff's department, that they have an abundance of information that they simply ignore." *Watson Testimony, L.A. Hearing*, vol. 2, pp. 10, 37-38.

⁴³ Memorandum from Jerry L. Harper, undersheriff, and Michael E. Graham, assistant sheriff, to division chiefs, Los Angeles Sheriff's Department, "Accountability," Nov. 1, 1995 (hereafter cited as *LASD Accountability Memorandum*, Nov. 1, 1995).

⁴⁴ *Kolts Report*, pp. 169-71.

the Kolts investigation. Department supervisors may now access all relevant information through the Personnel Performance Index (PPI). All use of force reports, traffic accidents, citizen complaints, commendations, and litigation naming an LASD member is logged into the PPI. Each month, management reviews a printout of the data.⁵¹ Sheriff Block cautioned, however, that in order to utilize the system properly, the inquirer must review the details in the original document. For example, the use of force is sometimes required for the job but all uses of force are recorded, not just inappropriate uses of force.⁵² Only management officials have access to the system.⁵³ At the hearing, Sheriff Block testified that the only portion of the tracking system left to implement was an automatic threshold warning or alert.⁵⁴

Under a settlement agreement reached in *Thomas v. County of Los Angeles*,⁵⁵ the LASD was required to have the system fully operating by March 1997.⁵⁶ During Commission staff followup to the 1996 hearing, the LASD reported that the final phase of the PPI was in fact implemented in March 1997.⁵⁷ The computerized system has the capability of allowing each department manager to set thresholds for various categories of data maintained by the PPI. When an employee exceeds the threshold number of

incidents, a notification is sent by electronic mail to the manager. The manager has discretion in deciding what action to take, if any.⁵⁸

The tracking system met with resistance from LASD personnel. A witness from the Association of Los Angeles Deputy Sheriffs testified:

[The] Kolts report recommended a computer tracking system for every allegation made against our members. That system is now called the Personnel Performance Index, or PPI, it's now in place. It administers our members by number, not by quality of performance, and it creates a process that allows false allegations to impede promotions and transfers of our members. The situation is bad for morale, and it provides no greater accountability from our members.⁵⁹

Sensitive to the concerns of deputy sheriffs, the department emphasized that the tracking system is a pointer tool that alerts management to investigate further, rather than a punishment tool based on numbers. An internal memorandum directs managers to explain to personnel that "the summary reports produced by the databases are designed to serve as 'pointers' for determining when to conduct a more in-depth analysis of performance—not for making direct, unsupported decisions."⁶⁰ Managers are also urged to use their "initiative, insight, and judgment in analysis and interpretation of personnel performance information."⁶¹

Amid early concerns by LASD personnel over how the tracking system would be used, Merrick Bobb stated that "[t]he PPI is a tool for inquiry, investigation, and, if necessary, for intervention; not for punishment per se."⁶² In his *6th Semiannual Report*, Mr. Bobb gave the LASD high marks for its progress on the computer tracking system. He commended the department for using its interim system as a pointer to identify approximately 100 employees who appeared to pose a high risk. The LASD examined the work histories of each person and developed individu-

⁵¹ Sherman Block, sheriff, County of Los Angeles, testimony, *L.A. Hearing*, vol. 2, pp. 108–09 (hereafter cited as Block Testimony).

⁵² Block Interview.

⁵³ Block Testimony, p. 108.

⁵⁴ Sheriff Block testified: "The purpose of the tracking system is to be able to evaluate the individual performances, as well as managerial performance, by seeing the activities that go on in a unit, for example, and how is the management of that particular facility or unit addressing this issue. . . . When the system is totally complete, what will happen is. . . we will set thresholds for different kinds of activity; perhaps for force complaints, for traffic accidents, for litigation or whatever. And when those thresholds are reached, the system will automatically flag that individual to alert management that we have an individual that needs to be looked at, because they are maybe in a position where they need counseling, additional training, perhaps reassignment." Block Testimony, *L.A. Hearing*, vol. 2, pp. 108, 109.

⁵⁵ 978 F. 2d, 504 (9th Cir. 1993).

⁵⁶ Watson Testimony, *L.A. Hearing*, vol. 2, p. 9.

⁵⁷ Sherman Block, sheriff, County of Los Angeles, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, Sept. 4, 1997, p. 1 (hereafter cited as Block Letter, Sept. 4, 1997).

⁵⁸ *Ibid.*

⁵⁹ Jeff Monical, communications coordinator, Association for Los Angeles Deputy Sheriffs, testimony, *L.A. Hearing*, vol. 2, p. 79 (hereafter cited as Monical Testimony).

⁶⁰ LASD Accountability Memorandum, Nov. 1, 1995.

⁶¹ *Ibid.*

⁶² Merrick Bobb, special counsel, *1st Semiannual Report on the Los Angeles County Sheriff's Department*, October 1993, p. 31 (hereafter cited as *1st Semiannual Report* (October 1993)).

alized performance plans. Several of the employees were determined to be competent despite the fact that they were identified by the computer as a potential risk. Mr. Bobb stated that this was a sign that the system was working as they envisioned—as a source of information, alerting management to investigate further without a rush to judgment, thus allowing the department to take proactive measures.⁶³ Nevertheless, in 1998 Mr. Bobb reported that there was continued mistrust of the PPI among deputies.⁶⁴

Despite the promising potential of the PPI, documents submitted to the Commission by the LASD revealed troubling inaccuracies in the data maintained by the system. Pursuant to the Commission's request for information, the LASD submitted departmentwide use of force data from its computerized system as well as monthly reports from the canine unit. The canine unit's monthly reports recorded far more canine bites than the departmentwide database.⁶⁵ When the discrepancy was called to its attention, the LASD explained that the more accurate numbers generated by the canine program manager were used to monitor the canine unit and promised to correct inaccuracies in the departmentwide database.⁶⁶

⁶³ Merrick Bobb, special counsel, *6th Semiannual Report on the Los Angeles County Sheriff's Department*, September 1996, pp. 29–32 (hereafter cited as *6th Semiannual Report* (September 1996)). The report stated: "This is precisely how we envisioned and hoped a computerized tracking system would work—as a tool for inquiry and further investigation, not as an end in itself. The numbers are only pieces of information. As with any piece of data, the facts behind the numbers are far more important than the numbers themselves." *Ibid.*, p. 31.

⁶⁴ Merrick Bobb, special counsel, *9th Semiannual Report on the Los Angeles County Sheriff's Department*, June 1998, pp. 32–34 (hereafter cited as *9th Semiannual Report* (June 1998)).

⁶⁵ The LASD database indicated that canine force incidents numbered as follows: 1992, 7; 1993, 0; 1994, 9; 1995, 1. The monthly canine reports submitted by the LASD recorded the number of canine bites as follows: 1992 (through November), 47; 1993, 42; 1994, 45; 1995, 31. *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

⁶⁶ Sheriff Block explained: "The discrepancy in the canine data from the two databases is apparently due to the fact that canine incidents are intensively documented in a specialized format which differs from the standard use of force report, and therefore data entry into the department-wide system has not been as consistent as it has into the canine database. Because we use the figures generated by the canine program manager for purposes of monitoring canine usage, we were unaware of the error in the other database.

The LASD use of force data provided to the Commission also had no category for shootings until 1995.⁶⁷ While the data submitted for 1995 and 1996 contained separate categories for the use of several types of firearms (handgun, rifle, shotgun, or other), the data recorded no use of a firearm.⁶⁸ However, according to reports by Special Counsel Merrick Bobb, deputies shot 34 suspects or citizens in 1995, killing 10. In the same year, deputies also shot at but missed in 26 incidents.⁶⁹ From January to June 1996, 12 suspects or bystanders were shot—8 of whom were killed—and an additional 10 were shot at, but not hit.⁷⁰ These examples highlight the importance of ensuring that a system is followed for inputting data into the tracking system. While the PPI enables the LASD to monitor its activities through an integrated computerized system, its effectiveness relies on department members accurately entering information.

The usefulness of the system also depends upon the types of information that the department chooses to maintain. Because a number of witnesses alleged that excessive force is used disproportionately on minorities, the Commission requested LASD information on the race of any suspect subjected to the use of force, the type of force used, and the suspected crime. The LASD was unable to provide this information but indicated that it would have the capability of doing so with the PPI.⁷¹

Collecting information on the race, age, and gender of people who file complaints with the

Now that we are aware of the difference in the databases, we will enter the 1994–1996 canine use of force into the PPI database and ensure that the current and future year data is entered as well." Block Letter, Sept. 4, 1997, p. 1.

⁶⁷ The department indicated that the "Type of Force" designations were changed in 1995. Table (2c) Total Force Used Broken Down by Methods (excluding Custody Division(s)) by Year, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

⁶⁸ *Ibid.*

⁶⁹ *6th Semiannual Report* (September 1996), p. 38.

⁷⁰ *Ibid.*

⁷¹ Specifically, Sheriff Block stated: "We do not have the capability of reporting the arrest charges in force incidents for the time period 1991–1996. During this interval we were developing and using an interim version of the Personnel Performance Index which did not have all the capabilities of the current, fully integrated version, operational since March, 1997. We will now be able to track and report arrest charge information for calendar 1997 and forward." Block Letter, Sept. 4, 1997.

LASD was the subject of some dispute. The American Civil Liberties Union of Southern California (ACLU-SC) reported that the sheriff's department would not transfer data on the race, age, and gender of complainants to the PPI and was no longer collecting data on the race and age of people who file complaints with the department.⁷² The ACLU-SC criticized this decision in a September 1997 report:

By failing to transfer existing data on race, age and genders of complainants to the new Personnel Performance Index (PPI) and by eliminating blocks on the standard department complaint form that gathered age and race of a complaining party, the LASD has essentially destroyed its own ability to assess the demographics of its civilian complaints.⁷³

After considering the criticisms, the LASD resumed collection of race, age, and gender information of complainants.⁷⁴

Use of Force Reporting and Documentation

The effectiveness of the Personnel Performance Index (PPI) depends upon the flow of accurate information into the system. Of particular concern is the department's ability to track the use of force by deputies. LASD officers must report "any use of force which is greater than that required for unresisted Department-approved searching or handcuffing,"⁷⁵ and any use of force

resulting in injury or complaint of pain.⁷⁶ Officers who use or witness reportable force must verbally notify their supervisor (with the minimum rank of sergeant). The supervisor determines whether to obtain a separate report from witnesses.⁷⁷ Reportable force is significant under the following conditions: "suspect injury resulting from use of force; complaint of pain or injury resulting from use of force; indication or allegation of misconduct in the application of force; any application of force that is greater than a Department-approved control hold or come-along."⁷⁸ In cases of significant uses of force, the field sergeant or immediate supervisor is directed to locate and interview all potential witnesses and document their statements, photograph the scene, complete a Supervisor's Report, Use of Force, interview medical personnel, and where appropriate, photograph injuries.⁷⁹

Unless a Professional Standards and Training Department (PSTD) response team is called (see below), the watch commander or supervising lieutenant prepares a force review package (FRP) documenting the incident.⁸⁰ All force packages are forwarded to the station captain who decides whether to take further action. The captain may (1) initiate a station investigation; (2) request IAB to investigate; or (3) request an

⁷² American Civil Liberties Union of Southern California (ACLU-SC), *Disturbing Trends: Examining Complaints Against the Los Angeles County Sheriff's Department*, September 1997, p. 19 (hereafter cited as ACLU-SC, *Disturbing Trends: Complaints & the LASD*).

⁷³ Ibid. Ramona Ripston, executive director of the ACLU-SC said: "The leadership of the department needs to build strong ties with all of the communities in which it serves. . . . To identify problems, to understand the relationships between law enforcement and those served, to nurture trust and cooperation, it is absolutely essential to maintain adequate data on the concerns of specific communities. To eliminate race and age identification on citizen complaint forms removes essential information." ACLU-SC, "Complaints Against the Sheriff's Department on the Rise, Says Report by ACLU of Southern California; LASD Also Eliminates Race Data From Complaint Information," press release, Sept. 10, 1997 (hereafter cited as ACLU-SC, "Complaints Against the Sheriff's Department on the Rise").

⁷⁴ Sherman Block, sheriff, County of Los Angeles, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, May 14, 1998, p. 2 (hereafter cited as Block Letter, May 14, 1998).

⁷⁵ LASD Manual, §5-09/430.00.

⁷⁶ Ibid. Low levels of force, such as forcing a person's hand behind his back, is reported to the sergeant, a form is filled out, but there is no detailed force review unless a complaint is made. For significant uses of force, such as striking a person, or whenever there is a complaint of pain or visible injury, a force package is compiled with a complete investigation. Norman Smith, captain, Internal Affairs Bureau, Los Angeles Sheriff's Department, telephone interview, Aug. 28, 1996 (hereafter cited as Smith Interview).

⁷⁷ LASD Manual, §5-09/430.00.

⁷⁸ See LASD Manual §5-09/430.00.

⁷⁹ Ibid.

⁸⁰ Ibid. The Force Review Package includes the following: (1) A memorandum to the unit commander explaining the incident, witness statements, and findings of the review; (2) The supervisor's use of force report; (3) A copy of supplemental reports by involved officers; (4) A copy of in-service rosters for the relevant shift(s); (5) A copy of any medical reports; (6) Photographs or video-tapes of the suspect's injuries or areas of alleged injury; (7) An audio or video tape of the watch commander or other supervisor's interview of the suspect, inmate, or witnesses; and (8) Any other relevant material such as radio transmission tapes. Merrick Bobb, special counsel, *4th Semiannual Report on the Los Angeles County Sheriff's Department*, June 1995, pp. 30-31 (hereafter cited as *4th Semiannual Report* (June 1995)); LASD Manual §5-09/430.00.

investigation by the Internal Criminal Investigations Bureau (ICIB) if there is possible criminal misconduct.⁸¹ If the injured person is taken to a hospital for treatment, the captain submits an abridged version of the force package to the division chief and the Internal Affairs Bureau (IAB).⁸² If the division chief disagrees with the captain's decision, he or she may request further investigation by IAB or ICIB.⁸³

The watch commander or supervising lieutenant must notify an on-call IAB lieutenant in 11 specific instances, including shootings by a department member, other serious injuries caused by a department member, canine bites requiring medical treatment, and inmate deaths other than from natural causes.⁸⁴ The on-call lieutenant decides whether to activate a PSTD response team, which is made up of representatives from different departments, depending on the type of incident. The team analyzes the incident and prepares a report. A PSTD response team is mandatory in the following cases: (1) all shootings in which a department member intentionally fires at a person; (2) force resulting in hospitalization; (3) any death following an altercation with any department member; (4) all head

strikes with impact weapons; and (5) all large party situations where force is used.⁸⁵ In 1994 there were 107 mandatory roll-outs by the PSTD response team.⁸⁶

Special Counsel Merrick Bobb audited a sample of 73 force review packages from three stations and one jail prepared between January and June 30, 1994. He found that 25 percent of the packages were "thorough, complete and contained excellent analysis," 50 percent were "satisfactory," and 25 percent had "significant problems." Mr. Bobb reported that packages prepared by the jail showed the most problems.⁸⁷ Approximately 80 percent of the packages were missing tapes of witness interviews.⁸⁸ Mr. Bobb also found that the watch commander's memoranda were often incomplete or misleading.⁸⁹ In 25 percent of the audiotaped interviews, there were "non-trivial" deficiencies. These included interviews ignoring a citizen's allegation of misconduct (particularly verbal misconduct); those showing bias on the part of the interviewer; and those revealing hostile or sarcastic LASD personnel sometimes arguing with the suspect about what happened.⁹⁰

In 1996 Mr. Bobb conducted a second review of force packages, which were prepared from January 1, 1996, through June 30, 1996, at the Inmate Reception Center.⁹¹ Overall, he found the completeness of the files "impressive," but cautioned against inferring that Force Review Packages at other facilities were as complete because he did not audit other facilities.⁹² Mr. Bobb made a few suggestions for improvement such as interviewing medical personnel and improving the quality of some of the videotapes. He also found some incidents of injury to an in-

⁸¹ *4th Semiannual Report* (June 1995), p. 31.

⁸² This package contains: (1) The watch commander's memorandum; (2) The supervisor's use of force report; and (3) Any supplemental reports from involved officers. *Ibid.*

⁸³ *Ibid.*

⁸⁴ The on-call IAB lieutenant must be notified immediately in the following cases:

"All shootings by any Department member, both on-duty and off-duty, including accidental discharges and the destruction of animals. (emphasis in the original).

"All incidents in which deputy personnel are shot.

"Hospitalizations due to injuries caused or allegedly caused by any Department member.

"Skeletal fractures caused or allegedly caused by any Department member.

"Significant force used by any Department member during or following a vehicular or foot pursuit.

"All large party situations where force is used.

"Injury or complaint of injury to a person's head, resulting in hospital treatment, following contact with any Department member (not applicable to contamination due to O.C. spray).

"All head strikes with impact weapons.

"Canine bites resulting in medical treatment.

"Any death following contact with any Department member.

"Inmate deaths from other than obvious natural causes."

LASD Manual §5-09/434.05.

⁸⁵ *Ibid.*

⁸⁶ *4th Semiannual Report* (June 1995), p. 30.

⁸⁷ *Ibid.*, p. 32.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p. 33.

⁹⁰ *Ibid.*, pp. 37-38.

⁹¹ During this period there were 104 force incidents at the center, with 48 involving significant force and 22 requiring notification of PSTD. Mr. Bobb evaluated Force Review Packages arising from force incidents where PSTD notification was required, but PSTD exercised its discretion not to send a response team. *6th Semiannual Report* (September 1996), p. 23.

⁹² *Ibid.*

mate's head or face that should have triggered PSTD notification.⁹³

Proper use of force reporting by deputies and their supervisors is necessary for triggering the department's review and response procedures. Merrick Bobb reviewed citizen complaints to determine whether officers were reporting the use of force. He found that the LASD personnel appeared to be satisfying the reporting requirements.⁹⁴ One witness at the hearing noted, however, that citizens with legitimate issues will not always lodge a complaint with the LASD.⁹⁵

Administrative Investigations

Internal administrative investigations are triggered by a citizen's complaint or by a complaint from a department member, usually a manager. Investigations are divided between individual stations or units and the Internal Affairs Bureau (IAB). The unit generally handles smaller cases while IAB investigates more complex cases, including those involving excessive force, sexual or racial harassment, and termination of employment. The division chief, with the concurrence of the Chief of Professional Standards and Training, decides whether to assign an investigation to IAB or to the unit.⁹⁶

An internal investigation may lead to the following findings:

Founded: the investigation establishes that the allegation is true, and the actions of the Department member are prohibited by law or Department policy.

Unfounded: the investigation establishes that the allegation is not true, or the actions of the Depart-

ment member that constituted the basis of the allegation are not violations of law or Departmental policy, and are otherwise not censurable.

Unresolved: the investigation fails to resolve conflicts between the complainant's allegation and the Department member's version of the incident in question; there is no preponderance of evidence to support either version of the incident.

Exonerated: the investigation unequivocally reveals one of the following:

- 1) The Department member was not present when the alleged incident occurred;
- 2) The Department member was not involved either directly or indirectly in the alleged incident; or
- 3) The circumstances constituting the basis of the allegation against the Department member did not occur.⁹⁷

Only a small percentage of complaints, roughly 20 to 25 percent are determined to be founded.⁹⁸ Historically, complaints generated by department members have a greater success rate than civilian complaints. According to a report by the ACLU-SC, out of 215 force related civilian complaints filed with the LASD from 1993 through 1996, approximately 11 percent were determined to be founded, 44 percent were unresolved, 38 percent were unfounded, and the remaining 7 percent of the files were closed.⁹⁹ Out of 403 officers investigated as a result of a complaint by a member of the department, approximately 26 percent were founded, 26 percent were unresolved, 37 percent were unfounded, and the remaining 11 percent of the files were closed.¹⁰⁰

The disparity in outcome between citizen complaints compared with internal complaints is cited as evidence that the LASD considers complaints more seriously when they originate from

⁹³ Ibid., p. 25.

⁹⁴ Mr. Bobb testified: "We tracked to see whether those uses of force forms were being filled out, whether they were being reviewed by supervisors and the like. Then we also tried to determine whether or not there were instances where officers were failing to report force. The only way that we could think of to test that was to look at citizens' complaints that were filed in a particular station at a particular time, in which force was alleged, and then to go back and see whether there was a use of force form for that particular incident. . . . And we were comforted to see that in almost all instances, the force had been reported as the policy required." Merrick Bobb, special counsel, testimony, *L.A. Hearing*, vol. 2, p. 103 (hereafter cited as Bobb Testimony).

⁹⁵ Michael Zinzun, executive director, Coalition Against Police Abuse, testimony, *L.A. Hearing*, vol. 2, p. 50 (hereafter cited as Zinzun Testimony).

⁹⁶ Smith Interview.

⁹⁷ County of Los Angeles Sheriff's Department *Administrative Investigation Manual*, September 1992, pp. 72-3, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a (hereafter cited as *LASD Administrative Investigation Manual*).

⁹⁸ See Merrick Bobb, special counsel, *7th Semiannual Report on the Los Angeles County Sheriff's Department*, April 1997, p. 36 (hereafter cited as *7th Semiannual Report* (April 1997)); ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 3.

⁹⁹ ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 3.

¹⁰⁰ Ibid.

a department member.¹⁰¹ Special Counsel Merrick Bobb reported that there has been some progress in recent years. From January 1995 through December 1996, 20.4 percent of force related citizen allegations were deemed "founded," compared with 27.3 percent of internally generated force related complaints for the same period.¹⁰² However, there may be some question as to the accuracy of these figures. LASD figures reported that from January 1993 to May 1995, citizens made 184 force related allegations. From January 1995 to December 1996, the number of citizen generated force allegations dropped to 44. Merrick Bobb reported that the disparity was probably due to erroneous reports to IAB from the units.¹⁰³

The *Kolts Report* found that IAB investigations were of a better quality than station investigations. Because of the importance of use of force investigations, the *Kolts Report* recommended that IAB handle investigations of citizen complaints of excessive force.¹⁰⁴ Hearing witnesses also placed greater confidence in the integrity and independence of IAB investigations because they are conducted by a separate unit. Merrick Bobb stated, "[w]e are not as comfort-

able, in general with station level investigations as we are with IA investigations, although there has also been improvement in station level investigations."¹⁰⁵ Sheriff Block testified that IAB now conducts all excessive force investigations.¹⁰⁶

In use of force cases, the unit prepares a force package that is reviewed by IAB. If the unit finds that the use of force was appropriate and there is no complaint, IAB does not investigate further. If, in the course of preparing the force package, the unit commander finds something wrong and decides that there should be an investigation, the case is turned over to IAB. Previously, the watch commander could conduct the investigation.¹⁰⁷ Approximately half of IAB investigations arise out of citizen complaints and half arise out of internal requests. IAB conducts approximately 800 investigations per year.¹⁰⁸

IAB also sends a force roll-out team in cases of egregious force. An IAB lieutenant is on-call 24 hours to advise units on the use of force. In severe cases, an IAB roll-out team will conduct a force investigation on the spot.¹⁰⁹ The case then goes before a commander's review committee in which three commanders review the case for policy and/or training issues. At the end of the review, the committee either closes the case, or, if it finds deficiencies, asks for further investigation by IAB. The investigation then becomes internal and returns to the review committee for a determination on whether the complaint is founded. Internal Affairs Bureau Captain Smith estimates that over 95 percent of force cases reviewed by the commanders panel are deemed within policy.¹¹⁰

¹⁰¹ The *Kolts Report* found that "although citizens generated roughly 77% of the excessive force allegations over the last two and a half years, only 6% were sustained. However, Department supervisors who alleged that their subordinates used excessive force had a 27% success rate, roughly 4½ times that of citizens. Our review of nearly 1,000 LASD investigation files and our interviews with both Department personnel and civilians also support the view that the LASD has not dealt adequately with citizen complaints of excessive force." *Kolts Report*, pp. 99-100.

¹⁰² *7th Semiannual Report*, pp. 35-37.

¹⁰³ *Ibid.*, p. 37. Special Counsel Bobb indicated that the data may have been inaccurate due to the lack of uniform reporting procedures. "The LASD currently lacks procedures to ensure that this information is reported and recorded accurately. . . . Perhaps because the source of complaint giving rise to unit level investigations is not audited, stations have not uniformly provid[ed] IAB with an accurate picture of the source of investigations. One knowledgeable Department member observed, 'I think some lieutenants are simply putting their captain's name down as the 'complainant' when there really is some civilian out there who started it all.'" *Ibid.*, pp. 37-38.

¹⁰⁴ "The Internal Affairs Bureau (IAB) should have the sole authority to conduct formal administrative investigations (FAIs) regarding (1) citizen complaints of unnecessary and/or excessive force; (2) citizen complaints of harassment on the basis of race, sex, religion, ethnicity or sexual orientation; (3) officer-involved shootings; and (4) deaths which occur during custody." *Kolts Report*, p. 130.

¹⁰⁵ Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 105-06. Another witness testified, "if you want to file an internal affairs complaint, then what we do is ask the person who's making these allegations to go, to skip the substation level and go to the main headquarters of the Los Angeles County Sheriff's Department, and request a complaint form that will then be sent to internal affairs." Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 52.

¹⁰⁶ Specifically, Block stated that "since 1995, all complaints of unnecessary excessive force are forwarded to the Internal Affairs Bureau, and they are responsible for the investigation." Block Testimony, *L.A. Hearing*, vol. 2, p. 106.

¹⁰⁷ Smith Interview.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.* Special Counsel Bobb noted that the LASD is making some progress in investigating excessive force com-

Discipline

Discipline is an important issue for internal and external accountability. Witnesses testified that the LASD imposes little or no discipline on deputies who engage in misconduct.¹¹¹ From the public's perspective, the department's willingness to discipline members is evidence of its commitment to fighting misconduct. Within the department, discipline is a measure of how serious management is about accountability.

The *Kolts Report* criticized the LASD for failing to discipline deputies. The report found that only 22 deputies, involved in 124 lawsuits with settlements or verdicts of over \$20,000, received any form of discipline.¹¹² During the period covered by the *Kolts Report*, only 6 deputies were terminated (3 over one case), 1 resigned, and 14 were suspended.¹¹³ Little or no discipline was imposed in many of the cases.¹¹⁴ In some cases, according to the LASD, attempts to discipline deputies for misconduct has been frustrated by the Los Angeles County Civil Service Commission. In one such case, seven deputies were dismissed for their involvement in the March 1990 death of suspected robber and kidnapper Arthur Jones.¹¹⁵ In May 1994, the Civil

plaints. "Although the LASD continues to make progress in fairly adjudicating excessive force complaints, the rate of progress appears to have slowed down. On the positive side, LASD executives somewhat more often accept the word of non-LASD personnel over that of their own officers. The LASD is noticeably more willing to listen to inmates who claim to have witnessed officers' use of force. In the past, LASD managers would routinely focus on minor inconsistencies between inmate accounts in order to deem the case 'Unresolved,' overlooking that truthful people nonetheless see and recall events differently." *7th Semiannual Report* (April 1997), p. 38.

¹¹¹ For example, attorney Watson testified that "[t]here is so much information that is available to the sheriff, that the sheriff simply ignores. There are citizen complaints, there are government tort claims, there are lawsuits, there are reports that are indexed . . . in a way that would enable the sheriff to compile very complete profiles of deputies who have a propensity to use excessive force. He totally ignores this . . . totally ignores that when making decisions about whether to assign that officer as a field training officer, or to promote the officer." Watson Testimony, *L.A. Hearing*, vol. 2, p. 38; see also, Patrick J. McDonnell, "County Pays \$123,000 in Excessive Force Case," *Los Angeles Times*, Feb. 13, 1994, p. B-3.

¹¹² *Kolts Report*, pp. 26, 30.

¹¹³ *Ibid.*, p. 30.

¹¹⁴ *Ibid.*, p. 25.

¹¹⁵ Sheriff's deputies allegedly witnessed Arthur Jones robbing and kidnapping a man at gunpoint. Jones was shot in

Service Commission ordered the reinstatement of five of the deputies.¹¹⁶ In another case, Deputy Jose Belmares was dismissed for the 1991 fatal shooting of 15-year-old reputed gang member David Angel Ortiz. The county settled the civil suit brought by the Ortiz family for \$600,000.¹¹⁷ In November 1995, however, the Civil Service Commission ordered the reinstatement of Deputy Belmares with 4 years of back pay.¹¹⁸ The LASD asserts that actions such as these by the Civil Service Commission interfere with reform in the department by blocking attempts to fire problem officers.¹¹⁹

From a different perspective, the Association for Los Angeles County Deputies (ALADS) criticizes the department for overzealousness in investigating complaints and pursuing discipline against deputies.¹²⁰ ALADS argues that the scrutiny over the sheriff's department in recent years has ratcheted up accountability of deputies to the point where a suspect may retaliate against a deputy just by filing a complaint. ALADS charges that even unfounded complaints remain in the deputy's personnel folder throughout his or her career, creating the possibility that a deputy may be passed over for promotions or transfers to coveted positions.¹²¹

In his semiannual reports, Merrick Bobb has criticized the department for failing to discipline department members. In June 1995, Mr. Bobb reported that "captains remain disinclined to impose substantial penalties for serious miscon-

the face during a violent high speed car chase. When deputies shot the tires of his car, Jones reportedly came out of his car with his hands raised. Nonetheless, the deputies allegedly struck him several times and he died three days later. The coroner reported that Jones might have died from the beating even if he had not received a gunshot wound. Carla Rivera, "Sheriff Will Fight Return of 5 Deputies," *Los Angeles Times*, July 23, 1994, p. B-1.

¹¹⁶ *Ibid.*

¹¹⁷ Kenneth Reich, "Panel Orders Sheriff's Deputy Who Killed Youth Reinstated," *Los Angeles Times*, Nov. 22, 1995, p. B-1.

¹¹⁸ *Ibid.*

¹¹⁹ Block Interview. See also, Carla Rivera, "Sheriff Will Fight Return of 5 Deputies," *Los Angeles Times*, July 23, 1994, p. B-1.

¹²⁰ Pete Brodie, president, and Jeff Monical, communications coordinator, Association for Los Angeles County Deputy Sheriffs, telephone interview, July 22, 1996 (hereafter cited as Brodie/Monical Interview).

¹²¹ *Ibid.*

duct.”¹²² He also found “substantial variations in the discipline imposed both between stations and within a given station itself.”¹²³ In a review of 63 cases in which the LASD determined that a department member had used excessive force, Mr. Bobb cited several examples of “trivial discipline for serious misconduct.”¹²⁴ He also found “cases in which the decision to exonerate the officer simply defies explanation.”¹²⁵ In one case decided in 1993, for example, an inmate refused to have his blood pressure taken for a second time and a sergeant ordered a team of seven officers to extract him. The inmate was punched in the face, struck with flashlights, sprayed with mace, and shot with a taser. Badly bruised and cut, the inmate had to undergo surgery for a broken jaw. After an investigation by IAB, the use of force was ruled within policy.¹²⁶ Merrick Bobb also found that discipline was light for gratuitous force in the jails. “We continue to find many investigations wherein deputies respond to talkative or uncooperative inmates with slaps to the face or a shove to the wall. The typical punishment for sustained instances of such conduct is a suspension of two days.”¹²⁷

In his April 1997 report Mr. Bobb reported little change. Although he found fewer incidents of excessive force and some improvement in the investigation of force incidents, many problems remained.

First, there were too many cases of physical force in response to verbal taunts or challenges. Second, troublesome cases rose from the jails even as such cases in patrol had begun to abate. Third, there were too many cases in which the ‘decision to exonerate the officer at times simply defie[d] explanation’(Fourth Semiannual Report at 21). Finally, discipline continued to be too lax for founded instances of excessive force.¹²⁸

Mr. Bobb furthermore stated that “the Department appears to lack the resolve to make the discipline stick during the grievance process. As a result, the Department substantially reduces

the level of discipline as a part of a plea-bargain with the deputy, even when it has strong evidence.”¹²⁹ At the Commission’s 1996 hearing, Mr. Bobb testified that although the department is deciding the cases appropriately, it could be better at imposing discipline.¹³⁰ He stated that there is still a general problem within law enforcement agencies with disparate punishments for different offenses.¹³¹ Sheriff Block cautioned, however, that a person must look at the totality of the circumstances when imposing discipline.¹³²

A related issue is the department’s willingness to reopen a misconduct investigation with the discovery of new evidence. While the LASD’s initial investigation of officer involved incidents may uncover no wrongdoing, evidence subsequently developed in the course of litigation may indicate otherwise. The *Kolts Report* stated that although the department monitors civil litigation cases, the evidence developed in those cases rarely form the basis for a new internal investigation. The report found that the outcome of the litigation did not appear in the deputies’ personnel files and had no effect on performance rat-

¹²⁹ *Ibid.*, p. 40.

¹³⁰ “If you go back through my reports, you will see from time to time that I have taken the department to task either for discipline that I perceive as too light, or for determinations that I think were incorrect. . . . If you ask the question a little differently, and you ask in general, do I believe that they are appropriately deciding these cases, I believe the answer to that is yes. If you ask me the question, do I believe that discipline is adequate, I believe that that is an area where there could still be improvement.” Bobb Testimony, *L.A. Hearing*, vol. 2, p. 107.

¹³¹ “There are some police departments that are extraordinarily severe with respect to allegations of corruption, and a founded allegation of corruption is going to lead to separation of that particular officer. On the other hand, in my view, an equally egregious allegation, proven allegation of excessive force, will be dealt with by giving the individual a few days off.” *Ibid.*, pp. 135–36.

¹³² Sheriff Block commented: “Mr. Bobb talked about the very strong reaction to corruption, and a lesser reaction to uses of force. You know, uses of force, there are degrees of force. And you must look at the totality of the circumstances in making a decision. When you talk dishonesty, as far as we’re concerned, there are no degrees. You’re either honest or your dishonest, and probably the degree of your dishonesty only depends on the opportunity of what was available for you to be dishonest about. And dishonesty can include anything from taking something that doesn’t belong to you, or falsifying a report. And we deal very, very, you know, strongly with dishonesty, because I see that as a character flaw, and the dishonest person has no place in law enforcement.” Block Testimony, *L.A. Hearing*, vol. 2, p. 137.

¹²² *4th Semiannual Report* (June 1995), p. 22.

¹²³ *Ibid.*

¹²⁴ *Ibid.*, pp. 22–23.

¹²⁵ *Ibid.*, pp. 20–21.

¹²⁶ *Ibid.*, pp. 21–22.

¹²⁷ *Ibid.*, p. 25.

¹²⁸ *7th Semiannual Report* (April 1997), pp. 35–37.

ings.¹³³ To the contrary, deputies received commendable evaluations despite evidence developed in civil lawsuits that suggested misconduct.¹³⁴ LASD officials, however, assert that the sheriff has reopened cases upon new evidence discovered, for instance, in a deposition or a trial.¹³⁵ The Sheriff's Department estimates that the number of reopened investigations is "no more than three to five annually."¹³⁶

Merrick Bobb reported in June 1998, that the LASD still does not routinely review past disciplinary decisions when a lawsuit ends in a large settlement or verdict amount.¹³⁷

Accountability to the Public Complaints

A system for receiving complaints from the public is an important accountability issue. Filing a complaint is one method available to the public to redress grievances. The LASD's willingness to accept and act on complaints is seen as a measure of its commitment to accountability. For management purposes, complaints are a source of feedback from the community.

The accessibility of the complaint system is a recurring issue addressed both by the *Kolts Report* and the Commission's Los Angeles hearings. According to the *Kolts Report*, complainants encountered hostile deputies who ignored them or forced them to wait for long periods of time. Some complainants were asked to show proof of citizenship while others were asked to produce their driver's license so that officers could check for outstanding warrants.¹³⁸

At the Commission's 1993 hearing in Los Angeles, Sheriff Block testified that under a system established in 1991, complainants are immediately referred to a watch commander who will either provide a complaint form or take informa-

tion over the phone.¹³⁹ Additionally, signs with a toll-free phone number are displayed on LASD vehicles and posted at each station in different languages.¹⁴⁰ Sheriff Block testified that complaint forms were available in county offices other than the LASD station and that the department sent civilian volunteers to test the system.¹⁴¹ He testified that all members of the department are well aware of the policy.¹⁴² Indeed, LASD procedures require the watch commander of the unit to receive all commendations or complaints from the public.

The watch commander of the unit shall initiate a service review by immediately interviewing any member of the public who, whether in person or by telephone, offers a comment. It is the watch commander or supervising lieutenant's responsibility to hear every commendation or complaint, even if another unit's personnel are involved, and to immediately complete a Watch Commander's Service Comment Report form. In cases of public input received through the mail, the unit commander shall designate a lieutenant to complete the Service Comment Report form.¹⁴³

Despite the LASD's efforts to improve its complaint system, there is still a lack of public confidence in the system.¹⁴⁴ Dr. Gloria Romero, a witness at the 1993 hearing, provided anecdotal evidence of continuing problems.¹⁴⁵ Such con-

¹³³ Ibid., p. 63.

¹³⁴ Ibid., p. 64-66.

¹³⁵ Lee McCowen, captain, Los Angeles Sheriff's Department, telephone interview, July 31, 1996 (hereafter cited as McCowen Interview).

¹³⁶ Sherman Block, sheriff, County of Los Angeles, letter to Stephanie Y. Moore, general counsel, U.S. Commission on Civil Rights, Dec. 13, 1996.

¹³⁷ *9th Semiannual Report* (June 1998), pp. 79-80.

¹³⁸ *Kolts Report*, p. 105.

¹³⁹ Sherman Block, sheriff, County of Los Angeles, California, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality And Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, June 15, 1993, vol. 2, p. 35 (hereafter cited as Block Testimony, *L.A. Hearing* (1993)).

¹⁴⁰ Ibid.

¹⁴¹ Ibid., pp. 35-36.

¹⁴² Ibid., p. 36.

¹⁴³ LASD Manual, §3-04/010.05.

¹⁴⁴ For example, Michael Zinzun, executive director of the Coalition Against Police Abuse testified that "it is our feeling that the people are discouraged or looked at as being suspicious, or not telling the truth, and so as a result of that, it's either thrown in the wastebasket, or simply put aside as being not enough information. And so it never reaches that officer's file." Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 51; Michael Zinzun, executive director, Coalition Against Police Abuse, telephone interview, Aug. 20, 1996 (hereafter cited as Zinzun Interview).

¹⁴⁵ Dr. Gloria Romero recounted the following situation: "The woman, a 20 year old Latino, modern-abled Spanish speaker, went to the counter along with a 16 year old Latino. All they were going to ask is, 'We would like to have a form to file a complaint against a Sheriff deputy.' That's all they were going

cerns had not subsided when the Commission returned to Los Angeles in 1996. At that time, Dr. Romero maintained that while there may have been an effort to make the complaint system more accessible, that effort was short lived and people still do not know how to access the complaint system.¹⁴⁶ Some observers also continued to assert the need for greater availability of complaint forms outside of the sheriff's office, such as at other county offices and at public libraries.¹⁴⁷

Top LASD officials have tried to address the public's criticism of the LASD for allegedly discouraging complaints and displaying hostility toward complainants. An internal memorandum sent to division chiefs outlines expectations that personnel will maintain a complaint system that is open and responsive to the public.¹⁴⁸

Michael Zinzun, executive director of the Coalition Against Police Abuse (CAPA), testified that people are discouraged from filing complaints with the LASD. He said that complainants are "rudely rebuffed" by station personnel or misinformed about the correct procedures.¹⁴⁹

to ask. My feeling is that's all they needed to ask. To simply ask for a form. Thirty minutes later, they walked out of the station, and this was only after the form had been thrown at them by the sheriff deputy there, 30 minutes, when it should have taken, what, two minutes, five minutes, ten minutes at most. . . ." Gloria Romero, Ph.D., associate professor of Psychology, California State University, Los Angeles, testimony, *L.A. Hearing* (1993), vol. 2, pp. 13-16.

¹⁴⁶ Gloria Romero, Ph.D., assistant professor of psychology, California State University, Los Angeles, telephone interview, Aug. 19, 1996 (hereafter cited as Romero Interview).

¹⁴⁷ Romero Interview; Zinzun Interview.

¹⁴⁸ LASD Accountability Memorandum, Nov. 1, 1995. Some of the expectations detailed in the memorandum are as follows:

"That you will emphasize to your Commanders, Captains, and Directors who in turn will emphasize to all personnel, the expectation that people shall not be discouraged or intimidated from filing complaints.

"That people with complaints are immediately put in touch with the Watch Commander or supervising lieutenant.

"That Complaints not be selectively accepted and investigated. Supervisors shall refrain from accepting only those complaints with a predetermined outcome that will clear the deputy. Complaints must not be refused simply because of the belief that the complaint is frivolous. All complaints are to be documented on the Service Comment Report and processed as outlined in Department policy and procedural information."

Ibid.

¹⁴⁹ "At the Coalition Against Police Abuse, we take hundreds of complaints each year, but when it comes to filing com-

ACLU-SC researchers who visited some of the stations found that deputies were hostile and uncooperative at some stations. "Deputy X demanded to know the sister's name [scenarios used by the interns were based on the pretext that they were seeking information on filing a complaint for a relative or friend] to run her for warrants before he would give us any information."¹⁵⁰ At another station, "[o]fficer X was sitting behind a desk labeled 'Jailer.' Officer X first gave us the toll-free number. However, he explained that calling that number prolongs the investigation."¹⁵¹

Because of mistrust of the LASD's complaint process, some complainants file a complaint with CAPA, or Police Watch, a nonprofit civil rights organization, without filing directly with the department.¹⁵² Mr. Zinzun said that many of the complaints remain at the substation level without reaching the Internal Affairs Bureau (IAB).¹⁵³ CAPA sometimes advises complainants to skip over the substation and go directly to LASD headquarters to request a complaint form that will be sent to IAB.¹⁵⁴

Complaints are one indicator of LASD performance. Mr. Zinzun indicated that there had been little change in the number of excessive force complaints received by CAPA since the institution of the Kolts Commission's reforms.¹⁵⁵

plaints at the substation level people with legitimate complaints find themselves rudely rebuffed by station personnel, or misinformed as to the correct procedures for filing these grievances." Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 32.

¹⁵⁰ ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 17.

¹⁵¹ *Ibid.*, p. 18.

¹⁵² Zinzun Testimony, *L.A. Hearing*, vol. 2, pp. 49-51.

¹⁵³ *Ibid.*, p. 52.

¹⁵⁴ *Ibid.*

¹⁵⁵ "What we are saying is that there hasn't been an increase and there hasn't been a decrease [in the number of excessive force complaints]. It's basically leveled out to what it's been traditionally. . . . but I think it's important to note that there are number of people that have been dissuaded from filing complaints, or have been frustrated, and these people are not included. There have also been complaints filed with the County Board of Supervisors, rather than going to the sheriff's departments. And so that tends to be put in a different category. . . . Again, we have to also understand that a lot of people will complain to us and not to the Sheriff's Department, whether it be through Police Watch, the Coalition Against Police Abuse, or the various centers throughout the Los Angeles area, East L.A. and so on." Zinzun Testimony, *L.A. Hearing*, vol. 2, pp. 49-50.

Merrick Bobb reported, however, that the LASD received fewer complaints in 1996 (annualized at the time of the hearing) than in the 2 preceding years.¹⁵⁶ Mr. Bobb reported that there were 2,131 personnel complaints in 1994 compared with 2,573 in 1995 and 1,154 from January through July 1996.¹⁵⁷ However, a report released on September 10, 1997, by the ACLU-SC stated that the number of complaints against sworn LASD personnel has been increasing since 1993.¹⁵⁸

The numbers and ratios of complaints against LASD sworn personnel have increased steadily overall since the end of 1993 and, although a handful of stations have recorded decreases, the majority of LASD installations continue to experience rapid increases in complaint volumes. This problem must be addressed immediately. Although some data provided by the LASD suggest a lowering of complaint numbers in the first part of 1997, this must be discounted if for no other reason than that a similar report provided to the ACLU last year suggested a decline in 1996, only to end up with the year recording a sharp rise in complaints once all data were finally gathered.¹⁵⁹

The ACLU-SC stated that 9 of the 17 stations and 2 of the 5 jail facilities surveyed showed serious problems in terms of the total number of complaints or the ratio of complaints per deputy.¹⁶⁰

Merrick Bobb testified that from his audit of three or four substations and examination of complaints received by the ombudsman, he is confident that the proper procedures for receiving complaints are followed.¹⁶¹ Mr. Bobb concluded that currently there were no barriers to filing complaints and that forms are available at

places outside of the LASD.¹⁶² Nonetheless, ACLU-SC field researchers who visited the Century and Lennox stations reported that rude and intimidating personnel at those stations could discourage people from making complaints.¹⁶³ There were fewer complaints at the West Hollywood and Pico Rivera stations, and researchers found the personnel at those stations "helpful, concerned and forthcoming regarding citizen complaints."¹⁶⁴ The ACLU-SC report recommended that the LASD review the West Hollywood and Pico Rivera patrol stations "to determine how these two installations appear to have achieved greater—if not perfect—harmony with their local communities."¹⁶⁵

The conviction persists among community members that filing complaints at the LASD may be futile. There is the perception that complaints are not maintained in the deputy's personnel file and that evidence of misconduct is not considered in promotions and assignments.¹⁶⁶ Witnesses also expressed frustration with the seeming reluctance of the Los Angeles County District Attorney's to prosecute law enforcement officers for misconduct.¹⁶⁷

Failure to Prosecute

Critics allege that the Los Angeles County District Attorney's (DA's) office fails to prosecute police misconduct. However, there are several possible reasons for the low prosecution rate of police misconduct cases in any jurisdiction. One is the difficulty of obtaining a police brutality conviction. Another is the need for ongoing cooperation between police agencies and prosecutors in most criminal cases:

Prosecutors need the full and enthusiastic cooperation of the police to be successful in court. Prosecutions of police officers severely jeopardize that relationship. Moreover, prosecutors consider themselves to be on the same side as the police; prosecuting an officer is like going after a friend or relative. Finally, the police who investigate brutality cases have many

¹⁵⁶ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 84.

¹⁵⁷ *6th Semiannual Report* (September 1996), p. 44.

¹⁵⁸ ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 19.

¹⁵⁹ *Ibid.*

¹⁶⁰ The nine stations were Lakewood, Avalon, Walnut/San Dimas, Santa Clarita Valley, Lancaster, Norwalk, East Los Angeles, Lennox, and Century. See ACLU-SC, "Complaints Against the Sheriff's Department on the Rise," p. 15. The other stations surveyed were Crescenta/Altadena, Carson, Industry, Lost Hills, Lakewood, Lomita, Pico Rivera, Santa Clarita, Temple City, and West Hollywood. The two problem jail facilities were Men's Central Jail and the Inmate Reception Center. *Ibid.* The other jail facilities examined were North County Correctional, Pitchess North, and Pitchess South. *Ibid.*

¹⁶¹ Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 144-45.

¹⁶² *Ibid.*, p. 145.

¹⁶³ ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 17.

¹⁶⁴ *Ibid.*

¹⁶⁵ ACLU-SC, *Disturbing Trends: Complaints & the LASD*, p. 19.

¹⁶⁶ Watson Testimony, *L.A. Hearing*, vol. 2, p. 18.

¹⁶⁷ *Ibid.*, p. 17.

ways of discouraging prosecution. Just because police formally present a case to a prosecutor does not mean police hope that charges are filed.¹⁶⁸

While acknowledging the difficulty of winning excessive force cases against police officers, the *Kolts Report* was nevertheless highly critical of the DA's reluctance to prosecute. In the 6½ years preceding the *Kolts Report*, LASD managers referred 57 cases to the Internal Criminal Investigations Bureau. The DA's office prosecuted seven of those cases.¹⁶⁹ Of the 382 questionable shootings that the LASD referred to the DA's office, only one case was prosecuted.¹⁷⁰ Many matters, including officer involved shootings, are referred to the DA's office regardless of any allegation of misconduct. In 1996 and 1997, the LASD referred a total of 126 cases to the Special Investigations Division of the DA's office. Of the 126 cases, there were 31 shootings, 13 excessive force complaints, and 82 cases involving other types of criminal conduct. The DA's office filed 11 criminal cases against sheriff's deputies.¹⁷¹

In January 1993, California State Senator Art Torres introduced a bill creating a special prosecutor to investigate and prosecute misconduct complaints against peace officers.¹⁷² The bill, which was intended to negotiate the legitimate interest of the DA's office in cultivating police cooperation with the public interest in vigorous prosecution of police misconduct, failed to pass; but the issue was not forgotten. In June 1996, a group of some 25 relatives of people killed by law enforcement officers held a demonstration in front of the DA's office and then made their way to the Board of Supervisors meeting to lobby for an independent prosecutor. Protesters remained dissatisfied when instructed to contact the Office of the Ombudsman with their griev-

¹⁶⁸ Samuel H. Pillsbury, professor, Loyola Law School, "Wake Up, Prosecutors, and Smell the Smoke," *Los Angeles Times* (Op-Ed), Jul. 22, 1992, p. B-7.

¹⁶⁹ *Kolts Report*, pp. 110-11.

¹⁷⁰ Pillsbury, "Wake Up, Prosecutors, and Smell the Smoke," p. B-7.

¹⁷¹ Clifford L. Klein, head deputy, Special Investigations Division, Los Angeles County District Attorney's Office, letter to OGC, U.S. Commission on Civil Rights, July 31, 1998.

¹⁷² Cal. S.B. 1335 (1992).

ances.¹⁷³ Over a year later, at a hearing before the Congressional Black Caucus in Washington, DC, CAPA Executive Director Michael Zinzun called for the creation of independent prosecutors to investigate and prosecute police misconduct under a national review board.¹⁷⁴

Office of the Ombudsman

The *Kolts Report* stated that because the LASD is not under civilian oversight, it is necessary to have a detached outsider review the department's investigations of misconduct complaints.¹⁷⁵ Sheriff Block and the Los Angeles County Board of Supervisors agreed to establish an Office of the Ombudsman to act as a liaison between complainants and the LASD. On July 6, 1993, the Los Angeles County Board of Supervisors adopted an ordinance establishing the Office of the Ombudsman.¹⁷⁶ The County Board of Supervisors appointed Rudy DeLeon as the first ombudsman in March 1994, and the office opened in May 1994.¹⁷⁷

With four staff members, the Office of the Ombudsman is the smallest department in the county.¹⁷⁸ Like other departments, the office is accountable to the county administrative officer and the Board of Supervisors.¹⁷⁹ The ombudsman and the assistant ombudsman are the only full-time employees. The duties of the office include facilitating timely investigations by making inquiries with LASD personnel and communicating the progress of investigations to the complainant.¹⁸⁰ Upon request by the complainant, the ombudsman reviews the LASD's find-

¹⁷³ Elyssa Getreu and Dan Lee, "Police Violence," *City News Service of Los Angeles, Inc.*, June 25, 1996.

¹⁷⁴ Michael Zinzun, Coalition Against Police Abuse, Prepared Statement before the Congressional Black Caucus hearings on Police Brutality, Washington, DC, Sept. 12, 1997.

¹⁷⁵ "For purposes of legitimacy, integrity, accountability and trust it is absolutely necessary that there be an opportunity for any person who is aggrieved with the disposition of a police misconduct complaint to have the Department's decision reviewed by a detached outsider." *Kolts Report*, pp. 345-46.

¹⁷⁶ Los Angeles County, Cal. Code ch. 2.37.

¹⁷⁷ Rudy DeLeon, Ombudsman, County of Los Angeles, telephone interview, Aug. 7, 1996 (hereafter cited as DeLeon Interview).

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ Los Angeles County, Cal., Code ch. 2.37.010.

ings for cases in which the complaint was adjudicated unfounded or unresolved. For cases in which the complaint alleges excessive force resulting in hospital examination or treatment, the ombudsman selects a retired judge from an approved panel to review the investigation.¹⁸¹ As of the time of the Commission's hearing, the office had not received a complaint triggering review by a judge.¹⁸²

The establishing ordinance explicitly states that the ombudsman and panel of judges do not have independent investigative authority and are not authorized to initiate or conduct investigations or interview witnesses. Information regarding the conduct and disposition of administrative investigations is confidential.¹⁸³ Thus, the ombudsman may not discuss the details of any discipline imposed on a member of the department. A complainant seeking the aid of the ombudsman or panel judge must waive his or her right to subpoena the ombudsman or panel judge as a witness. The waiver also protects any documents retained by the judge or the ombudsman.¹⁸⁴

The ombudsman's office functions as a liaison between complainants and the LASD. Complainants who have not yet filed a formal complaint are directed to the LASD's toll free phone number to do so. The sheriff's department then conducts the investigation and sends the complainant a letter stating the disposition of the

¹⁸¹ DeLeon Interview.

¹⁸² Ibid.

¹⁸³ See Los Angeles County, Cal., Code ch. 2.37.020—Appointment and Authority. The ordinance provides in pertinent part:

"The Office of Ombudsman shall be under the direction of the Ombudsman who shall be a person of great integrity and independence selected by the Sheriff and Board of Supervisors. The Ombudsman shall be an appointive County Officer.

"The Ombudsman and panel judges shall not have independent investigative authority and are not empowered to initiate or conduct investigations or interview witnesses. The Ombudsman will not become involved in reviewing criminal investigations, nor will the Ombudsman so involve any member of the panel of judges.

"The Ombudsman and panel shall be considered confidential employees and, as such, shall be bound by the same restrictions that apply to employees of the Sheriff's Department regarding the sharing or divulging of information relative to administrative investigations or their dispositions."

Ibid.

¹⁸⁴ Los Angeles County, Cal., Code ch. 2.37.030.

case and whether disciplinary action was taken. If action is taken, however, the LASD does not reveal what discipline is administered. If the complainant is dissatisfied with the result or would like to check on the status of the investigation, he or she may contact the ombudsman's office. The ombudsman's office reviews the investigative record for thoroughness. If the investigation does not appear to be thorough, the ombudsman's office contacts the complainant for any additional information such as new evidence or witnesses who were not interviewed. Such information is then conveyed to the LASD so that it may conduct a more complete investigation.¹⁸⁵

The Office of the Ombudsman receives complaints ranging from rudeness to officer involved shootings. From March 1994 to December 31, 1994, the ombudsman's office reviewed 168 cases (upon request) and referred over 50 people to the LASD to file initial complaints.¹⁸⁶ In 1995, its first full year of operation, the ombudsman's office reviewed 240 LASD investigations, responded to over 1,200 requests for information, determined the status of investigations for 30 people, and referred just over 100 people to the LASD to initiate a formal complaint. Some concerns are resolved with a few phone calls, making a formal complaint unnecessary.¹⁸⁷

From May 1994 to the time of the hearing in September 1996, the ombudsman's office assisted a total of 968 people. The largest number of complaints were in the categories of improper tactics (253 complaints) and discourtesy (144 complaints). There were 65 complaints of excessive force.¹⁸⁸ Mr. DeLeon advised that the top management at the LASD ensures that their staff fully cooperate and respond to requests from his office. This cooperation is essential to

¹⁸⁵ DeLeon Interview.

¹⁸⁶ Office of the Ombudsman, County of Los Angeles, *Fact Sheet*, June 23, 1995.

¹⁸⁷ DeLeon Interview.

¹⁸⁸ The 968 clients of the Office of Ombudsman acquired assistance in the following category of claims: criminal conduct, 19; discourtesy, 144; dishonesty, 36; excessive force, 65; false imprisonment, 22; harassment, 70; improper tactics, 253; injurious force, 21; medical, 187; neglect of duty, 108; not responsive, 17; referral, 226; theft of property, 10; other, 126. Summary Report by Complaint Category, May 1994-September 1996, Office of the Ombudsman, Sept. 10, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 13g.

carrying out his responsibilities.¹⁸⁹ The ombudsman maintains that most complainants are satisfied by the time the office completes the case.¹⁹⁰

Police Watch Intake Coordinator Vina Camper stated that the ombudsman has made a difference as a liaison.¹⁹¹ For example, an inmate might call Police Watch because he or she is not receiving proper medical attention, even with a court order. Ms. Camper said that she is now able to call the ombudsman who in turn may call the sheriff's office at the county jail and alert them to a court order or other complaint. Ms. Camper said that it is helpful to have a person who has ready access to the individual in charge at the sheriff's department.¹⁹²

Civilian Review

Most large metropolitan law enforcement agencies are under civilian oversight, for instance, from a police commission that sets policy and oversees operations.¹⁹³ The LASD, however, is under the sole supervision of the sheriff, who is an elected officer with a 4-year term. The lack of civilian oversight of policy or civilian review of complaints has been the focus of some criticism, particularly with the increased scrutiny of most major police departments following the Rodney King beating.¹⁹⁴ The *Kolts Report* highlighted the absence of civilian participation within the LASD. The report stated that the public's opportunity to vote once every 4 years is not comparable to the oversight functions of a police commission.¹⁹⁵ However, the *Kolts Report* stopped short of recommending a civilian review board. In-

stead, it urged the LASD to adopt procedures for civilian participation in adjudicating civilian complaints.¹⁹⁶ In the joint statement of January 1993, Sheriff Block agreed to establish the ombudsman and panel of retired judges, discussed above, to review the LASD's resolution of citizen complaints.¹⁹⁷ The statement made clear, however, that the sheriff would ultimately determine the disposition of complaints.¹⁹⁸

Community representatives criticized the Board of Supervisors for failing to implement civilian review.¹⁹⁹ The Coalition for Sheriff's Accountability proposed a much stronger model of a civilian commission: one with the power to conduct independent investigations and to recommend discipline.²⁰⁰

We believe any objective analysis of the criticisms related to excessive force and related topics addressed by both Judge Kolts and Sheriff Block leads to a single conclusion: the Los Angeles County Sheriff's Department must have an independent civilian oversight agency empowered to investigate and take action against officer misconduct.²⁰¹

The coalition was not adverse to an ombudsman acting as a liaison, but objected to the ombudsman as a substitute for a civilian commission.²⁰² The proposed panel of judges came under attack

¹⁸⁹ DeLeon Interview.

¹⁹⁰ *Ibid.*

¹⁹¹ Vina Camper, intake coordinator, Police Watch/Police Misconduct Referral Service, telephone interview, July 18, 1996 (hereafter cited as Camper Interview).

¹⁹² Camper Interview.

¹⁹³ *Kolts Report*, pp. 345-46.

¹⁹⁴ See E.H. Duncan Donovan, "Violence Involving Deputies," *Los Angeles Times*, June 9, 1990, p. B-7; Hugo Martin, "Statewide Police Review Proposed," *Los Angeles Times*, Nov. 7, 1991, p. B-3; Kenneth J. Garcia, "Lawyer's Group Urges Sheriff's Department Shake-Up; Panel Investigating Complaints of Excessive Force is Told of Need for Civilian Review," *Los Angeles Times*, Feb. 28, 1992, p. B-1; see also, Ronald Kaye, "Accessible Justice for Cops' Victims," (Op-Ed), *Los Angeles Times*, Jan. 23, 1994, p. M-5 (expressing similar opinion).

¹⁹⁵ *Kolts Report*, pp. 345-46.

¹⁹⁶ *Ibid.*, p. 347.

¹⁹⁷ *Joint Statement*, pp. 4-5.

¹⁹⁸ *Ibid.*, p. 5.

¹⁹⁹ "There is nothing civilian about this review," said Gloria J. Romero, a member of the coalition [for Sheriff's Accountability] and director of a Ford Foundation-supported Police-Community Studies Project at Cal State L.A., 'It is a facade.' Allan Parachini of the ACLU predicted that even after the reforms, 'the Los Angeles Sheriff's Department will still be the only local law enforcement agency without real review.'" Kenneth Reich, "Supervisors Vote for Panel to Review Sheriff's Dept.," *Los Angeles Times*, Jan. 6, 1993, p. A-1; see also, Kenneth Reich, "Compromises Sought on Kolts Report; Reforms: Sheriff Voices Opposition to Ongoing Oversight of Department by a Civilian Commission. Most Supervisors Back an Individual Monitor," Dec. 16, 1992, p. B-4.

²⁰⁰ *Blueprint for Accountability [Supplement]*, pp. 7, 13.

²⁰¹ *Blueprint for Accountability*, pp. 26-27.

²⁰² "The model of an Ombudsperson which is designed to simply function in a liaison capacity between the community and the LASD—in effect, a public relations officer, meets no strenuous objections on our part. However, an Ombudsperson with such limited responsibilities and powers cannot be construed in any way as meeting our demand for civilian oversight." *Blueprint for Accountability [Supplement]*, pp. 13-14.

as critics charged that it would impose an elitist "justice from above" model rather than a community-based process.²⁰³ Furthermore, the panel would not represent the diversity of the community since few retired judges were women or minorities.²⁰⁴ Jerome Skolnick, coauthor of *Above the Law*,²⁰⁵ called the Kolts model "lamentably weak" because the power to investigate complaints of misconduct remains squarely within the department.²⁰⁶ This view reflects community mistrust of law enforcement policing themselves and continued to be an issue at the 1996 hearing.

The ombudsman's office appears to be working well as a facilitator for reconciling misunderstandings arising out of interactions between citizens and deputies. However, the office is not viewed as an effective tool for maintaining accountability, particularly in cases of egregious force. In spite of the resources available through the ombudsman's office for facilitating citizen complaints, community representatives indicated that there is a lack of public confidence in the current system and continued to call for civilian review.²⁰⁷ The Coalition Against Police Abuse (CAPA) submitted a sample petition establishing an elected civilian review board and a special prosecutor with the authority to bring criminal cases against police officers.²⁰⁸ At a September 1997 hearing before the Congress-

sional Black Caucus in Washington, DC, panelists again called for civilian review, this time on a national level.²⁰⁹ CAPA advocated a national review board with independent investigative powers and independent prosecutors.²¹⁰

Civilian review boards may take many forms. Broadly, they are defined as having civilian intake personnel, civilian investigation of complaints, and civilian hearing boards that review cases and determine outcomes.²¹¹ Variations of civilian review boards have more limited civilian participation. For example, a police agency may conduct the investigation while civilians review the investigative report and/or the complainant may appeal the final disposition to a civilian board.²¹²

The establishment of a civilian review board generally faces stiff opposition from police unions and law enforcement officers who argue that civilians lack knowledge of police practices and have a tendency to be biased against officers.²¹³ Contrary to this belief, civilian review systems do not find police officers at fault for misconduct more often than internal systems.²¹⁴ Although the outcome of cases are not necessarily more favorable to complainants, civilian review systems overwhelmingly hold greater legitimacy with the public.

²⁰³ *Blueprint for Accountability*, p. 25.

²⁰⁴ See Kenneth Reich, "Supervisors Vote for Panel to Review Sheriff's Dept.," *Los Angeles Times*, Jan. 6, 1993, p. A-1. The Coalition for Sheriff's Accountability stated that out of 87 retired judges listed on the Los Angeles County Trial Panel/Retired Judges and Retired Commissioners in October 1992, 96.5 percent were male, and 94.2 percent were Anglo. *Blueprint for Accountability [Supplement]*, p. 4.

²⁰⁵ Jerome H. Skolnick and James J. Fyfe, *Above the Law, Police and the Excessive Use of Force* (New York: Macmillan, Inc., 1993).

²⁰⁶ "However well-intentioned, the model Kolts proposes for civilian-oversight is lamentably weak. . . . Should the outside civilian appellate adjudicator be dissatisfied, a 'relevant captain' would be obliged to investigate. In short, the entire investigative process would remain in-house, conducted by deputies." Jerome H. Skolnick, "Perspective on Law Enforcement; Oversight, But Not by Other Cops," *Los Angeles Times*, July 29, 1992, p. B-7 (hereafter cited as Skolnick, "Perspective on Law Enforcement").

²⁰⁷ See, e.g., Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 34 ("We think that one way to alleviate this crisis of confidence is to elect a civilian police review board").

²⁰⁸ Petition for Submission to Voters of Proposed Amendments to the Charter of the City of Los Angeles, *L.A. Hearing*, subpoena duces tecum document, Exh. 7i.

²⁰⁹ Congressional Black Caucus Hearings on Police Brutality, Washington, DC, Sept. 12, 1997.

²¹⁰ Michael Zinzun, Coalition Against Police Abuse, Prepared Statement before the Congressional Black Caucus hearings on Police Brutality, Washington, DC, Sept. 12, 1997.

²¹¹ Douglas Perez, "Police Review Systems," Management Information Service Report, Aug. 1992, p. 3 (hereafter cited as Perez, "Police Review Systems").

²¹² See University of Nebraska at Omaha, Department of Criminal Justice, "Civilian Review of the Police: A National Survey of the 50 Largest Cities, 1991" by Samuel Walker and Vic W. Bumphus, p. 3.

²¹³ See Mitchell Tyre and Susan Braunstein, Ed. D., "Building Better Civilian Review Boards," *FBI Law Enforcement Bulletin*, Dec. 1994, p. 10. See also, Kimberly A. Moy, "Sheriff Creates Advice Panel," *Sacramento Bee*, Jan. 8, 1997, p. B-1; John W. Sloten, "Deputies Lobby to Block Review Board," *San Diego Union-Tribune*, Dec. 8, 1995, p. B-9; "Supervisors Approve Retired Judges' Panel for Brutality Complaints," *United Press International*, Jan. 5, 1993; Kenneth Reich and Frederick M. Muir, "Kolts Panel Dissatisfied with Reforms," *Los Angeles Times*, Dec. 12, 1992, p. B-1.

²¹⁴ Perez, "Police Review Systems," pp. 4, 6.

Complainants all over the country have indicated in several surveys that they place far greater trust in civilian review boards. A great majority favor civilian interviewers at the intake level. A large percentage feel that only civilian investigators can produce an objective case report. Finally, most complainants feel that formal hearing boards should be made up of civilians, not police officers, if there is to be any chance of objective decision making.²¹⁵

This indicates that the public's confidence in the system is affected more by the perception that there is an independent and objective process than by the number of complaints upheld.²¹⁶ Noted police scholar Jerome Skolnick concurs: "The major reason for having a civilian-oversight mechanism is mistrust of cops investigating cops. Democratic institutions, such as civilian review or the jury, are instituted not because they are more efficient or able, but because they are trusted."²¹⁷ While civilian review may enjoy popular support from the public, police officers continue to view it with suspicion.²¹⁸ Sheriff Block remained adamantly opposed to nondepartment civilians investigating complaints against deputies.²¹⁹

State Law Makes False Complaints a Misdemeanor

California Penal Code section 148.6, "False Allegations of Misconduct Against Peace Officers," became effective on January 1, 1996. The statute provides that any person who knowingly files a false allegation of misconduct against a

peace officer is guilty of a misdemeanor. Complainants must sign an advisory informing them that they have the right to make a complaint and that anyone who knowingly makes a false complaint may be prosecuted for a misdemeanor.²²⁰ The Association for Los Angeles Deputy Sheriffs (ALADS) maintains that the law provides needed protection for deputies who otherwise would be exposed unfairly to possible liability.²²¹

Sheriff Block was concerned about the statute's impact on the department's ability to investigate complaints collected from anonymous sources or through their toll-free telephone line.²²² Therefore, Sheriff Block requested that

²²⁰ Cal. Penal Code §148.6 (1996) provides:

"Filing false allegation of misconduct against any peace officer; Misdemeanor

"(a) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the report to be false, is guilty of a misdemeanor.

"(b) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following information advisory, all in boldface type:

"YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

"IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

"I have read and understood the above statement.

"_____

"Complainant"

²²¹ Brodie/Monical Interview; Monical Testimony, *L.A. Hearing*, vol. 2, p. 113.

²²² "I often receive anonymous complaints addressed to my office. These sometimes allege serious criminal or unethical behavior on the part of deputies, and I often initiate investigations into such allegations. On occasion, the complaints are founded. Progressive law enforcement agencies encour-

²¹⁵ *Ibid.*, p. 7.

²¹⁶ "Aside from how thorough, fair, and objective it is in operation, a police review system must be evaluated with respect to how thorough, fair, and objective it is *perceived* to be. Is it seen as fair by the members of the police department? Is it seen as fair by the public (including the media, political officials, and members of the bar)? Does the system allay the need for public protest?" Perez, "Police Review Systems," p. 3.

²¹⁷ Jerome H. Skolnick, "Oversight, But not by Other Cops," (Op-Ed) *Los Angeles Times*, July 29, 1992, p. B-7. Skolnick continued: "A fully functioning police-oversight agency needs to investigate complaints, conduct hearings, subpoena witnesses and report its findings to the sheriff or police chief and to the public." *Ibid.*

²¹⁸ "Police officers surveyed indicate by a wide majority that they feel they are treated more fairly by internal systems than they are by external ones. Some believe that civilian review boards accept questionable evidence." Perez, "Police Review Systems," p. 7.

²¹⁹ See "Supervisors Approve Retired Judges' Panel for Brutality Complaints," *United Press International*, Jan. 5, 1993.

the County Counsel's Office and the State Attorney General's Office provide him with a legal opinion on whether the department would be precluded from investigating an unsigned complaint.²²³ In the meantime, the LASD issued a policy of attempting to obtain the complainant's signature.²²⁴ For complaints received by telephone, the watch commander is directed to read the advisory over the phone and inform complainants that they will receive a letter with a copy of the Service Comment Report and the information advisory, which the complainant is to sign and return.²²⁵ Still, the LASD maintained its policy of investigating all complaints regardless of whether the complainant signs the advisory.²²⁶ The State Attorney General's Office ultimately concluded that the statute's provision stating that the law enforcement agency "shall" require the complainant to sign the information advisory makes the provision mandatory, but the agency is not prohibited from investigating an unsigned complaint.²²⁷

According to Police Watch, people are sometimes fearful of making a complaint after reading the information advisory, particularly in a situation in which it is their word against the officer's.²²⁸ While the ombudsman was of the opinion that complainants genuinely believe that they have been wronged and willingly sign the

age communication with the citizens they serve. As an example, my department maintains a toll-free number through which residents of the community can express either commendations for or complaints about the service of our personnel. It is critical that I have the ability to investigate allegations of misconduct which are brought to my attention through that toll-free line or other informal channels." Sheriff Sherman Block letter to David Stirling, Chief Deputy Attorney General, California, Jan. 9, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a (hereafter cited as Sheriff Block letter to Chief Deputy Attorney General Stirling).

²²³ Ibid. Sheriff Sherman Block letter to De Witt W. Clinton, county counsel, County of Los Angeles, Nov. 21, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

²²⁴ Memorandum from Gerald W. Minnis, chief, Professional Standards and Training Division, to chiefs, directors, area commanders, and unit commanders, Dec. 29, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a (hereafter cited as Minnis Memorandum).

²²⁵ Minnis Memorandum. See LASD Manual §3-04/010.05.

²²⁶ LASD Manual §3-04/010.05.

²²⁷ Opinion of Daniel E. Lungren, Attorney General, California, No. 96-111, July 29, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

²²⁸ Camper Interview.

information advisory,²²⁹ some hearing witnesses testified that the statute may discourage people from contacting the LASD with valid complaints.

There is a statute on the books that provides that a person who is making a complaint, if the department deems it is frivolous, can be prosecuted. People who go in to make complaints are intimidated from doing so. The threat of criminal prosecution is put very prominently before them. They go in, they are often subjected to a warrant check, and the intake process for citizen complaints is very unsatisfactory.²³⁰

The witnesses further maintained that the threat of prosecution is heightened by the fact the sheriff's department determines whether or not complaints are founded.²³¹

Special Counsel Merrick Bobb also stated that the statute may have a chilling effect on complainants.²³² From his experience examining many citizen complaints, he acknowledged that some complaints are grudge complaints or clearly frivolous. Nevertheless, he stated that dealing creatively with those types of complaints to reach the underlying problem is worthwhile. Mr. Bobb said that "a system that requires the citizen to go through the chill of signing a statement that he or she could be prosecuted is somewhat misguided."²³³

State Law on Unfounded Complaints

At the time of the Commission's 1996 hearing, a State bill pending before Governor Wilson provided that complaints against a peace officer determined by the employing agency to be unfounded would not be maintained in the officer's personnel record, but retained in other files.²³⁴ Community witnesses, as well as Sheriff Block,

²²⁹ DeLeon Interview.

²³⁰ Watson Testimony, *L.A. Hearing*, vol. 2, pp. 53-54. Similarly, Michael Zinzun testified: "If I make an allegation against an officer, and you can, through whatever witnesses or the code of silence or whatever you show, that I really have no basis for this, then that threat can also arise. And so I would be more intimidated and I would back off. When, in fact, what I was saying was true, it's just that I don't have enough witnesses to come on my behalf as the police may have, or refuse to speak on." Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 54.

²³¹ Watson Testimony, *L.A. Hearing*, vol. 2, p. 54; Zinzun Testimony, *L.A. Hearing* vol. 2, p. 54.

²³² Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 112-13.

²³³ Ibid.

²³⁴ 1996 Cal A.B. 3434.

spoke out against the legislation, protesting that it would deprive law enforcement agencies of valuable data for effective tracking systems. Civil rights attorney Carol Watson testified that unfounded complaints are a major source of information that supervisors need to evaluate the fitness of officers.²³⁵ She stated that complaints are deemed founded or unfounded by the LASD rather than an independent party, and that many complaints are unresolved because of the lack of witnesses. She also noted that in a situation where the officer's version of events contradict the complainant's version and there are no witnesses for either side, the complaint is deemed unfounded.²³⁶ Ms. Watson indicated that officers should not be passed up for promotions or otherwise penalized for complaints that have no merit. However, an abundance of complaints against an officer might alert the agency to conduct a more thorough investigation.²³⁷

Echoing the views of Ms. Watson, Sheriff Block testified that he opposed the legislation because collecting data on unfounded complaints can be important for discerning patterns.

I have opposed that legislation, and I have asked the governor to veto that legislation, as most law enforcement managers in the state have, because that information can be important in seeing developing patterns. You may have a number of cases that have been shown to be unfounded, but yet, over time, if you have citizen complaints of a similar nature coming in, it causes you to take a special look at that employee, and see why there is a pattern of complaints of a particular kind against that individual.²³⁸

This is particularly the case where unfounded complaints include those in which the depart-

²³⁵ "I think it is horrendous that the police unions have been able to manipulate the legislature into passing legislation that will result in more secrecy, rather than more openness. The idea that they should remove unfounded complaints from an officer's file is to eliminate a major source of information that supervisors need to evaluate unfit officers." Watson Testimony, *L.A. Hearing*, vol. 2, pp. 39-40.

²³⁶ "The process by which a complaint is evaluated, and either deemed founded or unfounded, is one that is within the department, it's the fox watching the chicken coop. And many, many complaints are deemed unfounded that are simply a whitewash of the situation. There will be an officer's version of events, there will be contradictory version of events by the victim, and if there are no witnesses, the officer wins; it is deemed unfounded." *Ibid.*, p. 40.

²³⁷ *Ibid.*, p. 41.

²³⁸ Block Testimony, *L.A. Hearing*, vol. 2, pp. 109-10.

ment has insufficient evidence to prove or disprove. The majority of citizen complaints fall into this category.²³⁹ Special Counsel Merrick Bobb strongly opposed the legislation and testified that he has pressed for computerized tracking systems as a tool for inquiry and investigation, not a tool for punishment. Data indicating a problem area are a signal for further investigation. He said that it is critically important for department managers to be able to consider all relevant information to manage problems intelligently.²⁴⁰ Mr. Bobb characterized such legislation restricting information as "misguided because ultimately they undermine and erode the very basic information which is necessary to intelligently manage the problems that we're all concerned with."²⁴¹

Jeff Monical, from the Association of Los Angeles Deputy Sheriffs (ALADS), presented an opposing view. Mr. Monical testified that unfounded complaints may unjustly influence an officer's chance for promotion or transfers.²⁴² Ac-

²³⁹ Kenneth Reich, "Block Says Deputies Support Him, Not Rival," *Los Angeles Times*, July 29, 1993, p. B-3.

²⁴⁰ Mr. Bobb emphasized: "it is particularly important for . . . [the Commission] to focus on this kind of legislation, because it's not just a local California issue. . . . I think that we need to keep in mind that we are balancing very delicate interests. We are balancing interests of the community, interests of the department, and interests of the individual officers. . . . I think that it is important, it is critically and crucially important, that department managers be allowed to review and take into consideration all relevant information, whether it's an unfounded complaint or an unresolved complaint or a founded complaint or a founded complaint, whatever it is. But I think that there have to be protections, as there are in this department, with respect to the misuse of that information." Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 110-11.

²⁴¹ Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 111. *See also*, Jim Newton, "L.A. Police Panel Opposes Bill on Personnel Files," *Los Angeles Times*, Aug. 14, 1996, p. B-1; Susan Sward and Bill Wallace, "S.F. Opposes Bill to Clean Up Police Complaint Files, City Says It'll be Harder to Monitor Cops," *San Francisco Chronicle*, Aug. 12, 1996, p. A-17; Jim Newton, "Bills Seek to Alter Way Police are Monitored," *Los Angeles Times*, June 30, 1996, p. A-3.

²⁴² "What we're doing is ratcheting up the responsibility and, obviously, our membership . . . should be and are held to a higher standard. But when you don't have that same ratcheting up, what you're doing is holding the ALADS member more and more accountable with no protection. Understand, that if there is an unfounded complaint on the record, that . . . goes to impact that member's job, if not immediately, then somewhere in the future, looking for promotions, looking for transfers." Monical Testimony, *L.A. Hearing*, vol. 2, p. 114. *See also*, Jim Newton, "L.A. Police Panel Opposes bill on Personnel Files," *Los Angeles Times*, Aug.

According to Mr. Monical, the increased investigation, supervision, and punishment of officers over the last several years has had a negative impact on morale and could have a chilling effect on job performance.²⁴³ Both Sheriff Block and Special Counsel Merrick Bobb, however, rejected the implication that either morale or performance had been adversely affected. Sheriff Block expressed confidence in the professionalism of the department:

For the last two years, calls for services have gone down in our department. Arrests have gone up, which indicates to me that when our deputies are not responding to radio calls, chasing radio calls, they are out in the community doing their job as they're supposed to be. So I have not seen a chilling effect, I think the level of professionalism remains very high within the organization.²⁴⁴

Similarly, Merrick Bobb testified that:

I echo what the sheriff says. If you look at the Los Angeles County Sheriff's Department, arrests are up. I believe there were 94,000 arrests in '94 and approximately 98,000 in '95. . . . One can, perhaps, make inferences from that with respect to morale. If one can, then I believe that the deputy sheriffs within the Los Angeles County Sheriff's Department have not been chilled with respect to their law enforcement obligations and responsibilities.²⁴⁵

Shortly after the Los Angeles hearing, Governor Wilson signed into law a version of the measure prohibiting police agencies from keeping "frivolous" complaints in an officer's personnel file.²⁴⁶ The law became effective on January 1, 1997. The LASD stated that the new law will

have little effect on its tracking system because the department is not in the practice of storing complaint information in the general personnel files of employees. The department noted that the legislation does not prohibit retaining separate documentation on complaints. The LASD also maintained that the law would have "virtually no effect" on its ability to monitor the use of force because deputies are required to report all uses of force regardless of whether the use of force generates a complaint.²⁴⁷

Excessive Force/Misconduct

Another issue generating a high degree of public concern is the use of excessive force by LASD officials. One community representative testified that "[o]n the issue of excessive force, we have found through our complaint [intakes], that while there might not be an increase in excessive force, excessive force also is not on the decrease. It is eventually leveled out, and it's still within a crisis level There's plenty of illegal use of police batons and flashlights, questionable shootings involving officers, unnecessary arrests for suspicion. . . ."²⁴⁸

According to the LASD Manual:

Department members are authorized to use only that amount of force that is objectively reasonable to perform their duties. "Objectively reasonable" means that Department members shall evaluate each situation requiring the use of force in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, or the danger to the community, in determining the necessity of force and the appropriate level of force. Department members maintain the right to self-defense and deputy personnel have a duty to protect the lives of others.²⁴⁹

Discharging a firearm is considered deadly force. Circumstances surrounding the use of firearms or head strikes with an impact weapon must justify the use of deadly force. According to the LASD Manual, "Department members may use deadly force in self-defense or in the defense of others, only when they reasonably believe that death or serious physical injury is about to be inflicted upon themselves or others."²⁵⁰ Previously, either IAB or the concerned dep-

14, 1996, p. B-1; Susan Sward and Bill Wallace, "S.F. Opposes Bill to Clean Up Police Complaint Files, City Says It'll be Harder to Monitor Cops," *San Francisco Chronicle*, Aug. 12, 1996, p. A-17; Jim Newton, "Bills Seek to Alter Way Police are Monitored," *Los Angeles Times*, June 30, 1996, p. A-3.

²⁴³ "[A]re they still looking for, you know, opportunities to look for people who might be committing crimes, are they actively on the street patrolling, look[ing] for crimes? I mean, is that having a chilling effect on the members desire to go out and actively enforce the laws? . . . this entire discussion might have a negative impact on the morale of our membership." Monical Testimony, *L.A. Hearing*, vol. 2, p. 115.

²⁴⁴ Block Testimony, *L.A. Hearing*, vol. 2, p. 116.

²⁴⁵ Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 116-17.

²⁴⁶ Cal. Penal Code §832.5(c) (1996).

²⁴⁷ Block Letter, Sept. 4, 1997.

²⁴⁸ Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 32.

²⁴⁹ LASD Manual §3-01/0.25.00, Use of Force.

²⁵⁰ *Ibid.*

uty's unit could investigate an excessive force complaint. That policy was changed to require IAB to investigate all complaints of excessive force.²⁵¹

Based upon a review of LASD investigative files from July 1992 through May 1995, Merrick Bobb reported that the excessive force alleged in those investigations appeared to be less severe than in preceding years.²⁵² The report stated that there were fewer investigations involving multiple uses of force, outright beatings, or allegations of force involving impact weapons.²⁵³ Nevertheless, allegations of excessive force continue to plague the department. On August 1, 1998, an inmate died after a struggle with deputies at the Twin Towers Correctional Facility. On August 10, 1998, a mentally ill inmate was beaten by deputies at the same correctional Facility.²⁵⁴ On September 13, 1998, a suspect died after he was taken into custody and "hog tied."²⁵⁵ Merrick Bobb has reported that the number of officer involved shootings has decreased since 1991. The number of shootings (in which a suspect was shot), at a high of 56 in 1991, reached a low of 28 in 1994.²⁵⁶ There were 34 shootings in 1995 in which 10 bystanders or suspects were killed.²⁵⁷ The number of hit shootings dipped to 26 in 1996 and rose to 35 in 1997.²⁵⁸ Some stations have had a greater proportion of shootings than others. Century station had the highest number, averaging 12.7 between 1994 and 1997, while the department average was 7.5 shootings in the same period.²⁵⁹ According to Merrick Bobb's June 1998 report, the high number of shootings at Century was not explained by the high crime rate in that patrol area. In 1996, for example, the Southeast station had similar statistics on violent crimes but only three deputy

involved shootings while Century station had 14 shootings.²⁶⁰ The Century station was formed in 1994 through the merger of Lynwood and Firestone, two stations that have been characterized as having problematic histories.²⁶¹

There has been considerable attention to allegations of deputy misconduct in the Lynwood area. In the first of a series of lawsuits, a jury awarded \$611,000 to three African American plaintiffs in an excessive force lawsuit against Lynwood station deputies.²⁶² In August 1995, a jury awarded \$15.9 million to 36 plaintiffs in another excessive force suit, finding that the LASD engaged in practices leading to "deliberate indifference to the constitutional rights" of the plaintiffs.²⁶³ In January 1996, three lawsuits connected with *Thomas v. County of Los Angeles*,²⁶⁴ alleging excessive force by LASD deputies were settled. Under the terms of the settlement, \$7.5 million was awarded to the plaintiffs, and \$1.5 million was to be spent on LASD training.²⁶⁵ The department emphasizes that, because it must consider the cost of defending a lawsuit, a settlement is not an admission of wrongdoing.²⁶⁶ The lawsuits also arose out of incidents that occurred around 1989 to 1991, and the LASD has implemented significant changes since that time. Nevertheless, LASD critics contend that the LASD continues to deny past wrongdoing by its deputies in the face of evidence to the contrary and refuses to rectify past mistakes. Consequently, attorneys continue to receive calls from people alleging police misconduct.²⁶⁷

²⁵¹ Block Testimony, *L.A. Hearing*, vol. 2, p. 106.

²⁵² *4th Semiannual Report* (June 1995), p. 14.

²⁵³ *Ibid.*, pp. 14-15.

²⁵⁴ Josh Meyer, "Block Says 8 Sheriff's Employees were in Jail Vigilante Group," *Los Angeles Times*, Sept. 5, 1998, p. B-3.

²⁵⁵ V. Dion Haynes, "L.A. Sheriff Feeling Heat After 2 Deaths," *Chicago Tribune*, Sept. 21, 1998, p. 10.

²⁵⁶ *6th Semiannual Report* (September 1996), p. 38.

²⁵⁷ Merrick Bobb and Staff, *Los Angeles County Sheriff's Department, 5th Semiannual Report*, February 1996, p. 39 (hereafter cited as *5th Semiannual Report* (February 1996)).

²⁵⁸ *9th Semiannual Report* (June 1998), p. 16, table 5.

²⁵⁹ *Ibid.*, p. 10.

²⁶⁰ *Ibid.*, p. 12.

²⁶¹ See *9th Semiannual Report* (June 1998), p. 7; *Kolts Report*, pp. 323-32.

²⁶² Greg Krikorian, "\$611,000 Awarded to 3 Men in Brutality Case," *Los Angeles Times*, July 27, 1995, p. B-1.

²⁶³ Paul Feldman, "Ruling by Jury Blasts Policies of Sheriff's Dept.," *Los Angeles Times*, Aug. 17, 1995, p. B-1.

²⁶⁴ 978 F. 2d 504 (9th Cir. 1993).

²⁶⁵ Hugh Manes and Carol Watson, telephone interview, July 10, 1996 (hereafter cited as Manes/Watson Interview). See also, Jeffrey L. Rabin, "County Oks \$7.5 Million to Settle Suits," *Los Angeles Times*, Jan. 31, 1996, p. B-3. As discussed earlier in this chapter, the settlement required the LASD to have its tracking system operating by March 1997. Oversight of the LASD by Special Counsel Merrick Bobb was also extended through 1999.

²⁶⁶ See Jeffrey L. Rabin, "County Oks \$7.5 Million to Settle Suits," *Los Angeles Times*, Jan. 31, 1996, p. B-3.

²⁶⁷ Manes/Watson Interview.

There is also concern over the conduct of off duty deputies. Critics allege that the LASD fails to discipline deputies for misconduct while they are off duty and refuses to regulate the off-duty use of service weapons. Civil rights attorney Carol Watson testified that:

Another example of the department's refusal to manage is the policy or lack thereof concerning the use of firearms by off duty deputies who are intoxicated. I am currently involved in a case in which an off duty deputy sheriff shot and killed a young man outside of a bar. The deputy had a blood alcohol level of 0.21 two hours after the shooting. In the course of the litigation, I have found that the department does not monitor the misuse of guns by off duty deputies, they do not maintain the records in a readily retrievable manner, and they take the position that they have no authority at all, they are helpless to do anything about restricting or regulating the off duty use of guns by deputies. . . . I have learned that over a five year period, there were approximately eighty incidents where misuse of firearms by off duty deputies were alleged, approximately a third of them are alcohol related, and the sheriff[s] department does nothing at all about it.²⁶⁸

The sheriff's department's *Guidelines for Discipline* state that employees are subject to discipline for off-duty incidents. "Where an employee's off-the-job conduct is related to and impacts the Department's operation or the employee's ability to perform competently, discipline up to and including discharge may be warranted."²⁶⁹ However, there is no provision explicitly pertaining to the off-duty use of firearms.

²⁶⁸ Watson Testimony, *L.A. Hearing*, vol. 2, p. 19; see also, Tina Daunt, "Armed, Off Duty and Drinking: Risky Mix?" *Los Angeles Times*, Dec. 15, 1996, p. A-1.

²⁶⁹ Sherman Block, sheriff, Los Angeles County, *Guidelines for Discipline*, Aug. 19, 1996, p. 2, *L.A. Hearing*, subpoena duces tecum document, Exh. 8e. The following is the full text of the *Guidelines for Discipline* pertaining to off-duty conduct:

UNACCEPTABLE OFF-THE-JOB CONDUCT

"An employee can be subjected to discipline for off-duty incidents. Where an employee's off-the-job conduct is related to and impacts the Department's operation or the employee's ability to perform competently, discipline up to and including discharge may be warranted.

"Off-the-job conduct may also be subject to discipline when it is deleterious to the Civil Service system or County government without being specifically related to the job function or departmental operations. For example, an employee who cheats in a Civil Service examination or falsifies Civil Serv-

In another incident involving an off duty deputy, the *Los Angeles Times* reported that in July 1997, a deputy was convicted of several criminal charges stemming from an incident in which he chased a group of graffiti vandals in his truck and opened fire with his service pistol.²⁷⁰ The deputy claimed that the vandals had tried to carjack him and chased him, but this scenario was contradicted by witnesses.²⁷¹ Special Counsel Merrick Bobb also reported several incidents involving off-duty officers and concluded that "the LASD's off-duty policy needs tightening, especially at the perilous intersection of weapons and alcohol."²⁷²

Racial Implications

Civil rights groups and community leaders assert that law enforcement officers use excessive force disproportionately on racial minorities. Civil rights attorney Carol Watson stated that in her practice, the vast number of complainants alleging police misconduct are minorities.²⁷³ She also testified that the complaints range from harassment to killings.²⁷⁴ Indeed, controversy surrounds the allegation that groups of deputies have formed associations that terrorize minority residents and exhibit street gang-like behavior. In *Thomas v. County of Los Angeles*,²⁷⁵ plaintiffs sued the LASD, alleging malicious acts of misconduct by deputies. Plaintiffs submitted volumes of affidavits to support their allegations

ice examination applications is subject to disciplinary action up to and including discharge."

Ibid., pp. 2-3.

²⁷⁰ A jury convicted the deputy of assault with a firearm, gross negligent discharge of a firearm, shooting from a vehicle, and filing a false report. See Greg Sandoval, "Deputy Guilty in Off-Duty Shooting," *Los Angeles Times*, July 10, 1997, p. B-5.

²⁷¹ *Ibid.*

²⁷² *7th Semiannual Report* (April 1997), pp. 61-66.

²⁷³ When asked, "in your experience as a litigator, have you entertained complaints from more minorities versus non-minorities with respect to police misconduct claims?" hearing witness Carol Watson responded, "[v]astly, vastly more minorities. The huge number of victims of police misconduct, whether the Sheriff's Department or the Los Angeles Police Department or other police agencies, virtually, I would say ninety percent of the victims are African American or Latino." Watson Testimony, *L.A. Hearing*, vol. 2, p. 11.

²⁷⁴ *Ibid.*, pp. 11-12.

²⁷⁵ 978 F. 2d 504 (9th Cir. 1992).

that black and Hispanic men were repeatedly arrested without cause and severely beaten. Many of the victims required medical treatment and some were hospitalized. Plaintiffs alleged that deputies placed a firearm in a suspect's ear, mouth, or behind his head, and threatened to pull the trigger, or actually fired the gun without discharging a bullet. Plaintiffs also alleged that deputies illegally forced entry into homes, which they searched, ransacked, and then left without making any arrests.²⁷⁶ The district judge issued findings of fact stating that a group of Lynwood station deputies were "members of a neo-nazi, white supremacist gang—the Vikings—which exists with the knowledge of departmental policy makers."²⁷⁷ The case was settled in 1996 for \$7.5 million.

In 1990 the *Long Beach Press-Telegram* conducted a 10-week investigation into deputy gang behavior at the Lynwood station. The *Press-Telegram* reported that sources within the department stated that the Vikings flashed hand signs, sprayed graffiti, and harassed supervisors who tried to clean house.²⁷⁸ Some deputies sport tattoos of a Viking in the Lynwood station, and a caveman in the East Los Angeles Station.²⁷⁹ One sergeant received a package booby-trapped with a gun designed to shoot the person who opened the package. The *Los Angeles Times* reported

²⁷⁶ *Id.* at 506.

²⁷⁷ *Id.* at 511. Pursuant to its findings, the district court entered a preliminary injunction against the LASD. The preliminary injunction was reversed because the record at that stage of the litigation was insufficient to establish that the misconduct reflected departmental policy. *Id.* at 508–09. The circuit court also held that the injunction was too broad because the plaintiffs' evidence alleging misconduct by Lynwood station deputies could not support an injunction applicable to all LASD employees. *Id.* at 509–10.

²⁷⁸ Sabrina Steele, "Lynwood Deputies' Group Adopts Gang Traits," *Long Beach Press-Telegram*, Dec. 2, 1990, p. A1–5. One deputy who identified himself as a Viking reportedly bragged about running a sergeant out of the station. "We Stole his property, took his Vietnam jacket with all his medals on it, shot it up and then put it back on his chair." Another deputy commented, "[t]hey (messed) with his vehicle on a nightly basis. . . . It goes by levels—they let the air out of the tires, then cut the tires, then dings on the paint. They tied dead animals up under the frame so they would stink." *Ibid.*

²⁷⁹ See Tracy Wood, "Alleged Rogue Deputy Bands Spark Furor," *Los Angeles Times*, Sept. 2, 1991, p. B–1.

that the LASD believed that either street gang members or other deputies were responsible.²⁸⁰

Notwithstanding allegations to the contrary, the existence of the Vikings as a group promoting illegal activity has never been conclusively established in a court of law. Similarly, the Kolts Commission reported that the allegations of deputy gang activity were inconclusive. However, it found that some deputies at the Lynwood station have, at least in the past, associated with the Viking symbol and behaved in a "brutal and intolerable" manner.²⁸¹ At the Commission's 1996 hearing, Carol Watson testified that she recently settled a case against the LASD in which her client was allegedly shot by a Viking. She was not permitted to raise evidence of illegal Vikings activity during the criminal trial and the civil case was settled.²⁸²

LASD officials maintain that symbols such as the Viking represent mascots for sports teams and social clubs.²⁸³ Sheriff Block denied the existence of white supremacist deputy gangs, characterizing the Vikings as an informal name referring to a group of deputies who socialize together.²⁸⁴ Although the Sheriff has transferred deputies out of the Lynwood station, he maintains that they were transferred because of misconduct, not for misconduct as Viking members.²⁸⁵ However, in a September 5, 1998, report by the *Los Angeles Times*, Sheriff Block ac-

²⁸⁰ "Booby-Trapped Gun Mailed to Deputy," *Los Angeles Times*, Dec. 10, 1990, p. A–25.

²⁸¹ *Kolts Report*, p. 323.

²⁸² Watson Testimony, *L.A. Hearing*, vol. 2, p. 12.

²⁸³ "Shooting Victims are Linked," *Long Beach Press-Telegram*, May 17, 1995, p. A–1.

²⁸⁴ See *ibid.*

²⁸⁵ During the Commission hearing, Sheriff Block was questioned as follows:

"MS. MOORE: Have you personally transferred any officers from your department based on their alleged activities in—illegal activities with the Vikings?"

"MR. BLOCK: Have we transferred in that group? Yes, we did, make a number of transfers out of that station.

"MS. MOORE: And was it due to the allegations that they were engaged in misconduct?"

"MR. BLOCK: Due to allegations that they're engaged in misconduct.

"MS. MOORE: And engaged in misconduct as members of the Vikings?"

"MR. BLOCK: No, engaged in misconduct as deputy sheriffs." Block Testimony, *L.A. Hearing*, vol. 2, pp. 120–21.

knowledged the existence of an organized vigilante group of LASD employees at the Twin Towers Correctional Facility. The group called themselves the Posse and made it their duty to punish inmates who they believed were being "coddled" in a special ward for mentally ill inmates.²⁸⁶ This disclosure was prompted by an August 10, 1998, beating of a mentally ill inmate who was left with flashlight marks on his back and boot prints on his side. All eight LASD employees involved in the beating were identified as members of the Posse and at least six other deputies were also part of the group.²⁸⁷

Witnesses at the Commission hearing, were unshaken in their view that deputy gangs were responsible for terrorizing minorities.²⁸⁸ David Lynn, a private investigator experienced in police misconduct cases, explained, "this Lynwood area, Compton and Watts, are areas that are heavily entrenched in gang warfare, Latino and African American. And there's evidence that the Vikings have basically adopted into their patrolling techniques gang behavior, . . . [from] flashing gang signs to other gang members, to doing graffiti."²⁸⁹ Mr. Lynn said that similar to street gangs, Viking members are tattooed. "This has been described by black deputies at the Lynwood station as being very offensive to them, and by minority residents in the city of Lynwood, who say that this is an Aryan Symbol, this blond, Nordic type figure, and they take offense to it."²⁹⁰ Mr. Lynn also rejects the contention that

²⁸⁶ Josh Meyer, "Block Says 8 Sheriff's Employees were in Jail Vigilante Group," *Los Angeles Times*, Sept. 5, 1998, p. B-3.

²⁸⁷ *Ibid.*

²⁸⁸ For example, Michael Zinzun testified: "They're saying that, look, we've got a green light to do these things, and so we'll be able to, on the surface, appear as a social club, but what we implement, are many times, their interpretation of policies that many people in the community deem racist. And we cannot eliminate the question of white supremacy and racism that exists in this country, and it is filtered into law enforcement, they are not exempt from it. And there's a tendency of white male racist in the higher ups to overlook these things, because they think it's okay. This is part of the crisis that we're facing that needs to be looked at." Zinzun Testimony, *L.A. Hearing*, vol. 2, pp. 58-59; see also Watson Testimony, *L.A. Hearing*, vol. 2, p. 11; David Lynn, Private Investigator, testimony, *L.A. Hearing*, vol. 2, pp. 20-28 (hereafter cited as Lynn Testimony).

²⁸⁹ Lynn Testimony, *L.A. Hearing*, vol. 2, pp. 21-22.

²⁹⁰ *Ibid.*, pp. 22-23. Mr. Lynn testified further that "[t]hey have created racial tensions within the Sheriff's Department, by African American deputies that are forced to work

groups such as the Vikings and the Cavemen are merely social associations; instead, he testified that they are deputy gangs with members who unlawfully harass, beat, and shoot minorities.²⁹¹ Mr. Lynn maintains that Viking members have retaliated against LASD supervisors who have attempted to intervene with their activities and that the Vikings are still allowed to operate and continue recruiting new members.²⁹² He stated:

I have declarations from African American deputies from the Lynwood station who are extremely intimidated to even speak out against the Vikings, or even their symbol, to say that they find it offensive. According to their captain . . . they're afraid that if they did, next time they needed backup out in the field, that no one would respond.²⁹³

Mr. Lynn testified that other deputy gangs include the Grim Reapers at the Lennox substation, the Tasmanian Devils at the Temple City substation, the Cavemen at the East Los Angeles substation, and the Wayside Whities at the Wayside county jail.²⁹⁴ According to Mr. Lynn, unlawful violence on both sides between deputies and street gangs has led to tensions in the community.²⁹⁵ He asserted that the groups are allowed to continue operating because management has failed to control the problem.²⁹⁶

with these deputy gangs, and also on the streets, where I have talked to dozens of citizens, average citizens, gang members, both Latino and African American, who are offended by white deputies coming into their neighborhood, flashing their particular gang signs, and claiming their streets as their turf." *Ibid.*, p. 47.

²⁹¹ David Lynn, private investigator, telephone interview, Aug. 12, 1996 (hereafter cited as Lynn Interview).

²⁹² Lynn Interview.

²⁹³ Lynn Testimony, *L.A. Hearing*, vol. 2, p. 24.

²⁹⁴ *Ibid.*, p. 26-27.

²⁹⁵ Mr. Lynn explained: "The tensions in Lynwood are extreme. And just last year, one deputy Viking was murdered in Lynwood, admittedly by a Young Crowd gang member. This individual was convicted and is on death row today. . . . And what I hear on the streets, not only in Lynwood and other communities, is that if something isn't done, that if the federal government doesn't come in, because, obviously, the City, County, and State and are doing nothing about this, but if the federal government doesn't come in and do a thorough investigation and root out this problem, there's going to be more law enforcement deaths in the future." *Ibid.*, p. 48.

²⁹⁶ Lynn stated that "it's not only bad cops, but it's bad management. Middle management, who has tried to eradicate these groups, have become victims of these groups, and have

Treatment of Inmates in Custody

The LASD continues to draw criticism for its management of the county jails. The use of force on inmates and the denial of prompt medical attention are remaining issues that need to be addressed. Several witnesses at the September 1996 hearing also suggested that deputies were exacerbating racial tensions among inmates. Another recurring matter is the length of time a new deputy spends in a custody assignment before going out on patrol.

In December 1994, Merrick Bobb reported that "[t]he entire custody side of the Sheriff's operations merits increasing scrutiny and reform. The increasingly serious problems of inmate upon inmate violence, combined with more frequent race disturbances, along with health and medical issues, mean that the County jails present terribly serious problems of liability risk."²⁹⁷ In an audit of force packages from one of the jails, Mr. Bobb said that he uncovered many instances of "wholly gratuitous force" in the jail. He found that "slightly more than half of the files reviewed at the jail facility involved force apparently initiated by deputies in response to an inmate's verbal confrontation or refusal to comply with instructions."²⁹⁸

Abuse of inmates within the county jails has periodically received media attention over the years. In 1992 the *Los Angeles Daily News* reported the stories of several prisoners who were injured while in custody. According to the *Daily News*, John Weaver was arrested for drinking in public and having an outstanding traffic warrant. Beaten in jail by deputies, he suffered a ruptured spleen that had to be removed in emergency surgery. Steven Michael Cox, arrested for drunken driving, was hit twice in the groin and as a result, had to have a testicle removed. Otis Robinson was arrested for drunk driving and died in custody from a broken neck. Lawsuits brought as a result of these cases were settled by the Sheriff's Department for large

received no backup or support from the upper echelons of the Sheriff's Department." *Ibid.*, p. 47.

²⁹⁷ Merrick Bobb, special counsel, *3rd Semiannual Report on the Los Angeles County Sheriff's Department*, December 1994, p. 3 (hereafter cited as *3rd Semiannual Report* (December 1994)).

²⁹⁸ *4th Semiannual Report* (June 1995), pp. 38-39.

sums.²⁹⁹ The *Daily News* reported that inmates were often denied adequate medical care.³⁰⁰ According to records obtained by the Coalition Against Police Abuse, 17 people died while in custody from 1985 through 1993.³⁰¹

The LASD drew another wave of criticism after the in custody death of John Bernard Wiley, Jr., on March, 4 1994. Hospital nurses said that deputies taunted and battered Wiley before applying a chokehold and covering his face with a prisoner's smock. Wiley, who suffered from heart disease, lost consciousness and died an hour later.³⁰² The coroner's office ruled the death a homicide.³⁰³ Employees at County-USC Medical Center told reporters that deputies routinely took prisoners to isolated rooms where there were no witnesses and beat them.³⁰⁴

On August 1, 1998, inmate Danny Smith died after a struggle with deputies at the Twin Towers Correctional facility. Mr. Smith, suffering from a preexisting heart condition, died of a heart attack brought on by the struggle. The *Los Angeles Times* reported that Mr. Smith, who is black, refused to enter a cell with a Latino, and a struggle ensued. Inmates said that Mr. Smith was handcuffed while deputies beat him and held a flashlight across his throat, ignoring his protests that he could not breathe and had a bad heart. The LASD admitted that he was hand-

²⁹⁹ David Parrish and Beth Barrett, "Probe Finds Neglect, Abuse in County Jail," *Los Angeles Daily News*, Jul. 6, 1992, p. B-1.

³⁰⁰ *Ibid.*

³⁰¹ L.A.S.D. in Custody Deaths 1985 to Present, Public Records Act Request for Michael Zinzun, Coalition Against Police Abuse, *L.A. Hearing*, subpoena duces tecum document, Exh. 7g.

³⁰² Tori Richards and Brian Alcorn, "Prisoners Were Often Abused, Nurses Say," *San Gabriel Valley Newspapers*, June 12, 1994, p. A-1.

³⁰³ A press release from the coroner's office stated that "[t]he cause of death on John B. Wiley Jr., who died on March 4, 1994 has been determined to be restraint maneuvers including neck compression and near occlusive coronary atherosclerosis . . . The manner of death is ruled a homicide." Brian Alcorn and Teri Richards, "Questions Surround Earlier Death in Hospital," *San Gabriel Valley Newspapers*, June 11, 1994, p. A-1.

³⁰⁴ According to one employee, "[t]hey take prisoners up into rooms where no one can hear and beat (them up)." Another employee said, "They'll go in with a little cut on their face and come out all bloodied." Tori Richards and Brian Alcorn, "Prisoners Were Often Abused, Nurses Say," *San Gabriel Valley Newspapers*, June 12, 1994, p. A-1.

cuffed during the incident.³⁰⁵ The coroner's office determined the death to be a homicide because one of the contributing factors was "probable positional asphyxia," or a cutoff of oxygen to the brain. Sheriff Block reportedly said that the coroner's findings "clearly refute the statement of inmates who allege that Mr. Smith was brutally assaulted by deputy sheriffs Limited force was used but was not a contributing factor in his death. The primary cause of Mr. Smith's death was a heart attack."³⁰⁶ Sheriff Block denied allegations that a vigilante group of LASD employees called the Posse was involved in the incident.³⁰⁷

On August 10, 1998, 9 days after Danny Smith's death, another inmate was beaten at the same facility. The inmate, who is mentally ill, was left with flashlight marks on his back and boot prints on his side. An LASD investigation into the beating led the department to acknowledge that all eight employees involved in the beating were members of the Posse.³⁰⁸

According to Police Watch, the use of force is a continuing problem in Los Angeles County jails. The complaints that they receive mirror each other in reporting verbal or physical abuse for small infractions.³⁰⁹ Vina Camper, the intake coordinator for Police Watch, maintains that officers are less restrained with the use of force in custody because it occurs in a closed environment and the inmate is already in jail for some violation. Ms. Camper also indicated that not all uses of force are reported, because she has spoken to inmates who were subjected to the use of force but who were not interviewed by department investigators. Inmates have also told her that they have been pulled into another room and beaten with no witnesses.³¹⁰

Apart from the treatment of inmates by sheriff's deputies, racial and ethnic tensions among inmates are a continuing problem within the jails. "It is a fact that fighting between racial and ethnic groups, and between gangs, and between

'sets' or subgroups of gangs, is endemic in LA County jails."³¹¹ In January 1996, Latino inmates attacked black inmates, setting off several days of violent outbreaks in which 162 people were reportedly injured. Similar disturbances have occurred in past years.³¹²

The LASD has been criticized for failing to control racial tensions among inmates. One witness alleged that deputies encourage conflict between racial and ethnic groups:

Sheriff's deputies also instigate and maintain tension between black and Latino inmates in the county jail facilities, leading to injuries and death. . . . Sheriff's Department gangs, such as the Wayside Whites, and the insane deputy gangs, are responsible for the exacerbation of violence inside the jails, and they cover their misdeeds with a code of silence, which continues to be in place today.³¹³

LASD Chief Barry King said that they try to keep the open modules racially balanced to avoid conflict.³¹⁴ However, Police Watch Intake Coordinator Vina Camper reports having received complaints from Latino inmates who felt that they were intentionally housed with African American inmates so that they would be beaten up, and vice versa.³¹⁵ She said that when a few Latino inmates are put together with 40 African Americans, tensions build as to who will be in control.³¹⁶

Police Watch also maintains that one of the most serious problems in Los Angeles County jails is the denial of medical attention. Ms. Camper gave several examples of complaints she received from inmates who had serious illnesses because they were denied timely medical treatment.³¹⁷ Special Counsel Merrick Bobb, while acknowledging the difficult conditions in the county jails, criticized the department for not taking precautions to avoid violent outbreaks and failing to attend to the medical needs of inmates. "Escapes, fights, and shankings by inmates produced danger, injury, and risk for inmates and jailers alike. But there were also seri-

³⁰⁵ Anne-Marie O'Connor, "Inmate's Death is Ruled a Homicide," *Los Angeles Times*, Sept. 12, 1998, p. B-1.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ Josh Meyer, "Block Says 8 Sheriff's Employees Were Jail Vigilante Group," *Los Angeles Times*, Sept. 5, 1998, p. B-3.

³⁰⁹ Camper Interview.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*, p. 5.

³¹² *Ibid.*

³¹³ Zinzun Testimony, *L.A. Hearing*, vol. 2, pp. 30-31.

³¹⁴ King Interview.

³¹⁵ Camper Interview.

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

ous injury to inmates from lapses by the LASD in adhering to proper standards for inmate care and protection.”³¹⁸ Mr. Bobb cited several examples in his February 1996 report: An HIV positive inmate who was taking AZT when he was incarcerated received only one dose of the life-sustaining drug during his 9-day stay despite repeated calls for medication.³¹⁹ Another inmate who was susceptible to circulatory problems because he was diabetic and alcoholic was strapped to a bedframe for 8 days. He developed gangrene and his right leg had to be amputated.³²⁰ In another case, a man charged with molestation and who had never been in jail before was housed with violent offenders. On his first day in jail he was stabbed over 10 times with a metal shank. Mr. Bobb reported that there was evidence that the man was intentionally left bleeding for 20 minutes or more.³²¹ In June 1998, Mr. Bobb reported that efforts were underway to improve the delivery of medication and the provision of medical services in custody.³²²

Lengthy Custody Assignments

Deputy trainees begin their career in the Custody Division regardless of where they may ultimately end up working. Upon graduation from a 23-week training academy, new recruits enter the custody division for more training and are then given an assignment in custody. The LASD considers the custody environment a good training ground for new deputies. In custody, they learn to work with people with whom they might interact on patrol, and become familiar with the language used on the street. In addition, deputies are not armed so they have the opportunity to work on their verbal communication skills.³²³

New recruits spend 4 to 6 years in a custody assignment before they go out on patrol.³²⁴ Some critics allege that the lengthy time deputies spend in custody develops violent propensities in new recruits. The *Kolts Report* suggested that

working exclusively with hardened criminals will make deputies more likely to use force when they are assigned to patrol.³²⁵ Because African Americans and Hispanics are overrepresented in jails, new recruits might develop negative, stereotypical views that remain with them when they become patrol deputies.³²⁶

Supporters of the current system emphasize the value and importance of using custody as a training ground for inexperienced recruits.³²⁷ Chief Barry King denies allegations that the custody environment makes deputies more prone to using violence. The length of the custody assignment depends in part on which patrol station the deputy is interested in joining. A deputy might forego an opening while waiting for a more desirable location. Deputies also remain in custody longer because the department has not been able to hire as many new deputies due to budgetary constraints.³²⁸

In his February 1996 report, Merrick Bobb criticized the length of time deputies spend in custody assignments:

The volume of inmates produces numbness or apathy at times in the LASD staff processing all of these people. It is not surprising that LASD officers refer to inmates flowing into the system as “fish”—it reflects the officers’ perception of inmates’ seeming uniformity and lack of individuality. When combined with the unjustifiably long custody rotations for young deputies, it is not surprising that there is callous treatment at times, a problem that LASD management knows about but has not acted sufficiently aggressively to resolve.³²⁹

Mr. Bobb recommended that deputies who are interested in a career in patrol spend less time in custody and urged the LASD to make greater use of deputies who are willing to make custody their career.³³⁰

LASD Use of Canines

Law enforcement officials have long recognized the benefits of using canines in police work. With proper training, their keen sense of

³¹⁸ *5th Semiannual Report* (February 1996), p. 5.

³¹⁹ *Ibid.*, p. 7.

³²⁰ *Ibid.*, pp. 5–6.

³²¹ *Ibid.*, p. 8.

³²² *9th Semiannual Report* (June 1998), pp. 37–39.

³²³ King Interview.

³²⁴ *Ibid.*

³²⁵ *Kolts Report*, pp. 237–38.

³²⁶ *Ibid.*, p. 238.

³²⁷ *Ibid.*

³²⁸ *Ibid.*

³²⁹ *6th Semiannual Report* (September 1996) p. 11.

³³⁰ *5th Semiannual Report* (February 1996) pp. 9–10.

smell enables them to assist officers in finding suspected criminals. Police agencies maintain that canines protect officers against dangerous suspects, particularly one who is hiding.³³¹ Critics of both the LAPD and the LASD canine programs alleged that law enforcement officers allowed police canines to attack suspects unnecessarily, inflicting greater injuries than they could have without using canines. There was also criticism that canines were used more frequently in areas with large numbers of poor and minority residents. With increasing public pressure, the LAPD, and later, the LASD, began reforming their canine practices.³³²

The Los Angeles County Sheriff's Department established a canine program on September 1, 1980. According to the LASD, "[t]he purpose of the program was not only to provide additional protection for deputies, but also to hopefully deter criminal activity through the psychological effects dogs sometimes have on the criminal."³³³ Police dogs are selected in part for their aggressiveness and adaptability to stressful situations.³³⁴

The LASD canine unit is part of the department's Special Enforcement Bureau (SEB) and consists of 1 lieutenant, 4 sergeants, and 13 deputy handlers.³³⁵ According to LASD officials, canines are used to search for felony suspects or armed misdemeanor suspects who are wanted for serious crimes under circumstances presenting a clear danger to deputies. Canines may be deployed for building searches, area searches, and capturing armed suspects when less than lethal forms of force for apprehension are appropriate. The LASD does not use canines for routine patrol or for crowd control.³³⁶

³³¹ Lee Kramer, commander, Los Angeles County Sheriff's Department, telephone interview, Aug. 5, 1996 (hereafter cited as Kramer Interview).

³³² Jim Newton, "L.A. Finds Mixed Results in Curbing Police Dog Bites," *Los Angeles Times*, Mar. 1, 1996, p. A-1.

³³³ Los Angeles County Sheriff's Department Canine Program, January 1981, p. 1, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³³⁴ *Ibid.*, pp. 10-12.

³³⁵ Kramer Interview.

³³⁶ *Ibid.* The LASD deems the following situations suitable for deploying canines: (a) Building searches where there is the possibility of suspects hidden inside; (b) Searches of shopping centers, malls or other large structures where manpower commitments and search time will be extensive; (c) Area searches for felony suspects or armed misdemeanor

LASD canine handlers complete a Canine Activation Report on each deployment. When a canine bites someone, the handler also completes a Supplementary Report. In the event of a reportable or claimed injury, a supervisor from the Canine Services Detail or SEB conducts a preliminary investigation and then contacts a lieutenant from the Professional Standards and Training Division (PSTD). The PSTD lieutenant decides whether PSTD or SEB will handle the investigation. SEB generally investigates most of the cases, although PSTD investigates all cases in which a suspect is hospitalized.³³⁷

The use of canines at both the LAPD and the LASD drew fire from critics for inflicting large numbers of injuries. A coalition of organizations recommended that the LAPD Police Commission put a moratorium on using police dogs for the search and apprehension of suspects and order an independent investigation into the LAPD canine unit.³³⁸ The *Kolts Report* on the LASD stated that not all crimes appeared serious enough to warrant a canine search, and criticized the department's handlers for permitting dogs to continue biting until a suspect became completely passive according to the handler's instructions.³³⁹ The *Kolts Report* made the following recommendations: (1) a canine announcement should be mandatory before all canine deployments; (2) LASD supervisors should automatically review the performance of the ca-

suspects who are wanted for serious crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine; (d) capture of suspects who are armed, or are believed to be armed, when less lethal forms of apprehension are appropriate; (e) Specialized security assignments; and (f) Specialized saturation patrol. Canine Deployment Policy, Canine Services Detail Manual §6-01/030.00.

³³⁷ Memorandum from Leonard H. Kramer, commander, Field Operations Region III to Kenneth L. Bayless, chief, Field Operations Region III, "Comparison of Los Angeles Police Department and Los Angeles Sheriff's Department Canine Programs," Jan. 9, 1996, p. 5, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f (hereafter cited as Memorandum, Comparison of LAPD and LASD Canine Programs, Jan. 9, 1996).

³³⁸ "Analysis and Recommendations: Los Angeles Police Department K-9 Program," submitted to the Los Angeles Police Commission on behalf of ACLU Foundation of Southern California; NAACP Legal Defense and Educational Fund, Inc.; Police Watch; Southern Christian Leadership Conference; Southern California Civil Rights Coalition; Asian Pacific American Legal Center, Jan. 7, 1992.

³³⁹ *Kolts Report*, pp. 80-85.

nine unit whenever its bite ratio rises above 20 to 25 percent; (3) a suspect should be released from a dog bite as soon as the handler determines that the suspect is unarmed; (4) the department should eliminate any institutional bias for deploying canines against minorities; and (5) dog bites should be considered high on the use of force scale.³⁴⁰

The use of canines raised some concerns among officials within the LASD in past years. In 1991 one chief inquired into the feasibility of keeping a canine on a short or long leash. Keeping the dog on a leash was rejected as unsafe because it would put the officer in close proximity to the suspect when located by the dog. In addition, there was concern that deputies might inadvertently step on the leash and hinder the dog's desire to work.³⁴¹ Another chief inquired into the possibility of muzzling canines during a search. This suggestion was also rejected as presenting a safety problem in the event that the suspect attacks the officer.³⁴²

Dog Bite Injuries

Police dogs are capable of inflicting severe wounds, sometimes leading to death.³⁴³ Suspects injured by canines may experience multiple bite wounds, some of which require hospital stays of several days or weeks.³⁴⁴ Police dog injuries may be much more severe than bites from conven-

tional dogs. While adults are rarely hospitalized because of an attack from an ordinary, untrained dog, the Los Angeles County Hospital (County-USC) hospitalized a number of adults who were attacked by police dogs.³⁴⁵ The increasing number of police dog bite injuries in the late 1980s led to a study by County-USC, which reported that the incidence of arterial injury (24 percent) from police dog bites was similar to that resulting from "common causes of penetrating and blunt trauma (e.g., knives, gun shots, and motor vehicle accidents)."³⁴⁶ The study noted that police dog bite injuries were more severe than nonpolice dog bite injuries because "the police dog is trained to bite hard and to hold on until it is commanded to release, whereas the non-trained dog will often bite and release."³⁴⁷

Racial Bias in Canine Deployment

The LASD adamantly denies that there is any institutional bias to deploy canines against minorities.³⁴⁸ The department maintains that canines are deployed according to criteria such as the seriousness of the crime and whether the suspect is a potential threat to searching deputies.³⁴⁹ However, "[t]he Department agrees with the concept that, *if* a perception exists that canines are deployed against minorities, and this perception is generally held by the community as an indication of a racial bias on the part of the

³⁴⁰ *Ibid.*, pp. 86–87.

³⁴¹ Memorandum from Roy M. Brown, chief, Field Operations Region I to Raymon L. Morris, chief, Field Operations Region III, Oct. 21, 1991, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁴² "A muzzled canine offers no options in the event that the officer is attacked by a suspect. The dog is defenseless and is powerless to assist his human partner if needed." Memorandum from Daniel L. Burt, captain, Special Enforcement Bureau to Duane T. Preimsberger, chief, Field Operations Region II, "S.E.B. Follow-Up to Consideration of Muzzling Department Canines During Felony Suspect Searches," Feb. 27, 1992, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁴³ In Nashville, Tennessee, a canine team responded to a burglar alarm at a car dealership just after midnight. After issuing a warning that a dog would be used, the officer released the dog to search for the suspect. The officer found the dog with the suspect's neck in its mouth. The suspect was lying face down with half of his body underneath a car. The man was taken to a hospital and pronounced dead upon arrival. *Robinette v. Barnes*, 854 F. 2d 909 (6th Cir. 1988).

³⁴⁴ See Medical summaries submitted by Los Angeles County in the case of *Mario Avila v. County of Los Angeles*, CV 90–1404.

³⁴⁵ See K Bradford Snyder, M.D., and Michael J. Pentecost, M.D., "Clinical and Angiographic Findings in Extremity Arterial Injuries Secondary to Dog Bites," *Annals of Emergency Medicine*, September 1990, vol. 19:9, pp. 65–66.

³⁴⁶ *Ibid.*, p. 65. From May 1986 through May 1989, the annual number of dog bite patients in the Los Angeles County hospital jail ward more than doubled from 107 (1986 through 1987) to 230 (1988 through 1989). *Ibid.*, p. 67..

³⁴⁷ *Ibid.*, p. 67.

³⁴⁸ Daniel L. Burt, Captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Special Enforcement Bureau Comments on the Kolts Report," July 27, 1992, p. 3; Daniel L. Burt, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Special Enforcement Bureau Comments on the Kolts Report," Aug. 21, 1992, p. 3, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁴⁹ Daniel L. Burt, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Special Enforcement Bureau Comments on the Kolts Report," Aug. 21, 1992, p. 3, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

Department, then this 'perception' *must* be addressed."³⁵⁰

Critics assert that police canines are used primarily in areas dominated by low income minorities.³⁵¹ Statistics from the LASD canine unit show that blacks and Hispanics account for over 80 percent of the suspects bitten by canines. However, the LASD maintains that "apprehensions by canines are statistically similar to total department arrests when categorized by race."³⁵² Commander Leonard H. Kramer maintains that canines tend to be used in higher crime areas, which usually encompass poor and minority neighborhoods.³⁵³

Armed Suspects

The usefulness of canines against armed suspects is questioned by critics. Donald Cook, a plaintiff's attorney specializing in police canine cases, stated that police know that dogs are not effective against a suspect armed with a gun or a knife because the dog will get killed. Furthermore, according to Cook, officer involved shootings increase with the use of canines. Mr. Cook alleged that using canines provokes suspects into using their weapons against the dog attack, thus prompting officers to shoot the suspect.³⁵⁴ In an interview with Commission staff, however, Commander Leonard Kramer asserted that using canines does not provoke the use of deadly force by the suspect and that injury to a canine is rare.³⁵⁵ He said that whether a canine will be used against a suspect known to be armed de-

pends on the circumstances.³⁵⁶ In 1991 and 1992, roughly 30 percent of canine searches were for armed suspects.³⁵⁷ In more recent years from 1993 through 1996, approximately 45 percent of canine searches were for armed suspects.³⁵⁸

Status of Canine Policy Reforms

With over 300 bites a year and increasing public pressure, the LAPD began reforming its canine policy in the early 1990s. Some handlers were removed from the unit, and the department issued written procedures for using canines.³⁵⁹ Officially, the LAPD also changed from a "find and bite" policy to a "find and bark" policy with an added warning to suspects that officers were about to deploy canines.³⁶⁰ The LAPD reported a

³⁵⁰ Ibid.

³⁵¹ From January to November 1991, there were a total of 1077 canine searches. Of that number, 310 (28.8 percent) were for armed suspects. Memorandum from Daniel L. Burt, captain, Special Enforcement Bureau to Raymon Morris, chief, Field Operations Region III, "Monthly Canine Statistical Summary—November 1991," Dec. 4, 1991, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f. From January to November, 1992, there were 956 searches of which 364 (30.1 percent) were for armed suspects. Memorandum from Daniel L. Burt, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Monthly Canine Statistical Summary—November 1992," Dec. 12, 1992, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁵² In 1993 there were 940 searches, of which 422 (44.9 percent) were for armed suspects. Memorandum from William T. Sams, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Monthly Canine Statistical Summary—December 1993," Jan. 6, 1994, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f. In 1994 there were 921 searches, of which, 409 (44.4 percent) were for armed suspects. Memorandum from William T. Sams, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Monthly Canine Statistical Summary—December 1994," Jan. 4, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f. In 1995 there were 840 searches, of which 375 (44.6 percent) were for armed suspects. Memorandum from William T. Sams, captain, Special Enforcement Bureau to Kenneth Bayless, chief, Field Operations Region III, "Monthly Canine Statistical Summary—December 95," Jan. 2, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f. From January through August, 1996, there were 471 searches, of which 219 (46.5 percent) were for armed suspects. Memorandum from John M. Bauer, captain, Special Enforcement Bureau to Kenneth Bayless, chief, Field Operations Region III, "Monthly Canine Statistical Summary—August, 1996," Aug. 31, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁵³ Jim Newton, "L.A. Finds Mixed Results in Curbing Police Dog Bites," *Los Angeles Times*, Mar. 1, 1996, p. A-1.

³⁵⁴ Ibid.; see also chapter 3.

³⁵⁰ Ibid.

³⁵¹ See David G. Savage, "Necessary Weapons, or Excessive Force?" *Los Angeles Times*, Feb. 29, 1996, p. A-1; Jim Newton, "L.A. Finds Mixed Results in Curbing Police Dog Bites," *Los Angeles Times*, Mar. 1, 1996, p. A-1.

³⁵² Daniel L. Burt, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, "Kolts Commission Recommendation 5.4," Apr. 28, 1993, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁵³ Kramer Interview.

³⁵⁴ Donald Cook, attorney, Cook & Mann, telephone interview, July 11, 1996 (hereafter cited as Cook Interview). See also, Louise P. Dell, "Police Attack Dogs: A Dogmatic Approach to Crime Control," *Whittier L. Rev.*, vol. 13 (1992), p. 515. "Indeed, common sense tells us that an armed suspect may, in self-defense, shoot or stab, or grab a dog which is about to maul him. A predictable response of the officer is to draw his gun, thus escalating the procedure of apprehension into a deadly battle." Ibid., p. 516.

³⁵⁵ Kramer Interview.

decrease in its bite ratio from around 50 percent to the 11–13 percent range,³⁶¹ while the LASD maintained a bite ratio of 23.5 percent for the years 1992 through 1994.³⁶²

“Find and bark” or “find and bite” are often used to describe the way in which a police canine has been trained. In theory, a “find and bark” canine is trained to bark at the location of the suspect while a “find and bite” canine is trained to bite and hold. In either method, however, bite injuries will occur as long as the dog is permitted to bite.³⁶³ The most important factors in minimizing dog bites are handler control over the canine, the handler’s attitudes toward biting, canine training or conditioning, and accountability for bites.³⁶⁴

For many years, the LASD was resistant to changing its training methods. In 1992, for example, the International Association of Chiefs of Police National Law Enforcement Policy Center recommended that police departments train canines to “find and bark” rather than to “find and bite” in order to avoid civil litigation.³⁶⁵ At the time, the LASD responded that using “find and bark” canines would not eliminate civil litigation.³⁶⁶ With the LAPD reporting dramatic de-

creases in the number of dog bites, the LASD began a study in 1996 to compare the canine units at the two police agencies.³⁶⁷ After a comprehensive review and comparison of the LAPD and the LASD canine programs, recommendations were made to increase the supervision and training of canine teams and to adopt the “find and bark” method with emphasis on “handler control.”³⁶⁸ The LASD reported that under the LAPD’s “find and bark” policy, the canine does not bite unless the suspect assaults the canine or attempts to escape. Under this approach, when the canine finds the suspect, the handler recalls the canine and the search team leader calls the suspect out.³⁶⁹ The LASD’s previous “find and bite” or “search and apprehend” method conditioned the canine to find, then bite and hold the suspect.³⁷⁰ In May 1996, the LASD canine unit began to focus training on “guard and bark” techniques and handler control.³⁷¹ Commander Kramer stated that he was sensitive to officer safety issues and that, before implementing the changes, he examined other canine units and found no correlation between officer injuries and the types of changes that he was recommending.³⁷²

³⁶¹ The “bite ratio” is the percentage of suspects bitten when canines are used for apprehension. For example, if a police agency uses canines to apprehend a suspect in 100 cases, and 25 of those suspects were bitten, the bite ratio would be 25 percent.

³⁶² See Memorandum, Comparison of LAPD and LASD Canine Programs, Jan. 9, 1996.

³⁶³ The LASD summarized the views of the LAPD K-9 Platoon training sergeant as follows: “He indicated that under either method or philosophy canines will bite if they are allowed to bite. The primary objective of handler training and canine conditioning should be to minimize bites while maintaining officer safety. The ability to ‘read’ then call. . . [off] the canine is crucial with both ‘find and bite’ and [‘]find and bark’ philosophies.” Ibid., p. 8.

³⁶⁴ Ibid.

³⁶⁵ “To further protect against use-of-force litigation in canine deployment it is highly advisable to train canines to detect and bark rather than to detect and hold. A canine hold will almost assuredly result in some degree of injury to a suspect, particularly if the suspect resists.” IACP National Law Enforcement Policy Center, *Law Enforcement Canines*, May 1992, p. 7.

³⁶⁶ “[T]he use of Find and Bark dogs will not totally spare agencies from civil litigation. Any advantage is found in an agency’s ability to present a defense on the belief that, when the canine finds a suspect, the canine is trained to bite only if the suspect tries to move or assault the dog. Some movement or assault must have occurred or the canine would have been content to simply bark at, and intimidate, the

suspect. In reality, this seldom takes place although it appears, on the surface, to be a more humane method of utilizing police canines.” Memorandum from Daniel Burt, captain, Special Enforcement Bureau to Larry L. Anderson, chief, Field Operations Region III, “International Association of Chiefs of Police (IACP) Law Enforcement Model Canine Policy,” July 15, 1992, p. 5.

³⁶⁷ Memorandum, Comparison of LAPD and LASD Canine Programs (Jan. 9, 1996).

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ “In theory, if the canine gives silent alert through body language, handler control and the circumstances then determine whether the canine will physically confront the suspect. If a bite occurs, the handler immediately calls off the canine when a determination is made the suspect is not armed. ‘Handler control’ acknowledges that the canine is in a position to make a decision to bite or not. However, the canine does not have the ability to make a reasoned decision about the suspect’s intentions and will only react to circumstances for which trained. Therefore, the handler must maintain almost constant visual contact with the canine.” Ibid., pp. 7–8.

³⁷¹ Memorandum from John M. Bauer, captain, Special Enforcement Bureau to Kenneth L. Bayless, chief, Field Operations Region III, “Training Update for Canine Services Detail,” June 13, 1996.

³⁷² Kramer Interview.

The emphasis on training and officer accountability appears to be having some effect on the number of LASD canine bites. From 1992 through 1994, the bite ratio averaged 23.5 percent.³⁷³ In 1995 the bite ratio was 20.5 percent.³⁷⁴ From January through August 1996, there were 84 canine apprehensions with 12 bites, for a bite ratio of 14.3 percent.³⁷⁵ In an interview, Donald Cook asserted that the bite ratio should be compared with the police agency's overall use of force rate. He indicated that the likelihood that force would be used during an arrest increased dramatically once a dog was present. Using the LAPD as an example, Mr. Cook said that during 1989-91, there was approximately one hospitalization per 6,000 arrests when a canine was not present. The LAPD canine unit, however, was responsible for hospitalizing suspects at a rate of approximately one per six or seven arrests. According to Mr. Cook, all dog bites are unnecessary because canines may be used to locate suspects without biting. Typically, the suspect runs and hides from police but will surrender when located by the dog because there is no hope of escape.³⁷⁶ Mr. Cook argues that canines should not enable police to inflict greater force than they could without canines, and that the bite ratio should be no higher than the normal 1-2 percent use of force ratio for the same types of crimes.³⁷⁷

Canine Announcement

According to current LASD policy, a canine announcement must be made in English and Spanish before deploying a canine team.³⁷⁸ Any

³⁷³ Memorandum, Comparison of LAPD and LASD Canine Programs (Jan. 9, 1996).

³⁷⁴ 1995 Canine Statistical Summary.

³⁷⁵ August 1996 Canine Statistical Summary.

³⁷⁶ Cook Interview. See also, David G. Savage, "Necessary Weapons, or Excessive Force?" *Los Angeles Times*, Feb. 29, 1996, p. A-1.

³⁷⁷ Cook Interview.

³⁷⁸ Memorandum from Chief Callas, Chief Baca, Chief Anderson, Field Operations to unit commanders, Field Operations Regions regarding Field Operations Directive 86-37 (Revised 5-16-94), Canine Deployment, Search and Force Policy, p. 4, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f (hereafter cited as Field Operations Directive 86-37 (Revised 5-16-94)). The announcement must be made as follows:

"ATTENTION IN THE AREA, this is the Sheriff's Department. We are searching for a felony suspect and are pre-

recommending not to make a canine announcement must be approved by the supervisor in command at the scene.³⁷⁹ The purpose of announcing the intent to deploy a canine is to notify civilians in the search area and to allow the suspect to surrender.³⁸⁰ Another reason is to aid the LASD in defending lawsuits brought by canine bite victims.³⁸¹ The *Kolts Report* recommended that canine announcements be made prior to all deployments.³⁸² According to LASD policy, canine announcements are made in English and Spanish, but an exception is permitted if there is a concern for the safety of search personnel.³⁸³ Although announcements are issued in the vast majority of cases, a few unannounced searches are still made. Merrick Bobb was concerned that the exception could swallow the rule in the future and called for a narrow definition

paring to deploy a police dog. For your safety, please go inside your homes and stay inside until we leave the area or give an all clear.

"I am now speaking to the individual who is hiding from the police. Give yourself up now to the nearest deputy or police officer and you will not be harmed. If you do not, a police dog will be used to find you. THE DOG WILL FIND YOU. When the dog finds you, you may be bitten.

"COME OUT NOW WITH YOUR HANDS UP. Surrender now to the nearest officer and you will not be harmed."

LASD Canine Announcement Card, *L.A. Hearing*, subpoena duces tecum document, Exh. 8f. The canine announcement became mandatory in 1991, in English, and Spanish "if necessary." Memorandum from Chief Roy Brown, Chief Duane Preimsberger, Chief Raymon Morris, Field Operations, to Station Commanders, Field Operations Regions regarding Field Operations Directive 86-37 (Revised 7-11-91), pp. 3-4. In 1994 the LASD required that all announcements be made in English and Spanish. Field Operations Directive 86-37 (Revised 5-16-94), p. 4.

³⁷⁹ Field Operations Directive 86-37 (Revised 5-16-94), p. 4; Canine Deployment Policy, Canine Services Detail Manual §6-01/080.00 (Feb. 1, 1994), *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

³⁸⁰ Canine Deployment Policy, Canine Services Detail Manual §6-01/080.00.

³⁸¹ "[T]he fact that an announcement was made and was ignored by the suspect might influence a trier who is assessing whether the suspect somehow assumed the risk or brought about his own misfortune by failing to give himself up. Conversely, a surprise attack and a mauling by a dog without an opportunity to surrender is harder for the Department to explain and defend to a trier of fact." Merrick Bobb, special counsel, *2nd Semiannual* (April 1994), p. 45.

³⁸² *Kolts Report*, p. 86.

³⁸³ Canine Deployment Policy, Canine Services Detail Manual §6-01/080.00 (Feb. 1, 1994), *L.A. Hearing*, subpoena duces tecum document, Exh. 8f.

of the circumstances that would permit unannounced searches.³⁸⁴

Civil Litigation

The number of legal claims against the LASD has decreased in the years following the *Kolts Report*. According to Captain Lee McCowen of the LASD, active lawsuits dropped from a high of 811 in 1992, to 200 as of July 1996.³⁸⁵ In fiscal year 1995, a total of 209 lawsuits were filed. Seventy-eight of those cases alleged the use of force. In fiscal year 1996, the LASD was served with a total of 190 lawsuits. Force was alleged in 83 cases, while 107 involved nonforce allegations.³⁸⁶

Mirroring the decrease in the number of cases brought against the LASD, dollar amounts paid for judgments and settlements of lawsuits against the LASD have dropped from \$26.2 million in 1991 to \$11.9 million in fiscal year 1995.³⁸⁷ The decline is partly attributable to a new risk management system in which special teams quickly arrive on a scene likely to give rise to a liability claim against the department, and preempt liability lawsuits by quickly settling with aggrieved parties.³⁸⁸ Civil rights attorney Carol Watson suggested, however, that the reported decrease in the cost of litigation may be misleading. For example, the figures quoted do not include a \$15 million verdict entered in 1996 because it is being appealed, or the \$7.5 million settlement of the Lynwood litigation.³⁸⁹ Special Counsel Merrick Bobb explained that the \$7.5 million settlement of the *Thomas* case will be paid out over a period of a few years and will be counted as it is expended.³⁹⁰ A 1989 incident in which deputies injured 36 guests at a wedding party settled in 1998 for \$24 million. One of the plaintiffs suffered broken bones and brain damage and received \$5.8 million out of the settle-

ment.³⁹¹ Sheriff Block urged that the number of lawsuits was the better measure of performance than the dollar amounts paid out in settlements and verdicts.³⁹² Mr. Bobb predicted that there will be a continuing downward trend in litigation involving the LASD.³⁹³

Racial and Gender Diversity

Police force diversity has long been viewed as an important factor in police-community relations. In 1981 the U.S. Commission on Civil Rights found that “[s]erious underutilization of minorities and women in local law enforcement agencies continues to hamper the ability of police departments to function effectively in and earn the respect of predominately minority neighborhoods, thereby increasing the probability of tension and violence.”³⁹⁴ In 1980 the National Minority Advisory Council on Criminal Justice found that “it has been shown that the presence of minority police officers has had a positive effect on police-community relations. Therefore, more minorities must be recruited into police employment.”³⁹⁵

With respect to law enforcement in Los Angeles County, Special Counsel Merrick Bobb testified:

I think it is very important that any contemporary police agency reflect the community that it serves,

³⁸⁴ *2nd Semiannual Report*, pp. 47–48 (April 1994).

³⁸⁵ McCowen Interview.

³⁸⁶ *Ibid.*

³⁸⁷ Jim Newton, “Success of Reforms Varies at LAPD, Sheriff’s Dept.,” *Los Angeles Times*, Mar. 10, 1996, p. A-1.

³⁸⁸ Kenneth Reich, “Crime Dips in Sheriff’s Jurisdiction,” *Los Angeles Times*, Jan. 2, 1996, p. B-3.

³⁸⁹ Watson Testimony, *L.A. Hearing*, vol. 2, pp. 19–20.

³⁹⁰ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 151.

³⁹¹ Andrew Gumbel, “Attack Costs LA Police \$24m,” *The Independent (London)*, Oct. 2, 1998, p. 3.

³⁹² “[W]hile . . . dollar totals are significant, they’re really less significant than numbers of cases because you could have a single incident with a large dollar number which would skew the whole thing if you look at it just from dollars rather than numbers of lawsuits and claims and things of—of that nature. So dollars alone, while they’re important to the taxpayer, are not the best indicator of performance.” Block Testimony, *L.A. Hearing*, vol. 2, p. 153.

³⁹³ “[T]he backlog of cases from the pre-Kolts period are diminishing very, very rapidly, have not been replaced by other lawsuits, and therefore, even though you’re going to have blips like you’ve suggested where in a given year there may be \$20,000,000, you’re going to see a trend downwards that’s going to continue.” Bobb Testimony, *L.A. Hearing*, vol. 2, p. 151.

³⁹⁴ U.S. Commission on Civil Rights, *Who is Guarding the Guardians?* (Washington, DC: Government Printing Office, October 1981), p. 5 (hereafter cited as *Who is Guarding the Guardians?*).

³⁹⁵ National Minority Advisory Council on Criminal Justice, *The Inequality of Justice: A Report on Crime and the Administration of Justice in the Minority Community*, October 1980, pp. 15–16.

and reflect the wider community, in terms of demographics. I also think that it is extremely important for the police agency itself, for deputy sheriffs, for everybody, to be working with, side by side, people of diverse backgrounds. I think that when our police agencies do represent better the demographics of the communities that they serve, we will have a diminution in the kind of mistrust and the kind of tensions that have existed. So I look forward to the day when the Los Angeles County Sheriff's Department mirrors the County of Los Angeles in terms of its demographics. I also look forward to the day . . . when you can look at the department from top to bottom and find that there are women and minorities in positions of significance throughout the department, not just in token numbers.³⁹⁶

The LASD serves a highly diverse population. Within Los Angeles County, 56.9 percent are white (Hispanic and non-Hispanic), 11.2 percent black, 10.5 percent Asian, 0.5 percent Native American, 0.3 percent Pacific Islander, and 20.6 percent of other races. Hispanics (of all races) make up 37.3 percent of the county population.³⁹⁷ The racial makeup varies between geographic areas of the county. In the area served by the West Hollywood station, for example, Caucasians make up 85 percent of the population. By contrast, Hispanics make up 94 percent of the population in the area served by the East Los Angeles station.³⁹⁸ The racial composition of LASD personnel, however, does not reflect the diversity of the population that it serves. The *Kolts Report* noted that the LASD's upper management was overwhelmingly male and Caucasian.³⁹⁹ At the time the *Kolts Report* was issued in 1992, sworn personnel was 87.5 percent male and 72.4 percent Caucasian.⁴⁰⁰ In 1996 those figures were 86 percent male and 66.6 percent Caucasian.⁴⁰¹

Since the *Kolts Report*, the LASD has worked to diversify its work force. The LASD began a recruitment advertisement campaign in 1995 to

increase the number of women and minorities in the applicant pool. Specifically, the department advertised LASD positions in newspapers and other publications serving minority communities. The department also sent representatives to black churches and job fairs targeting minorities and women.⁴⁰² The *3rd Semiannual Report* stated:

The changes which have taken place in the Department's recruiting procedures since 1992 are welcome and dramatic. We have seen recruiting begin to change from a process whereby the Department overwhelmingly seemed to recruit only white males (in 1992 approximately 70% of applicants were Caucasian males) to the current process designed to attract applicants which reflect the diversity of Los Angeles County.⁴⁰³

Sheriff Block testified that they aggressively recruit throughout the community to develop a representative work force. He said that recruitment is subject to a limited budget, but graduating classes are representative of the ethnic and gender mix of the community. In May 1992, the department was 8.9 percent black, 16.2 percent Hispanic, 0.1 percent Native American, 2.0 percent Asian, and 0.5 percent Filipino.⁴⁰⁴ According to LASD statistics as of August 1996, the overall makeup of the department is 10.1 percent black, 20 percent Hispanic, 0.1 percent Native American, 2.5 percent Asian, and 0.7 percent Filipino.⁴⁰⁵

With the LASD's changes in recruitment, Merrick Bobb reported that the LASD continues to attract Latinos but has not been as successful with women or other minorities.⁴⁰⁶ Furthermore, as with the LAPD (detailed in the previous chapter), women and minorities have higher attrition rates from the LASD Academy. The trainee attrition rate is 10.1 percent for Caucasians, 14.2 percent for Latinos, 18.8 percent for Asian Americans, 23.3 percent for African Americans,

³⁹⁶ Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 125-26.

³⁹⁷ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population, Social and Economic Characteristics, California*, p. 34, Table 6.

³⁹⁸ *Kolts Report*, Table, p. 11.

³⁹⁹ *Ibid.*, p. 13.

⁴⁰⁰ *Ibid.*, p. 14.

⁴⁰¹ Sworn Comparison Breakdown Between LASD and LAPD, Aug. 23, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8e.

⁴⁰² Memorandum from Captain Jerry Skaggs to Chief Gerald Minnis, "Recruitment Advertisement Campaign," Mar. 1, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 8e.

⁴⁰³ *3rd Semiannual Report* (December 1994), p. 27.

⁴⁰⁴ *5th Semiannual Report* (February 1996), p. 12.

⁴⁰⁵ Sworn Comparison Breakdown Between LASD and LAPD, Aug. 23, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8e.

⁴⁰⁶ *5th Semiannual Report* (February 1996) p. 21.

and 27.1 percent for women.⁴⁰⁷ At the Los Angeles hearing, Mr. Bobb continued to express the concern that the LASD is not moving vigorously enough to increase diversity, particularly with respect to gender and some specific minority groups.⁴⁰⁸

Aside from the overall makeup of the department, there is also criticism of its slow progress in promoting women and minorities to coveted positions, although some gains have been made. In 1995 the LASD promoted the first woman to the rank of chief.⁴⁰⁹ Nevertheless, critics maintain that there are limited opportunities for most women. Merrick Bobb reported that women have made little progress advancing to the department's more desirable positions.⁴¹⁰ For instance, field training officer (FTO) positions are prestigious and viewed as a stepping stone to promotion.⁴¹¹ In several of his reports, Mr. Bobb has criticized the disparity between female FTOs and their overall representation in the department. As of January 31, 1998, only 10 out of a total of 206 FTOs were women. Although this was up from 4 FTOs out of 152 in 1996, the current number represented 5 percent of FTOs although women made up nearly 14 percent of LASD personnel.⁴¹²

According to a survey conducted by Merrick Bobb, vacancies for high profile or coveted positions are not always publicized throughout the department to attract applicants.⁴¹³ Of the 31

commanders and captains surveyed, 11 said that high profile positions were always broadcast departmentwide.⁴¹⁴ Surveys sent to lieutenants and sergeants, however, indicate that many do not perceive a fair process for transferring to a high profile position.⁴¹⁵ Some of the surveys were returned with comments emphasizing the importance of "the good old boy network," and remarks such as, "To be elevated, you must know the Chief, Commander or Captain and receive their direct support."⁴¹⁶

Advancement opportunities for female deputies were the subject of litigation and are now being addressed by the department. In 1980 LASD deputy Susan L. Bouman filed a complaint against the department and the county on behalf of herself and similarly situated female deputy sheriffs, alleging gender discrimination in employment practices "including assignment, transfer, training and promotion."⁴¹⁷ In particular, the plaintiffs alleged that the sergeant's examination discriminated against women.⁴¹⁸ In 1988 the U.S. District Court for the Central District of California entered a judgment in favor of the plaintiffs, restraining the department from discriminatory practices and prohibiting the use of any promotion selection method for sergeant that is not job related and disproportionately excludes females.⁴¹⁹ The court required promotional examinations to be validated according to

⁴⁰⁷ *Ibid.*, p. 22.

⁴⁰⁸ "I have taken the department at task for not moving more rapidly to increase particularly the number of women throughout the department, both in terms of absolute numbers, and with respect to women in coveted or special assignments. . . . And although I am critical of the department in not moving rapidly enough, in my view, I do not wish to have my comments interpreted as saying that the department internally discriminates." Bobb Testimony, *L.A. Hearing*, vol. 2, pp. 124-25.

⁴⁰⁹ "Sheriff's Promotes First Woman Chief," *Los Angeles Sentinel*, Feb. 23, 1995, p. A-1; Edward J. Boyer, "Woman Named Sheriff's Chief," *Los Angeles Times*, Jan. 26, 1995, p. B-3.

⁴¹⁰ *9th Semiannual Report* (June 1998), p. 60.

⁴¹¹ Merrick Bobb, special counsel, *2nd Semiannual Report on the Los Angeles County Sheriff's Department*, April 1994, p. 92 (hereafter cited as *2nd Semiannual Report* (April 1994)).

⁴¹² *9th Semiannual Report* (June 1998), p. 62, table 3, p. 69, table 13; see *6th Semiannual Report* (September 1996), p. 53.

⁴¹³ *Ibid.*

⁴¹⁴ The survey was sent to 31 captains and commanders with the question, "[w]hen your Division/Region/Unit has an opening for a high profile or coveted assignment, is a Department-wide broadcast sent to attract applicants?" The results of the survey were as follows: "Always" 11, "Most of the Time" 9, "Usually" 3, "Sometimes" 6, "Never" 2. *6th Semiannual Report* (September 1996), p. 53.

⁴¹⁵ Lieutenants and sergeants were asked, "[d]o you consider the Department's transfer process fair for movement into high profile assignments?" Of the 281 surveyed, 195 or 69 percent answered "No." *Ibid.*, pp. 53-54.

⁴¹⁶ *Ibid.*

⁴¹⁷ See *Bouman v. Block*, CV80-1341, Third Amended Consent Decree (C.D. Cal. entered Aug. 9, 1993), p. 3 (hereafter cited as cited as Third Amended *Bouman* Consent Decree).

⁴¹⁸ See *Bouman v. Block*, 960 F. 2d 1211, 1218 (9th Cir. 1991), cert. denied, 502 U.S. 1005 (1991).

⁴¹⁹ Third Amended *Bouman* Consent Decree, p. 4. The district court found that (1) the department discriminated against Bouman by failing to promote her to existing sergeant vacancies; (2) the sergeant examinations have a significant adverse impact on women; and (3) the department retaliated against Bouman for filing a claim with the EEOC. *Bouman*, 940 F. 2d at 1223.

professional standards.⁴²⁰ Appeals by the LASD were unsuccessful.⁴²¹ The parties entered into a consent decree, known as the *Bouman* consent decree, to avoid further litigation.⁴²² The *Bouman* consent decree, which has been amended several times, requires that the LASD spend "at least two and one-half million dollars and up to as much as four and one-half million dollars over a four year period to enhance the opportunities for advancement of all deputies including female deputy sheriff employees in LASD."⁴²³

The *Bouman* consent decree incorporated the district court's injunction requiring a validation procedure for any proposed examination.⁴²⁴ However, parties continued to have disputes relating to the validation process for the sergeant's exam. In April 1998, the LASD entered into an agreement with the *Bouman* plaintiffs, stipulating to the terms of the next sergeants exam.⁴²⁵ To address past gender discrimination, the department stipulated that 25 percent of the sergeants appointed from the 1998 exam would be female.⁴²⁶

⁴²⁰ Third Amended *Bouman* Consent Decree, p. 5.

⁴²¹ *Id.* at 9; *Bouman*, 940 F.2d 1211.

⁴²² Third Amended *Bouman* Consent Decree, p. 2.

⁴²³ *Id.*

⁴²⁴ The decree provides in Item 3:

"Further, Defendants shall not hereafter promulgate, prepare, administer, design, draft or use promotional examinations in the Los Angeles Sheriff's Department to promote individuals to the rank of Sergeant unless and until the Defendants first design an examination which complies fully with the requirements of Title VII, the FEPH Act, or any other equal employment opportunity or civil rights law, order, or regulation, or guidelines issued under or pursuant to Title VII or Section 1983 or any other equal employment opportunity or civil rights law, order or regulation.

"a. For the purpose of this Judgment, to comply with Title VII in the use of a promotional examination means that the examination shall be validated according to professional standards such as Division 14 and the American Psychological Association ("APA") standards. No later than 90 days prior to the administration of an examination for Sergeant, the County shall report to a testing consultant and monitor to the class, who shall be approved by the County and paid by the County alone, to be named by the court if the parties cannot agree, concerning the examination. Specific and detailed information shall be provided so as to enable the monitor to advise counsel to the class whether the examination is job-related and valid, within the meaning herein."

Ibid., p. 5.

⁴²⁵ 9th *Semiannual Report* (June 1998), p. 50.

⁴²⁶ *Ibid.*, pp. 50-51.

The *Bouman* consent decree also requires the LASD to "provide mandatory cultural diversity training to all executives, managers, supervisory personnel, and deputies during the term of the Decree in order to sensitize them to the concerns of the issues pertaining to the management of a culturally diverse work force at LASD."⁴²⁷ A Cultural Diversity Panel is established by the decree to advise LASD management and recommend policies enhancing equal employment opportunity for all members, including minorities and women.⁴²⁸

Pursuant to the consent decree, the department established the Ombudsperson/Career Resources Center in 1993. One function of the office is to resolve gender and racial discrimination complaints from LASD personnel. Grievants have the option of consulting the ombudsperson in an informal and confidential setting. Complaints may be resolved informally or the case may be referred to IAB or the unit for a formal investigation.⁴²⁹ The Career Resource Center supports the professional development of female, minority, and other interested employees to ensure equal access to advancement opportunities. The office also develops sexual harassment training.⁴³⁰ This office is distinct from the ombudsman's office, discussed previously, that receives complaints from citizens against LASD personnel.

The Career Resources Center may be having only a limited effect on facilitating the career advancement of deputies. As Merrick Bobb reported in June 1998, the office has focused more on topics such as retirement planning and domestic violence rather than providing information on the skills and training needed to advance to specific positions in the department.⁴³¹ The Career Resource Center's lack of direction reflects a larger departmentwide problem. According to Mr. Bobb, "the Department has taken inadequate steps to centralize and coordinate at a high level all LASD efforts to eliminate, wherever possible, and minimize, wherever feasible,

⁴²⁷ Third Amended *Bouman* Consent Decree, p. 20.

⁴²⁸ *Id.* at 23.

⁴²⁹ 6th *Semiannual Report* (September 1996), p. 65.

⁴³⁰ 1st *Semiannual Report* (October 1993), pp. 67-68.

⁴³¹ 9th *Semiannual Report* (June 1998), pp. 56-58.

gender as an element retarding career advancement, promotion, or opportunity.”⁴³²

Conclusion

For 16 years, Sheriff Sherman Block oversaw a department racked by controversy and reform. After Judge James G. Kolts issued a scathing report in 1992, the department attempted to implement reforms that would address the criticisms raised in the report. Special Counsel Merrick Bobb’s periodic reports criticize the department in some areas while commending the department in others. Despite years of reform, disturbing reports of excessive force continue to arise. Three recent incidents may be illustrative of continuing problems. On August 1, 1998, an inmate died after a struggle with deputies at the Twin Towers Correctional Facility. On August

10, 1998, a mentally ill inmate was beaten by deputies at the same correctional facility.⁴³³ On September 13, 1998, a suspect died after he was taken into custody and “hog tied.”⁴³⁴

At the time of his death, Sheriff Block was campaigning for reelection against Lee Baca, formerly the chief of Field Operations Region II. During the campaign, Sheriff Block attacked Baca for his track record as a chief who oversaw some of the most troubled stations in the department.⁴³⁵ Baca alleged that Block was ultimately responsible because there was a shortage of supervisors.⁴³⁶ After Sheriff Block’s death, Lee Baca became the new sheriff of Los Angeles County. He has promised to address issues of excessive force, discrimination, and racism.⁴³⁷ As yet, it is too early to tell what effect Sheriff Baca will have on reforming the department.

⁴³² *Ibid.*, p. 55.

⁴³³ Josh Meyer, “Block Says 8 Sheriff’s Employees wee in Jail Vigilante Group,” *Los Angeles Times*, Sept. 5, 1998, p. B-3.

⁴³⁴ V. Dion Haynes, “L.A. Sheriff Feeling Heat After 2 Deaths,” *Chicago Tribune*, Sept. 21, 1998, p. 10.

⁴³⁵ Peter Y. Hong, “Local Elections/L.S. County Sheriff,” *Los Angeles Times*, Sept. 10, 1998. Region II encompasses Carson, Century, Lennox, Lomita, and west Hollywood stations.

⁴³⁶ *Ibid.*

⁴³⁷ Ann-Marie O’Commor, “2 Stations Led by Baca Known for Problems,” *Los Angeles Times*, Nov. 13, 1998, p. A-1.

Chapter 5

The Relationship of Local Law Enforcement with Los Angeles Immigrant Communities

Section I: Overview of Police-Immigrant Relations

Introduction

On April 1, 1996, a Los Angeles television crew in a helicopter videotaped two Riverside County sheriff's deputies clubbing with batons a pair of suspected undocumented immigrants, after a frantic freeway chase of a pickup truck ended in South El Monte, about 10 miles east of downtown Los Angeles. The chase began at a border checkpoint and continued for 75 miles at speeds of up to 100 mph. The deputies were called in by the U.S. Border Patrol, which has banned high speed chases of immigrants since a 1992 pursuit ended in a deadly crash near a school in Temecula, California. The videotape showed the two deputies clubbing a man and a woman, after about 20 other suspected undocumented immigrants jumped from the truck and fled down a freeway embankment. The beating allegedly followed the two Mexican nationals' failure to respond to the deputies' command, in English, to get out of the bed of the pickup. An audiotape is reported to reveal that one of the deputies remarked during the beating: "Bunch of wetbacks, huh?"¹

The video struck a profound nerve in Los Angeles County, where some likened the incident to the Rodney King beating. Hispanic leaders, civil rights groups, and Mexican authorities expressed outrage over the incident and the FBI, the U.S. Department of Justice (DOJ) and the Los Angeles County Sheriff's Department (LASD) have all launched investigations into the beatings. There followed a number of demonstrations in Los Angeles against police brutality,

¹ Kenneth Noble, "Before They Beat Mexicans, Police Gave Orders in English," *New York Times*, Apr. 10, 1996, p. A-12; "Taped Aliens' Beating Sparks Protests," *Facts on File World News Digest*, Apr. 11, 1996, p. 245 D-3.

focusing particularly on the South El Monte incident. A protest in a Watts park near the Nickerson Gardens housing project on April 20th turned into a melee in which dozens of officers in riot gear arrested five people, and one suspect and five officers were injured. At its peak, about 60 riot-clad officers and a helicopter were involved and it took 80 minutes to disperse the crowd.² There was also a rally, sponsored by the Riverside County sheriff's deputies union to support the two sheriff's deputies, led by former Los Angeles Police Chief Daryl Gates, in which fights erupted after counter-demonstrators arrived. The rally drew about 400 people who waved U.S. flags and booed the mention of the two Mexican nationals, the media, and the Federal Government's civil rights investigation into the incident.³ Gates urged the Federal Government to stay out of the case. "We do not need the FBI, the civil rights section of the Justice Department, any of that," he said. Referring to the civil suit filed by the beating victims,⁴ people in

² "Five Arrested at Protest in L.A.," *Sacramento Bee*, Apr. 22, 1996, p. A-4.

³ "Riverside California Rally," Associated Press Online, Apr. 16, 1996, available in LEXIS, News Library, Curnws File. In defending the Riverside County Sheriff's Deputies, former LAPD Chief Gates said: "No matter how you use that club, people are going to criticize." Richard Seid, "Two Views of Mexico," *Christian Science Monitor*, Apr. 23, 1996, p. 20. Seid, an American who has lived in Mexico for 24 years, in reply, editorialized: "Wait a minute, Mr. Gates. We criticize because the way the clubs were used was wrong—brutal, racist, and discriminatory. Human rights are human rights, period. Neither the U.S. Border Patrol, sheriff's deputies, nor any vigilante groups have a valid excuse for violating them." *Ibid.*

⁴ A \$10 million claim was filed against the two Riverside deputies on behalf of the two undocumented immigrants who were beaten, saying the deputies "recklessly, intentionally and wantonly" beat and kicked them. David Cline, "Illegal Immigrant Victims Shouldn't Be Allowed to Sue," *Los Angeles Metropolitan News-Enterprise*, Apr. 16, 1996, p. 9. The case was ultimately settled, with the two Mexican nationals receiving \$370,000 each, in exchange for their

the crowd held up signs reading "Police get punished, criminals get \$\$\$" and "put the illegals away, not our deputies."⁵ The beatings raised passions and renewed clashes over immigration issues, as activists from both sides of the Proposition 187 debate squared off in rallies, protests, and demonstrations, also which erupted in fights and violence.⁶

Some defended the deputies, saying that while the beating is not justifiable, the penalties they incur should be mitigated, because they succumbed to "high speed pursuit syndrome"—what author and former Los Angeles Police Department (LAPD) officer Joseph Wambaugh describes as "fright and rage, resulting in an adrenaline rush that can be overpowering."⁷ Wambaugh also notes that street cops insist that under similar circumstances, the LAPD officers who beat Rodney King would have delivered the same blows to someone like Robert Shapiro of Beverly Hills. "The point they are making is that when police officers lose self-control after a long and dangerous pursuit, the ethnicity of their quarry matters not a bit."⁸ A *Los Angeles Times* poll conducted shortly after the incident, April 13–16, 1996, surveyed people across the United States. A total of 71 percent criticized the beating as unjustified, including 56 percent who considered it strongly unjustified.⁹

Most of this report concerns the progress of the LAPD's and of LASD's reform efforts along

the lines recommended by the Christopher and the Kolts Commissions to reduce incidents of excessive force, particularly against minorities, and to improve the relationship of the LAPD and the LASD with minority communities. The South El Monte incident highlighted the importance of similar issues regarding the immigrant community. This chapter examines the relationship of the LAPD and the LASD with the very large and growing immigrant communities of the city and county of Los Angeles.

Anti-Immigrant Sentiment, Racial and Ethnic Tensions, and Police-Immigrant Community Relations

Following the South El Monte incident, the editorial and letter to the editor pages of the *Los Angeles Times* were filled with various perspectives and opinions regarding the Riverside beating, whether such beatings routinely take place in Los Angeles County, and whether the beating and/or the reaction to it reflects a general hostility in California toward immigrants. Roberto Martinez, a human rights worker with the San Diego migrant center American Friends, said "[w]e feel the beating illustrates the hate and anger and rage of a lot of people. . . It's as if those deputies were doing it for all the rest."¹⁰ Father Andrew Greeley, a sociologist and Catholic priest, has suggested that the incident illustrates a new "nativism—hatred of immigrants" which could be "taking America where hatred of the Jews took the German people." He stated in an April 20th article in the *Albany, New York Times Union*:

We're not killing anyone yet, but the enthusiastic applause in some quarters over [the videotaped beating] suggests that we're not all that far away. In our minds, the "illegals" have become vermin. We have dehumanized them, deprived them of a claim to full humanity. Is it a long step from that to the gas chamber? Perhaps, but the logic is the same.¹¹

Some civil rights and immigrant advocates suggested that much of the support for the Riverside deputies was indicative of a growing anti-immigrant climate that—at least in

agreement to drop Federal and State civil rights lawsuits. Riverside County was not forced to make any changes in policy or admit wrongdoing. Don Nissenbaum, "Beaten Immigrants 'Happy' With \$740,000 Settlement, But their Lawyers Say Charges Should Be Filed Against Deputies," *Riverside Press Enterprise*, June 21, 1997, p. B-1.

⁵ Kenneth B. Noble, "Sympathies Sharply Divided on Beatings of Immigrants," *New York Times*, May 6, 1996, p. A-10 (hereafter cited as Noble, "Sympathies Sharply Divided").

⁶ Paul Lieberman, Paul Johnson and Kenneth Chang, "Beating Lead to Renewed Clashes Over Immigration Issues," *Los Angeles Times*, Apr. 4, 1996, p. A-19; Carla Hall, "Fight at Immigration Rallies Hurts 1, Closes Street: Police Break Up Skirmish In Middle of Wilshire Boulevard Between Groups on Opposing Sides of the Issue," *Los Angeles Times*, July 5, 1996, p. B-1.

⁷ Joseph Wambaugh, "Many Exploiting California's New Police Brutality Incident," *Minneapolis Star Tribune*, Apr. 22, 1996, p. A-13.

⁸ *Ibid.*

⁹ Duke Helfand and Stephanie Simon, "The Times Poll: 71% Say Beating of Immigrants Was Unjustified," *Los Angeles Times*, Apr. 18, 1996, p. 1.

¹⁰ Linda Diebel, "Mexicans Risk All on Trail of Tears," *Ottawa Citizen*, Apr. 20, 1996.

¹¹ Andrew Greeley, "U.S. Nativism Possible Prelude to Hitlerian Abuses," *Albany Times Union*, Apr. 20, 1996, p. B-12.

California—was particularly directed at Latinos. During an interview with Commission staff, Luke Williams, executive director of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA),¹² suggested that the incident and the subsequent demonstrations in support of the deputies illustrated the broader anti-immigrant and anti-Latino atmosphere created by the Proposition 187 and other immigration-focused campaigns.¹³ According to Dr. Alvin Poussaint, a psychiatrist on the faculty of Harvard Medical School:

because of the politically whipped-up hysteria, “some people feel that it’s good that police beat them (the Mexican nationals in the South El Monte beating incident)—that they deserved it.” That attitude, says Poussaint, is due to ignorance, hatred and a basic misunderstanding of our laws. Whether a crime has been committed or not, the role of law enforcement “is

¹² CHIRLA was founded 10 years ago following passage of the Immigration Reform Control Act of 1986 (IRCA) to deal with immigration issues, the civil and human rights of immigrants and interethnic relations. It started as a project of the United Way of Los Angeles. The coalition is composed of over 125 organizations including, among others, the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Educational Fund, the Asian Pacific American Legal Center, the Western Regional Office of the Southern Christian Leadership Conference, and a number of immigrant rights groups ranging from Search to Involve Filipino Americans to Russian immigrant groups. CHIRLA is the only multiethnic immigrant rights coalition in southern California. Coalition for Humane Immigrant Rights of Los Angeles, *Hate Unleashed: Los Angeles In The Aftermath of 187* (November 1995), p. 2 (hereafter cited as CHIRLA, *Hate Unleashed*); Luke E. Williams, executive director, Coalition for Humane Immigrant Rights of Los Angeles, telephone interview, July 25, 1996 (hereafter cited as Williams Interview).

¹³ Williams Interview. The newly created California Latino Civil Rights Network, a coalition of community-based Latino groups, agreed with this assessment. Christine Spolar, “Anti-Immigrant Mood Worries California Latinos,” *Washington Post*, June 5, 1996, p. A-3. Although polls show that a majority of people believe the Riverside deputies used excessive force, a vocal and influential minority has “directed their outrage at the people who were beaten. They have argued loudly, on talk radio, in sound bites on the nightly news and in newspaper columns that people who sneak into this country illegally, take American jobs, and burden social services deserve what they get. . . The disgust with illegal immigrants was palpable on a [New York] radio show. . . when a caller railed against ‘wetbacks’ who ‘ought to be sent back to Mexico.’” Noble, “Sympathies Sharply Divided.”

not to beat and punish people. That’s up to the courts.”¹⁴

If authority figures such as highly placed government officials or high profile political candidates “wage[] war against immigrants, the majority population, including law enforcement officers, begin to view the beatings as legitimate,” according to Aida Hurtado, a psychology professor at the University of California, Santa Cruz.¹⁵

At the Commission’s hearing, Mr. Williams testified that CHIRLA’s “primary concern is that. . . there has been an atmosphere created—an anti-immigrant atmosphere—one of hostility, hysteria, that really has impacted the relationship between the law enforcement community and immigrants in general.”¹⁶ Ramona Ripston, executive director of the American Civil Liberties Union of Southern California (ACLU-SC) similarly testified “that the anti-immigrant feeling in this city is greater than it’s ever been.”¹⁷ Latino groups and leaders largely concurred. They argued that an atmosphere in California of mistrust and outright contempt for Latinos, native born and immigrant, has been increasing since the 1994 adoption of Proposition 187. They maintained that “strong anti-immigrant rhetoric from politicians has provided a politically convenient outlet for racism.”¹⁸

Tom Saenz, the Los Angeles counsel for the Mexican American Legal Defense and Educational Fund (MALDEF), says that the developing anti-immigrant climate is “an open invitation to discriminate against people who fit the broad, sweeping profile of undocumented workers.”¹⁹ Mr. Saenz stated that MALDEF investigated a

¹⁴ Roberto Rodriguez, “Beyond Brutality: Scholars Say Repeated Beatings Born in Hate and Police Culture,” *Black Issues in Higher Education*, vol. 13, no. 5 (May 2, 1996), p. 22 (hereafter cited as Rodriguez, “Beatings Born in Hate and Police Culture”).

¹⁵ Ibid.

¹⁶ Luke Williams, Jr., executive director, Coalition for Humane Immigrant Rights of Los Angeles, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality And Discrimination, Hearing Before the U.S. Commission on Civil Rights*, Los Angeles, CA, Sept. 12–13, 1995, vol. 2, pp. 164–65 (hereafter cited as *L.A. Hearing*).

¹⁷ Ramona Ripston, executive director, American Civil Liberties Union of Southern California, testimony, *L.A. Hearing*, vol. 2, p. 193 (hereafter cited as Ripston Testimony).

¹⁸ Cassandra Stern, “Taped Beating Galvanizes Latino Community,” *Washington Post*, June 11, 1996, p. A-3.

¹⁹ Ibid.

situation in April or May of 1996 where a County Mobile Free Clinic was giving immunizations at a shopping center that was also a laborer site. The Immigration and Naturalization Services (INS) raided the clinic, according to Saenz, while they were conducting their work. The INS, he says claimed they were called by the LASD to make that raid. According to Mr. Saenz, however, the sheriff's department investigated and said that it could not find anyone in the department who made that call. MALDEF suspected that it was distinctly possible that the sheriff's department made the call, since the department had a concentrated supervision and observation effort under-way of the day-laborer site that was raided.²⁰

Luke Williams also expressed concern that 2 to 3 days before this Commission's hearing, INS raids were launched against day-laborer sites in Los Angeles. According to Mr. Williams "several of the day laborers were beaten pretty badly [and needed] medical attention." CHIRLA's was concerned, he said, that:

irrespective of whether it's the police department or the INS. . . that they. . . treat people fairly, that they follow procedures of due process, and that there isn't this wanton sort of discrimination based on identifying someone as being in the country undocumented based on skin color alone or someone that speaks with an accent.²¹

Finally, Mr. Williams explained that to the extent that there are abusive or discriminatory incidents where people are asked, based on their skin color or language, "for special documentation to show that they are residents, all of this really...discourages citizens and residents from coming forward either as witnesses to report crimes or to serve as assistants to the law enforcement community."²² This further feeds a general, preexisting fear in the immigrant community of interacting with local law enforcement.²³

²⁰ Tom Saenz, Los Angeles Counsel for the Mexican American Legal Defense and Educational Fund, telephone interview, July 26, 1996 (hereafter cited as Saenz Interview).

²¹ Luke Williams, Jr., executive director, Coalition for Humane Immigrant Rights of Los Angeles, testimony, *L.A. Hearing*, vol. 2, pp. 168-69 (hereafter cited as Williams Testimony).

²² Williams Testimony, *L.A. Hearing*, vol. 2, p. 166.

²³ *Ibid.* This uncertainty revolves around the perceived degree of LAPD and LASD adherence to their department's

In November 1995, CHIRLA published a report titled *Hate Unleashed: Los Angeles in the Aftermath of 187*, which analyzes and summarizes a sample of 157 complaints of serious rights violations. The sample was drawn from 229 verified cases of discrimination, denial of services, civil rights violations, hate speech and hate crimes reported through the CHIRLA hotline or through member organizations from the summer of 1994 to the fall of 1995.²⁴ The report notes that according to 1990 census data, 26 percent of California's population is Latino. The report:

reveals a profoundly disturbing pattern of systematic abuses against Latinos, many of them United States citizens [or] legal residents (green card holders). . . A common pattern seems to be that of the ordinary individual taking the law into his or her own hands . . . [seeking] to 'enforce' 187, ignoring that administrative machinery exists for that purpose and that even citizen initiatives are subject to judicial review.²⁵

According to the report, these were not the "isolated acts of a few persons that one might view as racial extremists. Many were the unofficial actions of police officers."²⁶

Of the 229 verified cases reported in *Hate Unleashed*, 49 involved "harassment and other unlawful treatment by law enforcement personnel."²⁷ Complaints about law enforcement officials harassing Latinos "flooded CHIRLA's hot-

respective policies prohibiting contact with the INS regarding an individual, unless the person has been arrested for certain local criminal violations. This issue is discussed in more detail later in this chapter.

²⁴ CHIRLA, *Hate Unleashed*, pp. 5, 9.

²⁵ *Ibid.*, p. 5.

²⁶ *Ibid.* The report notes, however, that some of the less careful rhetoric surrounding the debate over Proposition 187 may have given "license to discrimination and intolerance." For example, *Stop Immigration Now* founder Ruth Coffey told the *Los Angeles Times*, "I have no intention of being the object of 'conquest,' peaceful or otherwise, by Latinos, Asians, Blacks, Arabs or any other group of individuals who have claimed my country." *Ibid.*, p. 7. And Glenn Spencer, president of *Voices of Citizens Together*, which collected 40,000 signatures to qualify 187 for the ballot, said: "We have to take direct and immediate action to preserve this culture and this nation we have spent two centuries building up." He went on to describe immigration as "international busing." *Ibid.*, p. 8. See Sam Anson, "Prop. 187: Diehards Gear Up For Second Initiative Campaign." *Village View*, Feb. 17-23, 1995.

²⁷ *Ibid.*, p. 10.

line in the wake of 187's passage. Callers regularly reported incidents of police officers establishing traffic checkpoints and checking papers in communities heavily populated by Latinos. There were also reports of police using racial slurs and other abusive language towards Latinos."²⁸ The majority (60 percent) of the victims of the 157 cases covered in the report were U.S. citizens or lawful, permanent residents of every social class, who, according to CHIRLA, "were subjected to discrimination and racial attacks in the wake of Proposition 187 because of their Latino appearance alone."²⁹

The report states, "[m]any of the callers to CHIRLA's post-87 hotline, particularly those who are long-time residents, remarked that they had never before experienced such blatantly hostile treatment. It profoundly unnerved them" and had a deep psychological impact. One woman, who reported that she was held at gunpoint by a police officer demanding her "green card" was upset for several months afterwards, as were her children and her sister, who were all present. Nearly 4 months after the incident, she said that "the trauma has had a profound effect on me. . . I can't sleep. . . I've been a nervous wreck ever since this happened."³⁰ According to *Hate Unleashed*:

the psychological impact of the climate of discrimination unleashed by 187 is deep and connected to what is most significant about the effects of 187: the way it has changed daily life for Latinos. . . following its passage and has fueled a climate of intolerance. Reports of 187-related discrimination continue to come into CHIRLA's hotline, indicating that neighbors, business owners, police officers, and government officials still feel license to discriminate against anyone who they suspect "might be illegal."³¹

Mr. Williams testified that since the November 1995 report "we have received over 56 calls regarding police and sheriff department abuses against immigrants. . . that we verified. . . [and] referred to member organizations for legal analysis and assessment."³² In addition to the

²⁸ Ibid., pp. 14-15.

²⁹ Ibid., p. 16.

³⁰ Ibid.

³¹ Ibid.

³² Williams Testimony, *L.A. Hearing*, vol. 2, p. 167. These complaints were verified to CHIRLA's satisfaction, but had not yet proceeded to any sort of departmental or judicial

CHIRLA report, Williams provided the Commission with "a representative sample" of these calls, consisting of eight complaints received after the report was issued, with the proviso that client names and personal information be kept confidential. These complaints included incidents of alleged police brutality or harassment received by CHIRLA against law enforcement officials, including the LAPD and the LASD.³³ The flavor of these incidents can only be conveyed by reciting some examples: One woman, the victim of a robbery, reported that after LASD deputies recovered her purse, they questioned her regarding her immigration status, contacted the INS, and arrested and detained her until the INS arrived. She was later released to the custody of her employer. Another incident involved alleged hate speech in which a Latino LASD deputy referred to an individual and some friends as "bola de mojos" (roughly translated as "bunch of wetbacks") and threatened to call the INS when the individual refused to sign a search warrant. Another incident involved an LASD traffic stop. When the young Latino driver asked why he was stopped, the deputy allegedly replied, "Because I don't like Mexicans and you are an ignorant Mexican." When the incident was reported to the relevant Sheriff's station, the lieutenant reportedly asked whether there were any witnesses and the individual said "no." When the complainant said he would sue, the lieutenant allegedly replied, "OK, go ahead, hire Johnny Cochran." Another caller reported that he and his friends are stopped constantly by LAPD officers and asked to show their documentation. He said that officers typically threaten to call the INS to deport them and use hate speech such as "You Mexican mugrosos, putos, ["dirty, whores"] go back to Mexico."³⁴

determination. Mr. Williams testified that "these are calls that we verified where we have called back, talked to the people, talked to the people at the sites and done some background on this, and also incidents [which] we have referred to member organizations for legal analysis and assessment." Ibid.

³³ The station locations of officers or deputies and any other identifying information regarding them or the alleged victims are omitted.

³⁴ Letter from Luke E. Williams, Jr., executive director, Coalition of Humane Immigrant Rights of Los Angeles (CHIRLA), to U.S. Commission on Civil Rights, July 31, 1996.

Some civil rights advocates and academics indicate that an increasing intolerance for ethnic or racial minority immigrants is also a significant contributing factor to excessive force incidents like the Riverside beating. While local law enforcement often attribute such incidents to "high speed pursuit syndrome," Latino and African American psychologists argue that "attitude, not adrenaline," is at the heart of the problem. For example, Professor Aida Hurtado maintains that law enforcement officers "feel free to brutalize minorities because they see themselves in a 'war' against 'invaders.'"³⁵ Professor Hurtado noted that the South El Monte beatings occurred in broad daylight, with the full knowledge of the Riverside County deputies that they were being filmed, and yet they made no gender distinction—a woman passenger in the truck was beaten with a riot stick by two officers, then lifted by her hair, her face bashed against the hood of the truck, and then slammed to the ground. But because undocumented immigrants are not viewed as human beings, she said, the officers felt justified. "We're a country of human rights and human rights are universal," she said. "Yet we (society) are equating being human with being a U.S. citizen."³⁶

Similarly, Gloria Romero, a psychology professor at California State, Los Angeles and former chairwoman of the Hispanic Advisory Council to the LAPD, says excessive force incidents against minority immigrants are attributable "to the anti-Latino and anti-immigrant hysteria sweeping the nation." According to Professor Romero, "Police continue to believe it's okay to engage in brutality," an attitude which both professors Hurtado and Romero attribute to hatred, ignorance, and misinterpretations of Federal laws.³⁷

The Asian American community has also reported a dramatic increase in hate crimes and cases of alleged police brutality against members of their community. A 1996 study by the Asian American Legal Consortium found that hate crimes against Asians increased more than 80 percent in 1995 in Southern California, and

blamed the increase on a "climate of racial intolerance and exclusion."³⁸ K. S. Park, general counsel of Korean Immigrant Workers Advocates (KIWA) in Los Angeles, testified that there had been four cases of alleged police misconduct within a 6-month period that have outraged the Korean community.³⁹ Mr. Park emphasized the significance of the cases noting that "we haven't seen that many civilian killings or injuries. . . by law officers" in the Korean community.⁴⁰ However, Mr. Park noted that "turf search and seizure cases," in which Asian youths driving through primarily white neighborhoods "are stopped for no reason at all and are searched, sometimes. . . spread eagle on the ground," are common.⁴¹

Of the four cases cited by Mr. Park, only two involve allegations against the LAPD or the LASD. Still, each incident has nevertheless greatly upset the Korean community and affected its view of local law enforcement. In the first case, Hong Il Kim, a 27-year-old Korean man was shot and killed on February 14, 1996, following a pursuit by Westminster and Orange police officers (in Orange County) and California Highway Patrol (CHP) officers.⁴² Kim, after apparently making a reckless right turn in Westminster, led police on a 30-mile chase through several cities and was finally boxed into a parking space in a shopping center in Orange. An article in the *Los Angeles Times* reported that Kim, surrounded by officers, "lurched his vehicle toward two officers standing in front of it and was killed in a shooting police said couldn't have been avoided. Kim was trying to run down the officers and they opened fire in self-defense, po-

³⁵ Roberto Rodriguez, "L.A. Beatings Reminder of Brutality," *Hispanic*, June 1996, p. 9 (hereafter cited as Rodriguez, "L.A. Beatings Reminder of Brutality").

³⁶ Rodriguez, "Beatings Born in Hate and Police Culture."

³⁷ Rodriguez, "L.A. Beatings Reminder of Brutality."

³⁸ Michael A. Fletcher, "Violence Against Asian Americans Increases," *Washington Post*, Aug. 6, 1996, p. A-5.

³⁹ K.S. Park, general counsel, Korean Immigrant Workers Advocates, testimony, *L.A. Hearing*, vol. 2, p. 174 (hereafter cited as Park Testimony). KIWA's "mission is to empower Korean immigrant workers thorough organizing, service, and education and to develop a progressive constituency in the Korean community to join in solidarity with other communities working for social change and economic justice." "Become Friends of KIWA," *KIWA News*, vol. 5 (Spring 1997), p. 16.

⁴⁰ Park Testimony, *L.A. Hearing*, vol. 2, p. 190.

⁴¹ *Ibid.*, p. 191.

⁴² *Ibid.*

lice said at the time.”⁴³ Mr. Park said the shooting was broadcast live by a local television crew and that Kim was blocked in on all four sides; there was no way for him to flee; and the police officers nevertheless had their guns drawn. The car was moving very slowly, so slowly, according to Mr. Park, that the police could not have inferred any danger of being run over immediately.⁴⁴ Two city of Orange investigators, a California Highway Patrol officer, and a Westminster officer opened fire and shot about 30 shots at Kim, killing him.⁴⁵

The other non-LAPD or LASD incident referred to by Mr. Park involved the investigation of the murder of a police officer in July 1996, allegedly by an Asian man. Mr. Park said that in their zeal to catch the officer’s killer, the police arrested a Korean man, based only upon witnesses’ testimony that he looked like the killer from behind. The mainstream media publicized the arrest widely, so that there was “terrible damage” to the man’s reputation. Mr. Park expressed concern about how willingly the police pinpointed the man as the murderer without conducting a thorough investigation.⁴⁶

Two incidents cited by Mr. Park involved the LAPD. On May 10, 1996, Byoung Chul Hong, a 43-year-old Koreatown businessman, was seen running into traffic, kicking passing cars, and touching motorists who had their windows rolled down.⁴⁷ Mr. Hong appeared disoriented. Several Latino civilians brought him out of traffic and

over to the sidewalk, and then called the police. According to Mr. Park, LAPD officers subdued, handcuffed, and hog-tied Mr. Hong. Witnesses reported that one of the officers, himself about 200 pounds, according to Park, sat on Hong and shoved his knee into Hong’s upper back or neck to control him.⁴⁸ Hong became red in the face and looked short of breath, but the officer did not move and Hong died in that position. Mr. Park said that “the whole community is very angry that excessive force was used against this person.”⁴⁹ In an interview with Commission staff, Bayan Lewis, LAPD assistant chief of police, acknowledged that the LAPD has had a few deaths attributable to “positional asphyxia” (suffocation when an individual is laid on his stomach with his legs bound) but these situations involved people who were either overweight, fighting arrest, or had narcotics in their system. He indicated that the LAPD’s current policy requires a detainee to be on his or her side if officers bind the person’s hands and feet.⁵⁰

The fourth incident, the Tong-Sik Chong case, involved the failure of the LAPD to seek either a Korean-speaking police officer or utilize an interpreter service under contract with the city to communicate with an 81-year-old Korean man taken into police custody. Despite the filing of a missing person’s report by the family, Mr. Chong was released in late December 1995 and found a day later on a freeway by a passing paramedic. Mr. Chong was disoriented and bleeding from the head and hospitalized with pneumonia. He later died on April 19, 1996.⁵¹ The Chong case, Mr. Park testified, “pointed out how law enforcement . . . systematically failed to provide adequate service to the [non-English speaking] monolingual population.”⁵² This incident, along with the Kim and Hong cases led Charles Kim, executive director of the Korean

⁴³ Thao Hua, “\$3 Million Claim Filed In Police Shooting Death,” *Los Angeles Times*, Apr. 26, 1996, p. 4 (hereafter cited as Hua, “\$ 3 Million Claim”).

⁴⁴ K.S. Park, general counsel, Korean Immigrant Workers Advocates, telephone interview, Aug. 5, 1996 (hereafter cited as Park Interview).

⁴⁵ Aletha Yip, “Advocates Demand LAPD Investigation: Tragedy Results in Three Incidents of Alleged Misconduct,” *Asian Week*, July 4, 1996, p. 8 (hereafter cited as Yip, “Advocates Demand LAPD Investigation”). Angela Oh, one of the family’s attorneys, said that a pathologist hired by the family concluded that Kim was shot three times in or near the left eye and five times in the upper body. The family’s attorneys and representatives from several Korean American advocacy groups have urged Asian Americans and other southern Californians to demand that police officials reexamine their pursuit policies. Less than 2 months after Kim was shot, a pursuit in Riverside County ended outside Los Angeles in the videotaped beating of two undocumented immigrants. See Hua, “\$3 Million Claim.”

⁴⁶ Park Interview.

⁴⁷ Yip, “Advocates Demand LAPD Investigation.”

⁴⁸ *Ibid.*; Yip, “Advocates Demand LAPD Investigation.”

⁴⁹ Park Interview.

⁵⁰ Bayan Lewis, Assistant Chief, Director of Operations, Los Angeles Police Department, telephone interview, July 18, 1996 (hereafter cited as Lewis Interview).

⁵¹ Park Testimony, *L.A. Hearing*, vol. 2, pp. 174–76; Yip, “Advocates Demand LAPD Investigation.”

⁵² Park Testimony, *L.A. Hearing*, vol. 2, pp. 174–76. See also notes 45–53 and accompanying text. As discussed later in more detail, the Chong case led to the formation of the Language Task Force by the Los Angeles Board of Police Commissioners, on which Mr. Park served.

American Coalition, to comment: "Koreans tend to be conservative and usually support police. But when things like this [the three cases of alleged abuse] happen, a lot of people question whether police are on our side."⁵³ Angela Oh suggested that these three Asian Americans were victims of police officers' frustrations. She stated:

[Law officers] know there aren't going to be any consequences because, for the most part, Asian Americans don't speak out. . . People need to wake up and understand that this is not right. No matter how deranged the person is, these are professionals. Law enforcement personnel are trained to deal with these problem situations. . . What happened in these three situations was not necessary. With Mr. Chong, it was a matter of a phone call to get someone who spoke Korean. With Hong Il Kim, it was a matter of waiting. . . [W]e waited five to eight months for the Montanans [the Freeman of Montana stand-off near Jordan, MT], but we didn't wait 10 seconds for Hong Il Kim once they had him cornered. And David Hong (Byoung Chul Hong's American name), he died at the hands of these officers after being hogtied. It was all unnecessary.⁵⁴

Section II: The Relationship of the LAPD and LASD with Los Angeles Immigrant Communities

Representative Views of the Immigrant Community-LAPD and LASD Relationships

Both the LAPD and the LASD are attempting to move toward the model of community policing. Under this model, law enforcement explicitly recognizes the importance of a community's concerns and priorities in setting its own. Community policing also recognizes the necessity of community support and partnerships to real progress in reducing victimization and restoring security. Community policing increases police accountability to neighborhoods and communities, offers neighborhoods the kind of service and attention they desire, and crafts innovative working relationships.⁵⁵

Community perceptions of, and trust in, local law enforcement are critical determinants of the level of community support for law enforcement and the types of community-police partnerships important to community policing. In his testimony before the Commission, Sheriff Sherman Block agreed that if communities have confidence in law enforcement and the efficiency and fairness of the officers, it is easier for law enforcement to do its job. He stated that "when it comes to law enforcement and the community, trust is the key element. If the community trusts you, and recognizes why you're there in their community, they are going to support and assist."⁵⁶ The level of racial and ethnic tension produced by police relationships with Los Angeles' minority and immigrant communities is also significantly tied to their perceptions of and trust in the police. Community perceptions are important not only in helping to establish the objective facts of local law enforcement's relationship with Los Angeles' immigrant community, but also as a barometer of the level of immigrant communities' trust in law enforcement.

Luke Williams testified that there is a great deal of fear in the newcomer community about reporting to police officials in general. According to Williams, to the extent that there are abusive or discriminatory incidents like those previously noted,⁵⁷ where people are asked "for special documentation to show that they are lawful citizens or residents. . . discourages citizens and residents from coming forward either as witnesses to report crimes or to serve as assistants to the law enforcement community."⁵⁸ Active participation in the community policing activities of the LAPD and LASD of U.S. citizens and lawful permanent residents, as well as of undocumented immigrants, is discouraged by incidents in which people are asked to prove they are lawful residents or citizens, based upon their color, ethnicity, accent or language. The psycho-

⁵³ Yip, "Advocates Demand LAPD Investigation."

⁵⁴ Ibid.

⁵⁵ David M. Kennedy and Mark H. Moore, "Underwriting the Risky Investment in Community Policing: What Social Science Should Be Doing to Evaluate Community Policing," *The Justice System Journal*, vol. 17 (1995), p. 273.

⁵⁶ Sheriff Sherman Block, Los Angeles County Sheriff's Department, testimony, *L.A. Hearing*, vol. 2, p. 153 (hereafter cited as Block Testimony).

⁵⁷ See notes 28-40 and accompanying text.

⁵⁸ Ibid., p 166. This fear relates primarily to the perceived relationship between the LAPD and the INS, which will be discussed in more detail later in this chapter.

logical impact of these incidents may be deep and long-lasting.⁵⁹

Many immigrants, "particularly [those] from Mexico and Central America, have grown up with a certain amount of distrust of law enforcement because they come from countries where law enforcement represents a repressive government"⁶⁰ or has a significant corruption problem.⁶¹ Edith Perez, a member of the Board of Police Commissioners for the city of Los Angeles noted that because the police are feared in the countries of origin of many Latinos and other immigrant groups, they are apprehensive about how to deal with the police here and are uncomfortable coming forward to report crimes at a police station.⁶² Ms. Ripston indicated that in the area where the ACLU-SC is located, around 80 percent of the population is Latino. She said that people want the police to help them with the significant crime problem in the area, and yet there is tension between the need for police and the fear of the police. She noted that, in her estimation, police officers for the most part do not appreciate this tension. Instead, the officers are angry at the people for not liking them or more actively aiding them in law enforcement.⁶³ Ms. Ripston testified that the "immigrant community that I notice every day does not trust law enforcement, and law enforcement is very hard on these people. So they do not understand each

other, and that leads to anti-immigrant sentiment."⁶⁴

The Riverside County Sheriff's deputy's beatings in South El Monte served to highlight the Los Angeles immigrant communities' concern regarding what it perceived to be the "general anti-immigrant posture" of some law enforcement officers, as well as the perception that they may not "have the sensitivity that's needed to deal with communities where different languages are spoken, where different cultures are in effect."⁶⁵ In addition to an increase in the time and resources devoted to training officers in these areas, Luke Williams of CHIRLA emphasized that individual officers' dispensation of their own version of "curbside justice" to individuals they suspect may be undocumented will only end when the command structure makes clear that all people are to be treated equally.⁶⁶ Professor Gloria Romero agrees. To end police abuse, Professor Romero says, "there has to be a clear message from the top: 'If you beat somebody, you go to jail.'"⁶⁷

During the Commission's 1993 hearings in Los Angeles, minority witnesses, particularly Asian and Latino business owners testified that the LAPD did not afford them protection equivalent to that provided in predominantly white communities. Some civil rights and community advocates indicated that there remains some sense of that now, not only among minority business owners, but among minority residents, many of whom are recent immigrants.⁶⁸ Many minority residents have complained to CHIRLA or member organizations that the response time of police or sheriff's deputies, as well as the kind of treatment they receive from local law enforcement, is different from that received in white residential areas. Even regarding domestic violence calls, minority residents complain that police response time is slower in their communities than in white neighborhoods and, that when police do arrive, minority residents' statements are not given much weight and are frequently minimized or ignored.⁶⁹

⁵⁹ CHIRLA, *Hate Unleashed*, p. 16. See also notes 30-40 herein and accompanying text for a discussion of several such incidents reported to CHIRLA allegedly involving LAPD and LASD officers.

⁶⁰ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 193.

⁶¹ Ramona Ripston, executive director, American Civil Liberties Union Foundation of Southern California (ACLU-SC), telephone interview, July 25, 1996 (hereafter cited as Ripston Interview).

⁶² Commissioner Edith R. Perez, Board of Police Commissioners, city of Los Angeles, telephone interview, Aug. 13, 1996 (hereafter cited as Perez Interview). Commissioner Perez is chair of the following task forces of the commission: Language Policies, Use of Force, Curfew, and Real Estate. She is a partner at the law firm of Latham & Watkins, where she specializes in real estate finance and international transactions. *Ibid.* On July 29, 1997, Commissioner Perez was unanimously elected president of the Police Commission. Matt Lait, "Perez to Head Police Commission, Vows To Boost Morale, Cut Crime," *Los Angeles Times*, July 30, 1997, p. B-1.

⁶³ Ripston Interview.

⁶⁴ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 193.

⁶⁵ Williams Testimony, *L.A. Hearing*, vol. 2, p. 170.

⁶⁶ *Ibid.*

⁶⁷ Rodriguez, "Beatings Born in Hate and Police Culture."

⁶⁸ Williams Interview; Park Interview.

⁶⁹ Williams Interview.

K.S. Park presented a historical view of local law enforcement's relationship with the Korean immigrant community. In an interview with staff, Mr. Park noted the traditional reluctance of Koreans to challenge police or the government, and their fear in the United States of losing police protection from crime. Most Korean immigrants, he said, are hard-working and focused on having a better life and more independence in the United States. Many, he said, are willing to open, or work for, businesses that are in high-crime areas. And they look toward the police as the only source of protection in those areas, he said. According to Mr. Park, there are also many Koreans who do not feel established in their new country. Therefore, they try to keep a very good relationship with the police.⁷⁰ Mr. Park said that this relationship went through a significant change, however, around the time of civil unrest in 1992. He testified that a significant portion "of the physical damage. . . in the civil unrest of 1992 [was] against Korean-owned businesses."⁷¹ These small business owners were angry and frustrated that the LAPD did not do more to protect their businesses, especially since many businesses were allegedly saved simply by posting one armed guard in front of the store. They were further frustrated by the dismissal of a class action lawsuit against the city and the LAPD for failing to protect their businesses.⁷²

Around 1993, Mr. Park said, many Korean merchants began a grassroots fundraising effort in the community to raise money for the LAPD to build a police substation in the Koreatown

area. Mr. Park testified that he viewed the reaction as misguided for two reasons: First, it did nothing to address the inter-minority racial tensions among Asians, Latinos, and blacks in Koreatown or other neighborhoods throughout Los Angeles. Second, it set a dangerous precedent whereby a more prosperous community could buy greater protection than a poorer community, when in fact both are entitled to police protection under the law.⁷³ A more constructive response, in Mr. Park's estimation, was the effort of another group of Korean immigrants to organize better the Korean community politically to demand equal rights as residents and adequate enforcement of civil rights protections from police abuse. This latter group, as recent immigrants, perceived that they lacked the political clout to participate effectively in decisions regarding resource allocation. Their effort, coupled with increased Korean participation in inter-racial and inter-ethnic initiatives like Community Police Advisory Boards in the neighborhoods, and the Language Task Force of the Los Angeles Police Commission, would prove to be more effective, in Mr. Park's view.⁷⁴

This view was echoed at the National Korean American Studies Conference on the Fifth Anniversary of the 1992 Los Angeles Civil Unrest held on April 25–26, 1997, and jointly sponsored by Korean Immigrant Workers Advocates (KIWA), the Korean Youth and Community Center, and the UCLA Asian American Studies Department. In an article on the conference the *KIWA News* noted that the 1992 civil unrest:

was both a gargantuan tragedy and a fierce eye-opening experience for the Korean immigrant community. . . . [T]he Korean community resolved to strengthen itself politically. . . . [T]hose who believed that the unrest was a result of. . . policies engendering racial divisions. . . sought to improve the relationship among different racial communities and. . . sought more political power in solidarity with other ethnic communities.⁷⁵

⁷⁰ Park Interview.

⁷¹ Park Testimony, *L.A. Hearing*, vol. 2, p. 171. Over 2,500 Korean American-owned businesses suffered losses totaling almost \$500 million, according to the organization Asian Pacific Americans for a New Los Angeles. Nina Chen, "Picking Up the Pieces 3 Years After the L.A. Riots," *Asian Week*, June 16, 1995, p. 4. A more recent estimate is that Korean Americans lost approximately 2,300 stores in South Central Los Angeles and Koreatown, resulting in \$350 million in damages or 45 percent of the total damages from the 1992 civil disturbance. Pyong Gap Min, *Caught in the Middle: Korean Communities in New York Los Angeles* (Berkeley and Los Angeles: University of California Press, 1996), p. 1.

⁷² Park Testimony, *L.A. Hearing*, vol. 2, pp. 171–72. In his interview, Mr. Park indicated that the legal theory behind the dismissal was that law enforcement agencies have a duty to protect the general public, but not specific individuals. In selecting who to protect, he said, the law grants law enforcement agencies significant discretion. Park Interview.

⁷³ Park Testimony, *L.A. Hearing*, vol. 2, p. 172.

⁷⁴ Park Interview.

⁷⁵ "National Korean American Studies Conference on the Fifth Anniversary of L.A. Civil Unrest," *KIWA News*, vol. 5 (Spring 1997), pp. 3, 15. The article notes that some in the Korean American community saw the unrest as a criminal act and called for more police power, while some also called for building up the economic power of Koreans in American society. *Ibid.*

Those who saw the civil unrest "as an explosion of racial tension," the article notes, "engaged in sharper vigilance of the racial discrimination proliferating systematically in police and other government agencies."⁷⁶ To this end, KIWA helped the families of Tong-Sik Chong and Hong-II Kim form, with other concerned residents, Korean Americans for Police Accountability, "the first-ever organization in this ethnic community aimed at mobilizing support for police reform and vigil[ance] against civil rights infringement." In addition, KIWA, the Asian Pacific Islanders Advisory Council to the LAPD, the Hispanic Advisory Council to the LAPD, and the Asian Pacific American Legal Center "have pushed for concrete reform through participation in the Los Angeles Police Commission Language [Policies] Task Force."⁷⁷

Another issue causing concern among Asian American advocates is the recent crackdown on alleged "crime magnet motels."⁷⁸ The city attorney has been working with the LAPD to target motel businesses in high crime areas for nuisance revocation proceedings. Yet it is alleged that a seemingly disproportionate number of the businesses targeted for such proceedings are Chinese-owned. For example, there are 38 motels along South Figueroa Street, and of those, only 6 are Chinese-owned. Yet five of the six motels that the city's zoning administration has brought "nuisance revocation" proceedings against are Chinese-owned.⁷⁹ According to one report, none of the witnesses at the administrative nuisance hearings was sworn in or allowed to be cross-examined.⁸⁰ Sometimes, witnesses confused one motel with another.⁸¹ Following the administrative hearings, the zoning administrator ruled that all six motels were "public nuisances" and required that the motels hire security guards, install video cameras, pay fines, meet regularly with the LAPD vice unit, hire

⁷⁶ Ibid.

⁷⁷ "Civil Rights Work: LAPD Accountability Campaign," *KIWA News*, vol. 5 (Spring 1997), p. 11.

⁷⁸ Bonnie Tang, staff attorney, Asian Pacific American Legal Center of Southern California, telephone interview, July 11, 1996.

⁷⁹ Fanny Liu, "We Do Not Want Criminals in Our Motel or Neighborhood," *Los Angeles Times*, July 6, 1996, p. B-7 (hereafter cited as Liu, "We Do Not Want Criminals").

⁸⁰ Ibid.

⁸¹ Ibid.

managers who speak fluent English, and post signs notifying potential tenants that the motel was found to be a nuisance, among other things.⁸² This has imposed financial hardship on many of the businesses. One business owner noted that before the nuisance revocation proceedings, he had difficulty obtaining police protection. He said, "we were the victims of robbery, assault and racial discrimination. . . . Whenever we called the police, they took hours to come or they ignored our calls. When they did come, my family and our employees were always treated rudely, like we were the criminals."⁸³

In February 1996, the California Commission on Human Relations urged the Los Angeles zoning administration to "undertake an investigation to ensure that there has not been an unfair targeting of businesses owned by certain ethnic groups, either due to prejudices of area property owners or to those of any of the officials involved in the process."⁸⁴ Reportedly, there has been no such investigation.⁸⁵ When asked at the Commission hearing about this issue, Chief Willie Williams testified that the businesses were not targeted because they were Asian owned or operated. He told the Commission that before citations were issued:

we have training programs and information processes, where we sit down through Asian Chamber of Commerce and other groups, to help explain to new people what the policies and rules and regulations in the City of Los Angeles and the United States are, particularly if there are laws based on different value systems, not making a judgment on another country's value systems.

We also, before citations are issued. . . there must be documented, numerous visits to the site, speaking with the manager and/or the owner, and provide them an opportunity to address the issues. . . . It's only after we have done these things, and based on complaints or observations, that a citation or an arrest, whichever it might be, is issued. That's the last resort.⁸⁶

⁸² Ibid.

⁸³ Liu, "We Do Not Want Criminals."

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Chief Willie L Williams, Los Angeles Police Department, testimony, *L.A. Hearing*, vol. 1, pp. 194-95.

In her written statement to the Commission, Ramona Ripston stated that despite positive changes since the Christopher Commission report:

the institutional culture of the LAPD has largely stifled many initiatives that would be necessary to make reform work. There has been resistance at virtually every turn. It is not easy to change a department. A primary problem is that this is a police department notoriously unwilling to concede that reform must occur and notoriously unwilling to facilitate change. The department's largest employee organization, the Los Angeles Police Protective League, has been central in the effort to derail and delay reform, and the league has actively promoted a perspective of policing that depicts officers versus the entire rest of the community, including elected officials and the public. The result is that much of the important business of reinventing the LAPD in the spirit of community policing remains unfinished.⁸⁷

Ms. Ripston testified that in her opinion:

Far too much remains to be done. Only small amounts of change have occurred in the Los Angeles Police Department since the Christopher Commission Report in 1991. The broader challenge of altering the institutional mindset of the department so that reform and change are seen as synonymous with the community and accountability has not been met. We must see to it that it is.⁸⁸

⁸⁷ Ramona Ripston, executive director, ACLU-SC, written statement, *L.A. Hearing*, pp. 2-3 (hereafter cited as Ripston Written Statement). An example of this perspective of policing cited by Ms. Ripston involved a 1996 issue of *Thin Blue Line*, the league's official newspaper. A league director referred to "the naïve and moronic citizens of Southern California," in a column in which he questioned whether the assault on the two immigrants by Riverside County Sheriff's deputies in South El Monte could accurately be called a "beating." *Ibid.*, p. 3. In an interview with staff, Deputy Chief Mark Kroeker expressed a different opinion. He stated that in his view, the league has been remarkably understanding and forbearing about the need to move toward community policing, so long as officers are evaluated and rewarded for community policing activities, not simply the number of arrests. He also indicated that it is important to explain community policing in "police terms": it is not about waving and being nice to everybody, but rather, more effective crime reduction and reduction of fear of crime in the neighborhoods we serve by getting the community involved. Deputy Chief Mark Kroeker, commanding officer, Operations, South Bureau, Los Angeles Police Department, telephone interview, July 19, 1996 (hereafter cited as Kroeker Interview).

⁸⁸ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 184-85.

Similar complaints regarding resistance to reform by the LASD have been voiced by community organizations. Carol Watson, a partner in the firm of Manes & Watson, testified that her firm brought a class action suit on behalf of minority victims of "abusive power by Lynwood [station] Deputy sheriffs." The case was settled for \$7.5 million in damages to the victims and an agreement to provide \$1.5 million for cultural awareness and appropriate use of force training of LASD deputies.⁸⁹ The allegations involved 40 incidents that occurred in 1989 and 1990 in the cities of Compton, Athens, and Lynwood served by the LASD:

primarily involving African American and Latino residents. . . . The lawsuits accused deputies of 'systematic acts of shooting, killing, brutality terrorism, house-trashing and other acts of lawlessness and wanton abuse.' The plaintiffs also charged that they were the victims of false arrests and assaults with electronic stun guns. Spokesmen for both sides agreed. . . . that there have been fewer complaints against deputies in recent years.⁹⁰

Still, Los Angeles County Supervisor Gloria Molina, while supporting the settlement, said the "minority community still feels tension. A lot of officers do not feel respect for citizens and need training."⁹¹

Ms. Watson testified that, notwithstanding the settlement, "huge numbers" of police misconduct claims against the LASD continue, 90 percent of which involve African American or Latino victims. The abuses, she testified, "range from simple rousts on the street of young men who are required to prone out on the street for no apparent reason, all the way to killings."⁹²

⁸⁹ Carol Watson, partner in Manes & Watson, testimony, *L.A. Hearing*, vol. 2, pp. 8-9 (hereafter cited as Watson Testimony).

⁹⁰ Kenneth Reich, "Sheriff's Dept. OKs Unusual Suit Settlement," *Los Angeles Times*, Jan. 6, 1996, p. A-1. Lawsuits arising from incidents in the Lynwood area dropped from 33 in 1991-92 to 10 in 1994, according to Sheriff Block. Similarly citizen complaints dropped from 147 to 47. At the same time, arrests have increased from 8,300 in 1993 to 12,000 in 1995, according to Sheriff Block. *Ibid.*

⁹¹ *Ibid.*

⁹² Watson Testimony, *L.A. Hearing*, vol. 2, pp. 11-12. Ms. Watson testified that she recently settled a case for \$180,000 alleging that Lynwood deputies referred to a young man as a monkey, planted drugs on him and shot at him. The man was, she said, "a fine, upstanding young man,

Michael Zinzun, chairperson of the Coalition Against Police Abuse, testified that with the exception of 1992 and the civil disturbance, his organization has received about the same number of complaints of abuse or excessive force by the LASD against blacks, Latinos, and immigrants since 1990.⁹³ As for the discrepancy with LASD figures showing a drop in complaints, Mr. Zinzun said that "when it comes to filing complaints at the substation level, people with legitimate complaints find themselves rudely rebuffed by station personnel, or misinformed as to the correct procedures for filing those grievances."⁹⁴ He also noted that, unlike the LAPD, the LASD does not require officers making stops not resulting in arrest to provide on request a business card identifying the officer by name and badge number. This makes identifying deputies alleged to have engaged in misconduct more difficult and reduces the likelihood of a complaint being filed against them.⁹⁵

A particular source of tension between the LASD and minority and immigrant communities involves the department's maintenance of a computer database purporting to list members of "criminal street gangs."⁹⁶ Mr. Zinzun referred to this database as the "national gang database" and indicated that an individual did not have to

[who] runs a business with his father. And there was an attempt to destroy his life." *Ibid.*, p. 12.

⁹³ Michael Zinzun, chairperson of the Coalition Against Police Abuse, testimony, *L.A. Hearing*, vol. 2, pp. 32, 48-50 (hereafter cited as Zinzun Testimony).

⁹⁴ *Ibid.*, p. 32. Merrick Bobb, who served as general counsel to the Kolts Commission and as special counsel to Los Angeles County, prepares a report every 6 months on LASD progress on complying with the Kolts Commission's recommendations, has not found evidence to support the charge that LASD personnel make it difficult to file a complaint. Merrick Bobb, special counsel, Los Angeles County, testimony, *L.A. Hearing*, vol. 2, p. 145.

⁹⁵ *Ibid.*, pp. 70-71. Mr. Zinzun said that, unlike LASD deputies, LAPD officers are subject to discipline for not providing their card. *Ibid.*, p. 71.

⁹⁶ Commander William T. Stonich, Professional Standards and Training Division, LASD, testimony, *L.A. Hearing*, vol. 2, pp. 256-57 (hereafter cited as Stonich Testimony). Other than confirming its existence, Commander Stonich was unable to provide further details, since in his current position he had not had occasion to utilize the system. *Ibid.*, p. 256. It has been a number of years since he had been a station commander with operational command of a specific station or area. Commander William T. Stonich, Professional Standards and Training Division, LASD, telephone interview, Aug. 2, 1996 (hereafter cited as Stonich Interview).

have been convicted, or even arrested to be listed in the system—it could simply be "the perception of the officer that this is a gang member because of saggy clothes or whatever."⁹⁷ While the database is maintained by the LASD, the LAPD supplies information to the system and accesses it for its investigations, as well.⁹⁸ The system is actually known by its acronym as the GREAT system: the Gang Reporting, Evaluation, and Tracking System. As described in testimony before Congress, "GREAT is a computerized database used by LASD as an investigative/intelligence tool to identify and track Los Angeles County area street gangs and their members. About one-third of the estimated 300,000 to 350,000 street gang members in the United States are contained in the GREAT database."⁹⁹ It is national in the sense that the database system:

maintains selected information on identified street gang members principally in the Los Angeles area and to a lesser extent in areas of participating law enforcement agencies nationwide. These agencies have access to data in GREAT records through their computer systems for use in investigating criminal activities by gang members in their areas.¹⁰⁰

Other law enforcement agencies participating in the system include Orange, Riverside and Sonoma Counties; the San Diego, Los Angeles, and Oakland police departments in California; and the State of Nevada.¹⁰¹

⁹⁷ Zinzun Testimony, *L.A. Hearing*, vol. 2, pp. 33-34, 60.

⁹⁸ Watson Testimony, *L.A. Hearing*, vol. 2, pp. 62-63. Before 1995, the LAPD had access to the GREAT system but input information only into its own gang tracking system. The GREAT system allows law enforcement agencies to share information on and color photographs of gang members. Letter from Willie L. Williams, LAPD chief of police, to the Honorable Board of Police Commissioners requesting approval of grant award proposal to the California Office of Criminal Justice Planning to join the GREAT system (Jan. 17, 1995).

⁹⁹ *Information on the Los Angeles County Sheriff's Department Gang Reporting, Evaluation, and Tracking System: Hearings Before the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives*, 102d Cong., 2d Sess. 1 (1992) (statement of Harold A. Valentine, associate director, Administration of Justice Issues, General Government Division, United States General Accounting Office) (hereafter cited as Valentine GAO Testimony).

¹⁰⁰ *Ibid.*, p. 4.

¹⁰¹ Don Mace (attorney general investigator in charge, master node administrator, California Department of Justice,

In 1992 the U.S. General Accounting Office (GAO) conducted a study of the GREAT system at the request of the House Subcommittee on Civil and Constitutional Rights, because it was “[c]oncerned about the civil liberties implications of national gang databases.” The Bureau of Alcohol, Tobacco and Firearms and the Federal Bureau of Investigation (FBI) were proposing to link various gang databases through a national gang information network, and the GAO noted that “some features of GREAT are being viewed as a model for the national system.”¹⁰²

GREAT was developed by the Law Enforcement Communication Network, a nonprofit, tax-exempt 501(c)(3), law enforcement-supported corporation in concert with the LASD.¹⁰³ It became operational in 1987 and received State of California Office of Criminal Justice funding through February 1992. At the time of the GAO study, GREAT was being funded exclusively by LASD.¹⁰⁴ In September 1993, the California Department of Justice developed a plan to tie all GREAT local agency databases to a central location known as the Master Node Index (MNI) located at the California Department of Justice, Bureau of Investigation. When operational, it reportedly will allow local agencies to access statewide gang data via a central location.¹⁰⁵ The

statewide system, to be known as CAL/Gang, is expected to be operational in 1998.¹⁰⁶

Civil rights and immigrant rights organizations concerns with GREAT revolve around the vague criteria for determining who is a gang member, the lack of notice to individuals so identified, the consequent lack of a means of redressing or purging inaccurate information, the lack of oversight (as only police and prosecutors have access to the system), the fact that the overwhelming percentage of individuals listed in the database are minorities, and the potential consequences to young people of being incorrectly identified as a gang member.¹⁰⁷ The LASD developed six criteria, any one of which can be used as evidence of an individual’s membership in a gang and create a record in GREAT. LASD officials told the GAO that they prefer to use at least two of these criteria to establish membership.¹⁰⁸ GAO found that most of the GREAT records it reviewed did not indicate what criteria had been used to create a record. LASD officials said that previous software did not require entry of membership criteria to create a record, and that this problem should be remedied by new software that does require membership criteria in order to create a record.¹⁰⁹ According to LASD officials “there is no specific requirement to periodically review and update gang member rec-

Bureau of Investigation) and Wes McBride (sergeant, Operation Safestreets, LASD), “Gang Reporting Evaluation and Tracking System” (paper delivered at two workshops during the Eighth Annual Organized Crime and Criminal Intelligence Training Conference, Sacramento, CA, Aug. 23–26, 1994), p. 2 (hereafter cited as Mace and McBride, “GREAT System Overview”). Over 125 agencies in California participate in the system. *Ibid.*

¹⁰² Valentine GAO Testimony, p. 1. The national network “in effect would link state and local gang databases nationwide. It would contain, among other things a master index of street gang members’ records that participating law enforcement agencies could use to identify and access information on subjects from each other’s databases.” *Ibid.*

¹⁰³ Mace and McBride, “GREAT System Overview,” p. 1; Law Enforcement Communication Network, “G.R.E.A.T.—Introduction and Guidelines” (paper delivered at Eight Annual Organized Crime and Criminal Intelligence Training Conference, Sacramento, California, Aug. 23–26, 1994).

¹⁰⁴ Valentine GAO Testimony, p. 3.

¹⁰⁵ Mace and McBride, “GREAT System Overview,” p. 2. As explained by Mace and McBride, a local jurisdiction will be able to dial its regional node (Orange County, San Bernardino/Riverside, Los Angeles, Sonoma County, San Diego, Oakland, or the State of Nevada) and “connect via the DOJ network to the MNI and search every other GREAT database anywhere in the state with a single call.” *Ibid.*

¹⁰⁶ Lorenza Munoz, “Gang Database Raises Civil Rights Concerns: More Than 90% of Those on Countywide Listing Are Minorities,” *Los Angeles Times (Orange County Edition)*, July 14, 1997, p. B-1 (hereafter cited as Munoz, “Gang Database”).

¹⁰⁷ Munoz, “Gang Database.” A recent hearing by the California Advisory Committee of the U.S. Commission on Civil Rights on alleged widespread civil rights violations in Orange County revealed that although minorities make up less than 50 percent of Orange County’s population, Latinos, Asians and African Americans make up more than 90 percent of the approximately 20,000 county residents being tracked by law enforcement as suspected gang members. *Ibid.*

¹⁰⁸ Valentine GAO Testimony, p. 12. As summarized by the GAO, the six criteria are the following: (1) “An individual admits membership”; (2) “A reliable informant identifies an individual as a gang member”; (3) “An untested informant identifies an individual as a gang member, and this is corroborated by other information”; (4) “An individual resides in or frequents a known gang area and displays a gang’s clothing style, hand signs, and/or tattoos”; (5) “An individual is arrested several times with known gang members”; (6) “Strong indications exist that an individual has a close relationship with a gang.” *Ibid.*

¹⁰⁹ *Ibid.*, p. 13.

ords.”¹¹⁰ The GREAT system automatically purges records if they have not been modified or updated within 5 years. However, each time a record is changed, the 5 year countdown begins anew.¹¹¹

Carol Watson testified that:

stopping a young man on the street who's got the wrong clothes on, or in the wrong neighborhood will forever mark that young man as a gang member. . . it's a devastating system. . . [conducted] by agreement of police agencies. . . that can really ruin young people's lives. [T]here are. . . gang units in police departments [that] patrol the streets. If they see someone on the street who looks suspicious, who is not occupied, who is not in school, who is wearing suspicious clothing, they will stop them and fill out what they call a field interview card. The kids call them scare cards. That person is then listed on a gang list. They'll ask questions, are you with such and such gang, or, what's your moniker?. . . if the kid's got a nickname, this goes into a gang database as though this is a hardcore gang member with a moniker, and it's a permanent record. They'll [also] take a photograph of the kid.¹¹²

Ms. Watson stated that she did not think there should be a list. She testified, “unless there are very definite and concrete criteria to determine who goes on the list. Perhaps a conviction would be an adequate criteria for including a person on a list.”¹¹³ . . . When a kid is labeled by an officer as a gang member, that is done in secret, without any safeguards. . . [t]hat person has no procedural safeguards to ensure that any information gathered about him is accurate.”¹¹⁴ Moreover, according to Mr. Zinzun, “the ability to rescind is a very critical aspect, because if they find out that this person's not a gang member, and they're entered into the [database], it's too late to do anything about it.”¹¹⁵ John Crew, director of the ACLU's Police Practices Project, wrote the California Advisory Committee of the U. S. Commission on Civil Rights on July 3, 1997, arguing that law enforcement agencies should be required to tighten the criteria for inclusion in the gang database, and, at the very

least inform individuals when they are entered in the system.¹¹⁶

Neither the LASD nor the LAPD testified in any significant detail at this Commission's September 1996 hearing on their participation in the GREAT system or its effect on racial and ethnic tensions in their jurisdictions. Other law enforcement officials, however, have defended the system, saying that the database is not meant to be a criminal rap sheet; rather it is an informational tool for authorities to use when tracking down suspected gang members involved in serious crimes. “That person is not being labeled, he is being used as a potential lead for law enforcement,” according to Don Mace, the CAL/Gang project administrator at the California Department of Justice.¹¹⁷ Some law enforcement officials have noted the large minority representation in the database. Westminster Police Chief James Cook called the overrepresentation “a sad reality of gang violence” and said “gangs tend to develop among new immigrant groups and in socioeconomic areas where they have been denied opportunities. It's a tragic fact.”¹¹⁸ Community and civil rights activists and attorneys, however, as indicated in their testimony to the Commission, admonished that the list is a source of tension with the minority and immigrant communities within the county and city of Los Angeles.

With specific reference to the immigrant community, K. S. Park also criticized the LASD's primary reliance upon a list of volunteer interpreters who can be called for assistance in certain incidents where knowledge of a particular language is required. He noted that the initiative for the volunteer program came from the “community groups that were part of the advisory council to the sheriff's department.” According to Mr. Park, it was the community groups that developed the list of volunteers and printed cards listing the volunteers, which are distributed to deputies. Although community

¹¹⁰ Ibid., p. 14.

¹¹¹ Ibid., p. 9.

¹¹² Watson Testimony, *L.A. Hearing*, vol. 2, pp. 63–64.

¹¹³ Ibid., p. 65.

¹¹⁴ Ibid., pp. 67–68.

¹¹⁵ Zinzun Testimony, *L.A. Hearing*, vol. 2, p. 66.

¹¹⁶ Letter from John Crews, director, ACLU Police Practices Project, to California Advisory Committee to the U.S. Commission on Civil Rights, July 3, 1997. The ACLU-SC has asked the Orange County District Attorney's office to establish a civilian oversight board to scrutinize the alleged problems with the list referred to above. See Munoz, “Gang Database.”

¹¹⁷ Munoz, “Gang Database.”

¹¹⁸ Ibid.

participation is the essence of community policing, Mr. Park does not believe that the expenditure of immigrant and community group resources for an LASD service is appropriate. Rather, he says, it sets a dangerous precedent that leaves open the possibility that law enforcement programs may depend on outside resources, instead of department sponsored initiatives.¹¹⁹

Community Policing Programs

Community policing was the cornerstone of the Christopher Commission's recommended reforms aimed at improving police-community relations and reducing incidents involving alleged excessive use of force. It noted in its 1991 report that the:

LAPD's current approach is the product of a reform era that emphasized creation of professionalism within the force. A "professional" model of policing is primarily concerned with maintaining a well-disciplined, highly trained, and technically sophisticated force insulated from improper political influence. Crime-fighting is seen as the principal objective of policing.¹²⁰

As a result, the:

LAPD has an organizational culture that emphasizes crime control over crime prevention and that isolates the police from the communities and people they serve. . . . Patrol officers are evaluated by statistical measures (for example, the number of calls handled and arrests made) and are rewarded for being "hard-nosed." This style of policing produces results, but it does so at the risk of creating a siege mentality that alienates the officer from the community.¹²¹

Witness after witness [before the Christopher Commission] testified to unnecessarily aggressive confrontations between LAPD officers and citizens, particularly members of minority communities. From the

¹¹⁹ Park Testimony, *L.A. Hearing*, vol. 2, pp. 173-74. Sheriff Block noted that while "we've identified those people within the department who speak specific languages," the department has "a very large staff of volunteer interpreters who can be called upon to assist us in incidents where we need special languages." Block Testimony, *L.A. Hearing*, vol. 2, p. 140.

¹²⁰ Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles, 1991), p. 97 (hereafter cited as *Christopher Report*).

¹²¹ *Ibid.*, pp. xiv-xv.

statements of these citizens, as well as many present and former senior LAPD officers, it is apparent that too many LAPD patrol officers view citizens with resentment and hostility; too many treat the public with rudeness and disrespect. LAPD officers themselves seem to recognize the importance of the problem: nearly two-thirds (62.9 percent) of the 650 officers who responded to the recent LAPD survey expressed the opinion that "increased interaction with the community would improve the Department's relations with citizens."

A model of community policing has gained increased acceptance in other parts of the country during the past 10 years. The community policing model places service to the public and prevention of crime as the primary role of police in society and emphasizes problem-solving, with active citizen involvement in defining those matters that are important to the community, rather than arrest statistics. Officers at the patrol level are required to spend less time in their cars communicating with other officers and more time on the street communicating with citizens. . . .

The LAPD made early efforts to incorporate community policing principles and has continued to experiment with those concepts. . . . The LAPD remains committed, however, to its traditional style of law enforcement with an emphasis on crime control and arrests. LAPD officers are encouraged to command and to confront, not to communicate. Community policing concepts, if successfully implemented, offer the prospect of effective crime prevention and substantially improved community relations. . . . [T]he LAPD should carefully implement this model on a City-wide basis. This will require a fundamental change in values. The Department must recognize the merits of community involvement in matters that affect local neighborhoods, develop programs to gain an adequate understanding of what is important to particular communities, and learn to manage departmental affairs in ways that are consistent with the community views expressed. Above all, the Department must understand that it is accountable to all segments of the community.¹²²

Following the Christopher Commission's report, the LAPD under Chief Willie Williams has attempted to implement the community policing model citywide, emphasizing its principles of increased interaction and communication with the communities it serves in many of its specific programs. These principles are especially critical in serving the large and growing immigrant

¹²² *Christopher Report*, pp. xiv-xv.

community in Los Angeles, many of whom are minorities and primarily rely upon a language other than English. As of 1992, 34.8 percent of the population of the city of Los Angeles was foreign born.¹²³ Recent data on immigrants' intended metropolitan area of residence, moreover, indicate that Los Angeles continues to be a magnet for immigrants in the 1990s.¹²⁴ In the city, approximately 39.9 percent of the population is of Hispanic origin, 37.3 percent of the city's residents are white non-Hispanic, 13 percent black non-Hispanic, 9.2 percent Asian, 0.3 percent American Indian, and 0.3 percent "other race."¹²⁵ About half the population (49.9 percent) speak a language other than English at home¹²⁶ and 17.5 percent do not speak English well.¹²⁷

The foundation for the LAPD's implementation of community policing is the Community Policing Advisory Board (CPAB) in each of the LAPD's 18 geographic stations. Each CPAB is composed of residents from the community served by the station who volunteer or are sought out by the captain in command of the station. The captain has final authority over the makeup of the CPAB, but every attempt is made to ensure that the CPAB represents the diversity of the area's population. One resident is chosen to cochair CPAB meetings with the station captain. The CPABs meet at least monthly to identify law enforcement and quality of life problems in the community, discuss ways to address these

¹²³ Scott Minerbrook and Jim Impoco, "A Trial of Two Cities," *U.S. News & World Report*, May 29, 1995, p. 29 (hereafter cited as Minerbrook and Impoco, "Two Cities").

¹²⁴ See chapter 1, notes 25-30, and accompanying text.

¹²⁵ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: General Population Characteristics, California* (1990 CP-1-6) (Washington, DC: Government Printing Office, 1992), Table 6, Race and Hispanic Origin, p. 76; Minerbrook and Impoco, "Two Cities," p. 29.

¹²⁶ U.S. Bureau of the Census, Table 3, *Cities With 200,000 or More Population Ranked*, <<http://www.census.gov/statab/cdb/ccdb307.txt>>, "Percent of Persons Speaking Language Other than English at Home, 1990." Los Angeles had the fourth highest percentage of people speaking a language other than English at home among cities with 200,000 population or more, trailing only Miami, FL, with 73.3 percent, Santa Ana, CA, 69.2 percent, and El Paso, TX, 66.7 percent. *Ibid.*

¹²⁷ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics, California* (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), Table 167, "Language Spoken at Home," p. 856.

problems, and recommend law enforcement priorities. Their primary function is to serve as a vehicle for a continuing community-police dialogue regarding ongoing events in and concerns of the community.¹²⁸

According to LAPD Deputy Chief Mark Kroeker, the LAPD has during the past 3 years intensified its commitment to community policing in all its areas. Deputy Chief Kroeker commands the general policing activities of the LAPD's South Bureau, with an area of about 57 square miles, a population of approximately 750,000, four geographic stations, and a traffic division. It includes many of the communities comprising South Central Los Angeles and around the Port of Los Angeles. The demographic composition varies dramatically in the four geographic areas, but in general, as Deputy Chief Kroeker testified, the "areas are largely Hispanic with substantial African American communities, and less Anglo and Asian Pacific Islander areas."¹²⁹ In addition to CPABs, Deputy Chief Kroeker reported that the department is attempting to build a supporting neighborhood infrastructure to ensure solid two-way communication between neighborhood residents and the police. In South Bureau, this has involved "a major mobilization of neighborhoods. . . which now include 2,492 block captains, 186 community police representatives. . . and a growing list of volunteers who help in general duties at our stations."¹³⁰ Every census tract or reporting district has a community police representative (CPR) who sits on the CPAB. Block captains report to the CPR. A senior lead officer is assigned to each district with a CPR. Neighborhood residents are informed that the senior lead officer is the contact for police services. The CPR serves as an intermediary between the senior lead officer and the many block captains in each dis-

¹²⁸ Kroeker Interview; Lewis Interview.

¹²⁹ Deputy Chief Mark Kroeker, commanding officer, Operations, South Bureau, Los Angeles Police Department, testimony, *L.A. Hearing*, p. 228 (hereafter cited as Kroeker Testimony). In South Central L.A., Commander Kroeker said that over half the population is now Latino. Kroeker Interview. A recent article reported that Latinos are now 60 percent of the population in South Central. Lou Cannon, "Riordan Names Black Officer to Head LAPD," *Washington Post*, Aug. 7, 1997, p. A-1.

¹³⁰ Kroeker Testimony, *L.A. Hearing*, vol. 2, p. 229. Such efforts are in addition to the CPAB in each station. *Ibid.*

trict.¹³¹ Deputy Chief Kroeker indicated that the goal is to have a block captain on every block in South Bureau and a CPR in every reporting district. That, he said, will establish a free-flowing dialogue in the neighborhood, so that when interracial or police-community conflict arises, it becomes the subject of discussion, rather than bottled-up-hostility.¹³² Beyond South Bureau, the Commission received no evidence regarding the extent of this type of neighborhood mobilization throughout the city.

Each station also offers a Community Police Academy that explains LAPD procedures to the community and allows residents to become familiar with how the department operates. South Bureau offers English and Spanish language versions, and has a Spanish language outreach committee that makes additional recommendations to the department aimed at facilitating the participation of Spanish-speaking community members. A grant-funded project called Project Azul also operates to “inform thousands of Spanish speaking residents about traffic laws and safety.”¹³³

There are also a number of miscellaneous community police activities in operation at some of the 18 stations that help build community. “Operation Sparkle” involves mobilizing residents to clean up their neighborhood so that it “sparkles.” The concept is that if a neighborhood is kept in disrepair, it attracts crime, so cleaning it up should make it a less attractive venue for criminals. This project essentially parallels the “broken windows theory” of criminologists James Q. Wilson and George L. Kelling.¹³⁴ The Neighborhood Watch, Business Watch, and Apartment Watch programs are implemented on a block-by-block level. An established group of people meet every month with the CPR and senior lead officer to identify problems and suggest solutions. Deputy Chief Kroeker characterized these ef-

forts as the “problem solving” approach that is an integral part of the strategy of community policing: mobilize neighborhoods, focus on the problems they identify, and adapt law enforcement services toward problems in the communities.¹³⁵

There are also 125 ministations or community outreach centers designed to both ease congestion at the city’s 18 main police stations and make the department more approachable for those who are reluctant to come to a police station to make a report. These centers are advertised in the community, and staffed by bilingual officers where appropriate. They conduct community outreach activities in addition to accepting reports and serving as meeting sites for community volunteers.¹³⁶ Los Angeles County Ombudsman, Rudy De Leon, who served on the LAPD in the 1970s, has said that the centers are particularly important in minority communities and in neighborhoods with many recent immigrants. “Residents bring customs and languages from other cultures,” he noted. “So when they see a station in the community, they can relax. They can talk to someone in plainclothes and deal with them one-on-one.”¹³⁷ Of the 125 centers, 113 opened in the last 4 years, “a time when Chief Willie Williams was putting renewed emphasis on the department’s decades-old community policing effort,” following the Christopher Commission report.¹³⁸

The City Council’s Public Safety Committee is taking a hard look at the network of ministations, in light of unanticipated costs, which have recently come to light. Many ministations operate in donated office space from property owners who were unable to fill the space during the recent recession. The department was unprepared, however, for the number of incidental expenses at the substations for everything from drywall repair to electric bills to landscaping. Moreover, because they were not budgeted, these expenses fell into a category for unplanned costs paid for by the city’s Department of General Services rather than by the police department. The *Los*

¹³¹ There might be 50 block captains in the area who get an identification card and training.

¹³² Kroeker Interview.

¹³³ Kroeker Testimony, *L.A. Hearing*, vol. 2, p. 229.

¹³⁴ Kroeker Interview. The basic idea is that paying attention to seemingly small things such as broken windows and graffiti creates a sense of order and lawfulness that reduces overall crime and fear of crime and improves a community’s quality of life. See James Q. Wilson and George L. Kelling, “Broken Windows,” *The Atlantic Monthly*, vol. 29 (March 1982), pp. 29–38.

¹³⁵ Kroeker Interview.

¹³⁶ Lewis Interview; Dade Hayes, “Police Centers: Outreach or Overreaching?” *Los Angeles Times*, Mar. 31, 1997, p. A-1 (hereafter cited as Hayes, “Police Centers”).

¹³⁷ See Hayes, “Police Centers.”

¹³⁸ *Ibid.*

Angeles Times noted that with the departure of Chief Williams, "a chief criticized for being long on style and short on substance, the substations have become a logical target for scrutiny." Deputy Chief Kroeker, an outspoken proponent of community policing, said he "believes in the idea of the substations, but would like to see the department be more selective in choosing their locations, rather than simply relying on the largeness of property owners."¹³⁹

The Community Impact Team Program operates in selected neighborhoods of South Bureau. It involves focusing a multitude of department and other city agencies' resources on a problem identified by neighbors, city department representatives, police officers, and elected representatives. Deputy Chief Kroeker said that some really profound effects have occurred, but success depends on having a good facilitator and an involved neighborhood that will maintain focus on a problem when the "hot light" of significant LAPD and other agencies' resources are removed. Finally, the "jeopardy program" tries to help families that desperately want their children to stay out of gangs. Two officers in each station work with children at risk of joining gangs, referring them to the program, working with parents and kids on alternative activities—essentially developing an identity that is not gang based. The South Bureau has had the program since 1993, and it has been very effective, according to Deputy Chief Kroeker.¹⁴⁰

In terms of results, Deputy Chief Kroeker testified that there had been:

a three year downturn in crime, and despite some celebrated cases, we believe that the fear level has been reduced also. Neighborhood quality of life issues have been addressed and improved. Our anti-graffiti programs have taken hold. The community police relationship in my judgment has vastly improved with one measurement being complaints against police officers, which are again lower this year than last, and another being an increasing number of commendatory letters arriving in our stations.¹⁴¹

The number of unauthorized force complaints has steadily declined since 1992. In 1990 there were 172 complaints; 1991, 252; 1992, 328; 1993,

241; 1994, 173; 1995, 163; and through July 31, 1996, 65.¹⁴² Deputy Chief Kroeker concluded his testimony, saying "[i]n summary, we are not where we want to be yet, but every major indicator points in the right direction."¹⁴³ In this regard, Assistant Chief Bayan Lewis pointed out that, more than any programmatic changes, community policing essentially involves a massive change in police culture which generally takes 7 to 10 years to accomplish. To facilitate this ongoing change, the LAPD teaches community policing and problem-solving techniques in both its police academy and in its ongoing training, and the new performance rating forms include for the first time a section on community policing activities and skills.¹⁴⁴

The 1992 Kolts Commission report on the Los Angeles County Sheriff's Department also emphasized the importance of community policing to departmental reform, saying "*we view the immediate, Department-wide implementation of community policing as our single most important recommendation for reduction of excessive force cases.*"¹⁴⁵ The Kolts Commission noted that Sheriff Block emphasized "service-oriented policing," which:

shares elements in common with [the] philosophy of law enforcement known as "community-based policing" or "community policing. . ." Community policing is not yet practiced in the Sheriff's Department to an adequate degree. We do, however, want to recognize and commend Sheriff Block's efforts to foster and encourage positive interaction between the Sheriff's department and residents, and we believe that many of his current programs are valuable and point in the direction of community policing. . . Community polic-

¹⁴² Letter from Willie L. Williams, chief of police, and Mark A. Kroeker, deputy chief and commanding officer of Operations, South Bureau, LAPD, to U.S. Commission on Civil Rights, July 31, 1996. A recent ACLU-SC study, however, suggests that one reason for this drop may be the difficulty the public, particularly the non-English speaking public, has in locating a complaint form. ACLU-SC of Southern California, *Reform Delayed: Five Years After the Christopher Commission—Los Angeles Police Department Citizen Complaint Procedures 1991–1996* (July 9, 1996), pp. 10–11. This study is discussed in more detail in the section of this chapter on language issues.

¹⁴³ Kroeker Testimony, *L.A. Hearing*, vol. 2, p. 230.

¹⁴⁴ Lewis Interview.

¹⁴⁵ James G. Kolts & Staff, *The Los Angeles County Sheriff's Department: A Report by Special Counsel James G. Kolts & Staff* (Los Angeles, 1992), p. 285 (emphasis in original) (hereafter cited as *Kolts Report*).

¹³⁹ *Ibid.*

¹⁴⁰ Kroeker Interview.

¹⁴¹ Kroeker Testimony, *L.A. Hearing*, vol. 2, p. 230.

ing is not an effort simply to improve relations with citizens by projecting a positive image of the police. It is far more than public relations efforts. It is more than what exists within the sheriff's department today, which are some well-intentioned and well-run community-oriented programs in an otherwise traditionally structured and managed police department.¹⁴⁶

Similar to the *Christopher Report*, the Kolts Commission report observed that:

community policing is a philosophy of law enforcement that builds up from a base of partnerships created and nurtured at the station level by the deputies, sergeants and lieutenants with community organizations and individuals. . . . The essence of community policing is that every person dealing with the police is to be treated with dignity and respect, even in difficult circumstances when the person is abusive, aggressive, resistant and provocative. It connotes a breakdown of the 'us vs. them' attitude and the substitution of a thoroughly professional approach.

. . . It measures its success not so much by the numbers—number of arrests, response time—but rather in terms of citizen involvement, improvement in the quality of life, proactive crime prevention, coordination with social agencies and the consequential reduction of lawsuits and complaints of brutality, excessive force, and rude or demeaning behavior or language.

. . . It means devolving real power to the unit commander to organize a community-specific partnership as he or she sees fit. It means fashioning ways to hold the unit commander accountable for failures and to reward him for successes. . . it means sharing authority to set policing priorities and policies with the individual resident and groups representing that person.

Community-based policing. . . builds from the bottom up instead of imposing from the top down. It is the antithesis of the usual model of a paramilitary hierarchical police force. Each police station is responsible to its resident constituency for achievement of the priorities set by that constituency in partnership with the station.¹⁴⁷

The *Kolts Report* concluded that if a:

true community policing system. . . were fully implemented by a determined management, we believe that it would lead to less abrasion be-

tween the police and those segments of the community from which complaints are most often voiced. The diminution in abrasion will then lead to fewer citizen complaints, fewer lawsuits, fewer injuries, fewer claims and fewer dollars spent by the County to settle litigation or pay judgments.¹⁴⁸

The Kolts Commission stated: "We urge that adequate additional funds be made available to the Sheriff's Department for the rapid implementation of community policing at each station and throughout the Department."¹⁴⁹

Like the LAPD, the LASD has since 1992 implemented a number of community policing programs that strive to involve residents, including the immigrant community, in defining those law enforcement matters that are important to the community. Sheriff Block testified that the LASD has implemented a number of "community oriented policing programs," going beyond the department's first service oriented policing efforts in the late 1980s, which emphasized "proactive interaction between the community and law enforcement," the reduction of crime, and improvement in the quality of life.¹⁵⁰ As with the city of Los Angeles, the community policing approach is critical to serving adequately Los Angeles County's increasingly diverse population, many of whom are immigrants, minorities, and non-English speakers. According to the 1990 census, 33 percent of the population of Los Angeles County was foreign born.¹⁵¹ In Los Angeles County, 40.8 percent of the population is white non-Hispanic, 37.8 percent Hispanic, 10.6 percent black, 10.2 percent Asian or Pacific Islander, 0.3 percent American Indian, and 0.3 percent "other race non-Hispanic."¹⁵² Approximately 45.4 percent of the population in Los Angeles county speak a lan-

¹⁴⁸ Ibid., p. 293.

¹⁴⁹ Ibid., p. 294.

¹⁵⁰ Block Testimony, *L.A. Hearing*, vol. 2, pp. 199–200.

¹⁵¹ Roger Waldinger and Mehdi Bozorgmehr, eds., "The Making of a Multicultural Metropolis," in *Ethnic Los Angeles* (New York: Russell Sage Foundation, 1996), p. 14 (hereafter cited as Waldinger and Bozorgmehr, "Multicultural Metropolis"); 1990 U.S. Census Data: Database C90STF3A, *Los Angeles County*, <<http://venus.census.gov/cdrom/lookup/854921846>>, Table "Place of Birth" (hereafter cited as 1990 Census Data, *Los Angeles County*).

¹⁵² 1990 Census Data, *Los Angeles County*, Table "Hispanic Origin by Race."

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., pp. 285–86, 291–92.

guage other than English at home¹⁵³ and 25 percent do not speak English well.¹⁵⁴

In the first semiannual report on the LASD issued by Los Angeles County Special Counsel Merrick Bobb, Mr. Bobb noted that the "Kolts Report advocated community advisory committees (CACs) as the foundation for community-based policing."¹⁵⁵ Sheriff Block testified before the Commission that:

In 1993 community advisory committees were instituted at all sheriff's stations. These committees consist of members of the community representing the ethnic, gender, religious, and demographic diversity of the area. . . . [They] meet quarterly with local sheriff station personnel to confer about issues such as law enforcement priorities and resource deployment, law enforcement-community relations, [and] programs suited to community needs. The members of these community advisory committees are rotated periodically to maximize diversity of input. All members receive 24 hours of law enforcement orientation training.¹⁵⁶

Special Counsel Bobb's first report noted:

Captains had substantial discretion to solicit and select individuals to serve on the CACs under the general rule that the CACs should include residents of the area with diverse backgrounds and views respecting law enforcement. Some captains made a point of asking community groups to choose members for the CAC. Others selected from individuals they

already knew had an interest in and a commitment to the community. Although some captains chose not to advertise the CACs in newspapers, other captains widely publicized the CACs.¹⁵⁷

Participation of non-English speaking residents is encouraged, but depends upon the individual station commander's ability to draw upon volunteer interpreters, because the LASD relies upon the Volunteer Interpreter Program and commits no LASD resources for translation services, other than an administrator to run the program.¹⁵⁸ As of August 1996, the roster of volunteers consisted of 170 volunteers representing 40 different languages.¹⁵⁹

Most of the sheriff's stations offer Citizens Academies which, like the LAPD's Community Police Academies, introduce interested members of the public to sheriff's department functions and procedures, as well as acquaint them with other community policing services and activities that may be offered at the station. The program involves 8 to 13 weekly classes and is publicized through the local media.¹⁶⁰ The Lennox Sheriff's Station offers a Citizens' Academy twice a year to 25 people that consists of a 13-week program "designed to build a better understanding between residents and the Sheriff's Department by exposing community members to department procedures."¹⁶¹ In the Walnut station, which has a very large Asian community, the program is so successful that many of the graduates of the academy have been hired by the department or serve on volunteer police patrols.¹⁶²

Outside of the Community Advisory Committees at each station, there is more variation in the community policing programs offered among LASD stations than in the LAPD. As Sheriff Block explained, the "severity and frequency of crime and the underlying endemic conditions in each of our field operation cities and contract cities produce varying approaches to community

¹⁵³ Ibid., Table "Language spoken at Home."

¹⁵⁴ David E. Lopez, "Language Diversity and Assimilation," in *Ethnic Los Angeles*, eds. Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 141 (citing U.S. Department of Commerce, 1990 U.S. Census of Population, *Social and Economic Characteristics* (Washington, DC: Government Printing Office, 1990), p. 266).

¹⁵⁵ Special Counsel Merrick J. Bobb & Staff, *The Los Angeles County Sheriff's Department: 1st Semiannual Report* (October 1993), p. 83 (hereafter cited as Bobb, *LASD 1st Semiannual Report*).

¹⁵⁶ Block Testimony, *L.A. Hearing*, vol. 2, pp. 100-01. At the end of this initial implementation of CACs, 191 persons were selected from 384 applicants at 18 different stations. Some stations, such as the West Hollywood, Norwalk, and Temple stations had similar groups in place prior to the launching of this initiative. Bobb, *LASD 1st Semiannual Report*, p. 86. There are 21 sheriff's stations within three field operations divisions. The LASD provides law enforcement services for the unincorporated area of Los Angeles County, as well as for 39 incorporated cities that contract with the sheriff for their law enforcement services. Stonich Interview.

¹⁵⁷ Bobb, *LASD 1st Semiannual Report*, p. 84.

¹⁵⁸ Stonich Testimony, *L.A. Hearing*, vol. 2, pp. 258-59, 279.

¹⁵⁹ Helen H. Reardon, director, Special Programs, Los Angeles County Sheriff's Department, telephone interview, Aug. 7, 1996 (hereafter cited as Reardon Interview).

¹⁶⁰ Block Testimony, *L.A. Hearing*, vol. 2, p. 100; Stonich Interview.

¹⁶¹ "Lennox Sheriff's Station to Offer Citizen's Academy," *Los Angeles Times*, June 5, 1996, p. B-5.

¹⁶² Ibid.

policing and management of the program.”¹⁶³ One of the programs active at some stations is the “Volunteer On Patrol” program, begun in 1993 and administered by Helen Reardon, director of the Office of Special Programs for the LASD.¹⁶⁴ Overall, this program consists of 400 people of all ethnic backgrounds who go through an academy class where they are trained to identify possible criminal law violations, radio in their observations to police on patrol, and refrain from intervention. They serve as extra “eyes and ears” for the LASD and are active in East Los Angeles and in South Central. They sign a waiver of liability, and if they are injured, the individual’s insurance is primary and the LASD’s secondary.

The Association for Los Angeles Deputy Sheriffs (ALADS), the certified bargaining representative for more than 7,000 sheriff’s deputies, sergeants, and district attorneys working in Los Angeles County, conducts several outreach programs aimed at improving LASD-community relations. Since 1991, community leaders from all parts of the county have been invited to talk privately with ALADS’ Board of Directors at their meetings about issues of concern to them. About the same time, a mentoring program was started, in which ALADS volunteers work with at-risk youth in cooperation with the Los Angeles Conservation Corps.¹⁶⁵

Some community organizations consider the LAPD’s Community Police Advisory Boards and the LASD’s Community Advisory Committees to be “a step in the right direction” toward community policing.¹⁶⁶ Three aspects of these efforts, however, need to be improved according to some community organization leaders. A major defect, in their judgment, is that the station captain or commander “makes the selection of who shall sit on these boards, and [they] tend to pick people who are friendly toward the police. They do not reach out to communities to put community activists on those boards.”¹⁶⁷ Most LAPD captains, for example, feel that a person should be auto-

matically ineligible if they are associated with an organization with an agenda.¹⁶⁸ According to K.S. Park, general counsel for Korean Immigrant Workers Advocates, this is what occurred in the Korean community, where Korean merchants “basically dominated the dialogue between. . .the Korean community and the LAPD, and other voices. . .calling for police accountability were basically phased out of the dialogue.”¹⁶⁹ The captains also tend to pick business people, which, in addition to ignoring the views of community activists, can tend to result in a board or committee that does not reflect the demographic makeup of the community.¹⁷⁰

This result is not consistent with the generally accepted view of the function of a community advisory group. Judge Kolts, for example:

envisioned that these committees would be comprised of local residents who reflected the demographics and socioeconomic strata of each service area and who held a wide spectrum of views concerning law enforcement and how to contend with crime in their respective communities. . . [He] envisioned that community advisory groups should be more than a vehicle for one-way communication from the station to the community, or police booster clubs, or vehicles to generate a positive image of the police. Rather, they should provide a forum for captains to hear from their

¹⁶³ Block Testimony, *L.A. Hearing*, vol. 2, p. 100.

¹⁶⁴ Stonich Interview; Reardon Interview.

¹⁶⁵ Jeff Monical, campaign manager, Association for Los Angeles Deputy Sheriffs, testimony, *L.A. Hearing*, vol. 2, pp. 77, 143.

¹⁶⁶ See Ripston Testimony, *L.A. Hearing*, vol. 2, p. 221.

¹⁶⁷ *Ibid.*

¹⁶⁸ Allan Parachini, public affairs director, American Civil Liberties Union of Southern California (ACLU-SC), telephone interview, July 29, 1996 (hereafter cited as Parachini Interview). Special Counsel Merrick Bobb disagrees that organization representatives or outspoken critics of law enforcement should not be included on CACs. Special Counsel Merrick Bobb and staff wrote: “Obviously, delicate lines need to be drawn. A captain need not include groups that throw down the gauntlet and issue non-negotiable demands to manage the station. That is not the kind of constructive interaction with the Sheriff’s Department that Judge Kolts envisioned. On the other hand, as anyone who has ever gotten angry and scolded a loved one can attest, deeply felt criticism is not inconsistent with loyalty and trustworthiness.” Bobb, *LASD 1st Semiannual Report*, p. 86.

¹⁶⁹ Park Testimony, *L.A. Hearing*, vol. 2, p. 222. Mr. Park stated that he concurred with the ACLU-SC’s position “that the way the CPAB is impaneled should be seriously looked at if. . . it’s an attempt at a channel between the community and the police.” *Ibid.*

¹⁷⁰ Ripston Interview. Ms. Ripston said that, for example, she and Allan Parachini, public affairs director of the ACLU-SC, have been to CPAB meetings in the heavily Latino Rampart District where the ACLU-SC offices are located, where most of the participants are white or Korean business people. *Ibid.*

outspoken critics as well as their outspoken supporters.¹⁷¹

Special Counsel Merrick Bobb and his staff identified this issue in their first report reviewing the implementation of the *Kolts Report* recommendations, stating:

We have some concern that the discretion afforded to captains to form and run the CACs is too broad and will produce unacceptably disparate results in terms of the composition, openness, and procedures of the committees from station to station. It appears to us that a captain, operating within the Department's guidelines and wide discretion, could manage to exclude outspoken critics of police conduct. . . . *These committees are intended to be part of an early warning system: Captains need to know directly from the community where trouble is brewing, in terms of growing crime problems, under-served parts of the community, priorities, and dissatisfaction with how the police are comporting themselves.*¹⁷²

Ms. Ripston has spoken to LAPD captains and proposed that they select the majority of participants in their CPAB, but allow the community to pick a smaller number. In that way, they would get some information from the community, while retaining control of the board. According to Ms. Ripston, all have resisted this suggestion.¹⁷³ Special Counsel Bobb and staff suggested that the LASD "may wish to consider guidelines for the operation of the CACs which narrow the captain's discretion and tend to assure that the CACs break down a station's insularity rather than reinforce it."¹⁷⁴ This suggestion, too, awaits action.

Communities United for Police Reform (CUPR), a coalition of more than two dozen groups published a proposal in 1996 directed at the LAPD, but which is equally applicable to the LASD. It proposed that the representatives on the CPAB "should be chosen by the three elements of the Public Safety partnership"—the police, the community, and the elected local representative—in this case, the local City Council representative. CUPR stated that the process for choosing community-selected representatives should be democratic, but could include: (1)

"Holding a Division-wide meeting to allow community members to choose the representatives they feel are most qualified, capable, and committed"; and (2) "Ensuring that the CPAB pursues diversity through selecting 1 or more representatives from each of the following categories: youth; business community; community residents and neighborhood-based associations such as block clubs; community and civic leadership such as from churches, community organizations, service or social organizations."¹⁷⁵ This proposal has also been resisted and remains only a vision.¹⁷⁶ Commissioner Edith Perez of the Los Angeles Board of Police Commissioners testified that the selection of CPAB members by station captains "has caused some controversy in some areas of the city," and this is causing "the Christopher Commission task force to reevaluate how community police advisory boards are selected."¹⁷⁷

The second major suggestion of community groups for improvement in the community policing programs of both the LAPD and the LASD is that "Community Academies" be instituted in each LAPD division and LASD station, through which the community would provide law enforcement officers with orientation and instruction regarding the nature of the community served by the station—its demographic makeup, cultural differences, and major institutions and community groups.¹⁷⁸ Just as the sheriff's stations offer Citizens Academies and LAPD stations offer Community Police Academies "in which people from the community are given instruction in what the police agencies do," newly

¹⁷⁵ Communities United for Police Reform, *The Community Academy/Community Police Advisory Board Pilot Project Concept* (1996), p. 2 (hereafter cited as CUPR, *Community Academy/Community Police Advisory Board Pilot Project Concept*).

¹⁷⁶ Ripston Interview.

¹⁷⁷ Edith R. Perez, commissioner, Board of Police Commissioners, city of Los Angeles, testimony, *L.A. Hearing*, vol. 2, p. 280 (hereafter cited as Perez Testimony). Commissioner Perez is chair of the following task forces of the commission: Language Policies, Use of Force, Curfew, and Real Estate. She is a partner at the law firm of Latham & Watkins, where she specializes in real estate finance and international transactions. Perez Interview. On July 29, 1997, Commissioner Perez was unanimously elected president of the Police Commission. Matt Lait, "Perez to Head Police Commission, Vows To Boost Morale, Cut Crime," *Los Angeles Times*, July 30, 1997, p. B-1.

¹⁷⁸ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 194.

¹⁷¹ Bobb, *LASD 1st Semiannual Report*, p. 84.

¹⁷² *Ibid.*, pp. 86-87 (emphasis in original).

¹⁷³ Ripston Interview.

¹⁷⁴ Bobb, *LASD 1st Semiannual Report*, p. 86.

assigned officers, and eventually existing personnel at a station "would undergo two or three days of interaction of a non-confrontational nature with members of the community to acquaint the officers with the nature, institutions. . .[and] languages of the community."¹⁷⁹ Neither the LAPD nor the LASD "has so far been receptive to this notion that [orientation, instruction, and communication] should go both ways."¹⁸⁰ The LAPD has said that it cannot spare the officers for the 2 to 4 days of instruction. Community organizations believe that the LAPD and LASD cannot afford to pass up the opportunity to provide officers a "greater understanding" of the communities they serve, resulting in "more effective law enforcement."¹⁸¹

The third suggestion for improvement in community policing is that in communities with large numbers of monolingual immigrants whose primary language is not English, there should be some type of mechanism—for example, translators—to encourage and ensure full participation of all members of the community.¹⁸² The Language Policies Task Force of the Board of Police Commissioners has also asked that the LAPD find ways to ensure that monolingual, non-

¹⁷⁹ Allan Parachini, Public Affairs Director, ACLU-SC-SC of Southern California, testimony, *L.A. Hearing*, vol. 2, pp. 194–95 (hereafter cited as Parachini Testimony). See also CUPR, *Community Academy/Community Police Advisory Board Pilot Project Concept*. This recommendation is also the second prong of the CUPR pilot project proposed in 1996. CUPR envisions the Community Academy to be "an extension of the current [Community] Police Academy that allows the community in which the division is based to develop a community curriculum and teach the officers about the communities which they will be policing as well as to offer suggestions as to deployment and problem-solving suggestions." *Ibid.*, p. 1. Instruction would be designed to acquaint officers "with the full range of cultural, business, professional, social and service resources within a given division," and would take place on two weekends or on four separate days spread over not more than a calendar month. The curriculum would be developed by "individuals and organizations made up of division residents or people whose professional activities are concentrated in the division," and a "special effort would be made to address concerns of segments of the community with histories of poor relationships with the police." *Ibid.*, p. 3.

¹⁸⁰ Parachini Testimony, *L.A. Hearing*, vol. 2, p. 195.

¹⁸¹ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 193. Mr. Park also strongly endorsed the CUPR Community Academy concept. Park Testimony, *L.A. Hearing*, vol. 2, pp. 179–80, 219.

¹⁸² See, e.g., Williams Testimony, pp. 216–17. This has been a primary point of concern for the Coalition for Humane Immigrants Rights of Los Angeles (CHIRLA). *Ibid.*

English speakers are placed on Community Police Advisory Boards. Commissioner Perez, chair of the task force testified that "having non-English speaking residents as members of those boards is going to be helpful to the officers as well as to community members." She noted that interpreters have been present at Board of Police Commissioner community meetings and said, "we have learned more about the community from people who do not speak English concerning specific crimes or hot areas" of which officers may not otherwise have been aware.¹⁸³ The task force has also considered the idea of using head-phone sets that provide translations, but thus far the cost has been prohibitive. Nevertheless, Commissioner Perez said that because the participation of non-English speaking residents is important, the task force is asking the whole community police advisory board system to find a way to allow non-English speaking residents to participate, notwithstanding the difficulties.¹⁸⁴

Community organization leaders were not alone in their assessment that more progress must be made in the community policing efforts of both the LAPD and the LASD. Concerning the LAPD's implementation of community policing and the reduction of police excessive use of force and other misconduct since 1993, Commissioner Perez testified, "there has been some progress. In my view, given the capability of this department, I think it has been much too slow and I think we have a long, long, long way to go."¹⁸⁵ Special Counsel Merrick Bobb similarly noted in his September 1996 report on the LASD that in "its efforts to manage excessive force and other misconduct" the LASD is making "continuing progress," but "[m]uch more needs to be done."¹⁸⁶

Police-immigrant community relations are undergoing a particularly difficult time in Los Angeles, given increasing anti-immigrant senti-

¹⁸³ Perez Testimony, *L.A. Hearing*, vol. 2, p. 281. Commissioner Perez noted that when there are approximately half a million people in the city of Los Angeles who do not speak English and a large number who are better able to express themselves in their first language, officers need to tap into those resources in order to do good police work. Perez Interview.

¹⁸⁴ Perez Interview.

¹⁸⁵ Perez Testimony, *L.A. Hearing*, vol. 2, p. 263.

¹⁸⁶ Special Counsel Merrick J. Bobb & Staff, *The Los Angeles County Sheriff's Department: 6th Semiannual Report* (September 1996), p. 1 (hereafter cited as Bobb, *LASD 6th Semiannual Report*).

ment generally and concomitant increased racial and ethnic tensions in the city and county. In addition to community policing programs, the LAPD's and LASD's cultural awareness training, their struggle with language issues (ranging from methods for communicating with the non-English speaking public to bilingual recruiting, bilingual incentive pay, and the availability of the departments' citizen complaint systems), and their interaction with the INS are all important elements of the relationship of local law enforcement with immigrant communities.

Cultural Awareness Training

Cultural awareness training, along with more general use of force training, goes to the heart of the Christopher Commission's and Kolts Commission's concern with issues of excessive force and sensitivity to the communities served by the LAPD and LASD. Such training is of particular importance in dealing with new arrivals to the United States, who may have perceptions of law enforcement with which most officers are not familiar and customs to which they are sensitive. Effective July 1, 1991, the California Commission on Peace Officer Standards and Training (POST) mandated that peace officers receive regular instruction on working in a racially and culturally diverse environment.¹⁸⁷ Both departments offer training in this area.

As noted earlier in chapter 2 of this report, the allocation for cultural awareness training for LAPD recruits was increased in 1992 from 8 to 24 hours. This consists of an 8-hour, 1-day course (referred to as the POST curriculum) provided by the LAPD Training Division, Human Relations Unit, supplemented by 16 hours of guest speakers, 4 hours each, from the African American, Asian, and Latino communities.¹⁸⁸ As Chief Williams testified, the LAPD now involves "the ethnic community, as well as the gay and lesbian community in developing our training,

¹⁸⁷ R.L. Greene and S.J. MacArthur, Los Angeles Police Department Training Division, "History of Police Department Training Regarding Cultural Awareness /Diversity," September 1995, p. 1, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(o) (hereafter cited as Greene and MacArthur, "LAPD Cultural Awareness Training").

¹⁸⁸ Guest speakers from the gay and lesbian communities are also included in the LAPD's training.

plus participating in the various training sessions."¹⁸⁹

In September 1995, 8 hours of in-service training was instituted for all department employees (sworn officers and civilian employees), with some modifications and additions for the differences in civilian employee duties. The training is provided by 18 trainers in two 8-hour classes per week, and was facilitated by a 40-hour "train-the-trainer" course conducted by a human relations consultant for the 18 trainers. The LAPD Training Division also received 24 hours of training from the National Coalition Building Institute (Washington, DC), on cultural diversity and conflict resolution.¹⁹⁰ As of the date of the Commission's hearing, 51 percent of the LAPD had received this cultural diversity training.¹⁹¹ Further in-service instruction has been received through rollcall training using videotapes or presentations during a particular month. Some examples include the videotapes *Cultural Awareness, Black Culture* (February 1992), *Respect for Others* (January 1993), and presentations by the watch supervisor on hate crimes (May 1994, August 1995).¹⁹²

The LAPD's 8-hour, 1-day course that all sworn officers and LAPD civilian employees must take, entitled Cultural Awareness for Law Enforcement: Living and Working in Our Diverse Society, includes discussion of matters such as the reluctance of many Latino immigrants from Central and South America to talk to police because of the differing function or activities of police in those countries. The course was designed by an outside consultant.¹⁹³ The goals of the course are to help officers identify their own biases about cultural groups; learn how biases negatively affect job performance, ranging from impeding the department's emphasis on problem-solving and community policing

¹⁸⁹ Willie L. Williams, chief of police, Los Angeles Police Department, testimony, *L.A. Hearing*, vol. 1, p. 118 (hereafter cited as Williams Testimony).

¹⁹⁰ R.L. Greene and S.J. MacArthur, Los Angeles Police Department Training Division, "Human Relations Training for LAPD Personnel, 1992-1995," September 1995, p. 1, *L.A. Hearing*, subpoena duces tecum document, Exh. 1(o) (hereafter cited as Greene and MacArthur, "Human Relations Training").

¹⁹¹ Williams Testimony, *L.A. Hearing*, vol. 1, p. 118.

¹⁹² Greene and MacArthur, "Human Relations Training," p. 1.

¹⁹³ Lewis Interview.

to officer safety; teach and reinforce the skills needed to overcome the differential treatment of others; and provide general guidelines, as well as guidelines for specific groups, for effective contacts with different cultural groups.¹⁹⁴ The course emphasizes that, although everyone holds some prejudicial assumptions or stereotypes, it is unacceptable and dangerous to act on these assumptions. As the course materials state, "the consequences of negative behavior due to biases are more serious for police professionals than some other occupations."¹⁹⁵ The department's priority of community policing and the goal of reducing complaints from the community are also stressed. One component of the course covers diversity, discrimination, and the law, emphasizing the negative criminal consequences, as well as career consequences, of behavior that violates an individual's civil rights. Stereotyping and law enforcement profiling are also distinguished in the course.¹⁹⁶

The LAPD also offers approximately 89 hours in Spanish language instruction (down from 130 hours several years ago), according to Commissioner Perez, which complements its cultural awareness training. Although learning elemental phrases and commands is included, Commissioner Perez noted that such training is not aimed at learning how to say "hello" in Spanish. Rather, she said, it is more about "feeling comfortable with people who are different from you and servicing them the same way you would service the people that speak English and look like you." She also expressed concern with the drop in hours devoted to Spanish language in-

¹⁹⁴ LAPD, "Cultural Awareness for Law Enforcement: Living and Working in Our Diverse Society" (course materials), 1996, p. 1 (hereafter cited as LAPD, "Cultural Awareness for Law Enforcement").

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*, pp. 1-4. Stereotyping is defined as "a preconceived or oversimplified generalization involving negative or positive beliefs about a group - a danger especially when people are viewed as members of groups rather than being seen as individuals." Profiling is "a knowledge-based set of articulatable facts and information used to guide officers' decisions and actions. It will be a matter of law as to whether or not sufficient probable cause existed to support an officer's actions." Officers are also cautioned that "although a member of a cultural group may fit a defensible profile, the officer must always consider the long and short-term community impact. . . of police-related actions." *Ibid.*, p. 4 (emphasis in original).

struction.¹⁹⁷ In 1995 Deputy Chief Kroeker, contacted the Mexican Cultural Institute with a proposition that resulted in a unique pilot program of instruction in the Spanish language and in Mexican culture for 19 senior lead officers. The program included 6 months of instruction at the institute, followed by 10 days in Guadalajara, Mexico, in December 1995 with local families. The officers praised the program, and according to Deputy Chief Kroeker, returned with an enriched understanding of the cultural forces at work. The program was coordinated by former Los Angeles School Board member Leticia Quezada, now president of the Mexican Cultural Institute in Los Angeles, which is the largest of 20 similar nonprofit centers around the country financed by local donations and the Mexican government. Except for the officers' salaries, expenses were sponsored by several companies, including MGM and the Automobile Club of Southern California. The program received supportive comments from the Board of Police Commissioners, but due to budgetary constraints will not be repeated unless Deputy Chief Kroeker obtains a grant for the program.¹⁹⁸

Just as the Rodney King incident and the *Christopher Report* accelerated the development of cultural awareness training in the LAPD, three lawsuits against the LASD alleging 40 "systematic acts of shooting, killing, brutality. . . and other wanton abuse" in 1989 and 1990 against primarily African American and Latino residents and the *Kolts Report* similarly accelerated the LASD's development of cultural awareness training.¹⁹⁹ Sheriff Block and Judge Kolts issued a joint statement providing, in part, that the "Sheriff's Department will improve existing programs and is initiating new academy and post-academy teaching and training to further reduce the use of force and to instill attitudes

¹⁹⁷ Perez Interview.

¹⁹⁸ Kroeker Interview; Matea Gold, "Institute Strives to Help Mexican Culture Find a Spot in the Mainstream," *Los Angeles Times*, Apr. 21, 1996, p. B-11; "Police Spanish," *City News Service*, Dec. 7, 1995, available in LEXIS, News Library, Curnws File.

¹⁹⁹ The suits involved residents of east Compton, Athens and Lynwood, outside the city of Los Angeles. The settlement included payment of approximately \$7.5 million to 80 plaintiffs and a commitment of \$1.5 million for LASD training in cultural diversity and the appropriate use of force. See Kenneth Reich, "Sheriff's Dept. OKs Unusual Suit Settlement," *Los Angeles Times*, Jan. 6, 1996, p. A-1.

that will lead to greater understanding and tolerance of differences in race, gender, culture and sexual orientation.”²⁰⁰ In addition, an earlier internal committee studying the LASD’s ability to service the diverse ethnic communities in Los Angeles County had recommended that the department hire a consultant to conduct an inter-departmental survey regarding racial and ethnic tolerance. That survey indicated that there were degrees of rising intolerance within the department.²⁰¹ As a result, Sheriff Block, in April 1991, appointed Commander William Stonich to chair the Cultural Awareness Advisory Committee charged with developing the recruit and in-service cultural awareness training program in conjunction with LASD staff.²⁰² Since then, the committee has included 40 to 50 members, drawn from both LASD sworn and civilian personnel and “community leaders representing a variety of racial, ethnic and cultural backgrounds reflecting the diverse makeup of Los Angeles County.”²⁰³

In 1992 the Professional Standards and Training Division (PSTD) was created within the LASD and cultural awareness training was initiated. This division centralizes sections responsible for hiring, training, internal investigations, and risk management.²⁰⁴ Of eight divisions within the department, it is the only one that reports directly to the sheriff.²⁰⁵ Commander Stonich was assigned to the PSTD, where he oversees both the Recruit Training Bureau, which is responsible for “the recruitment, hiring, processing, and training of all new deputy sheriffs trainees, numbering over 400. . . each year,” and the Advanced Training Bureau, which is responsible for “the development, certification, and presentation of the majority of in-service

training for . . . 12,000 department members and many outside agencies.”²⁰⁶

A “full-time staff consisting of a lieutenant, four sergeants, and ten deputies who have received extensive training in this subject,” as well as two civilians, provide the LASD’s cultural awareness training.²⁰⁷ Sheriff Block testified that the LASD’s cultural awareness training has become the model program for the State and for many other departments throughout the Nation.²⁰⁸ Recruits receive 24 hours of training in cultural awareness, consisting of a 16 hour course, augmented by a full day at the Simon Wiesenthal Center’s Museum of Tolerance. In-service training through September 1996, consisted of 8 to 16 hours training, depending upon rank. Deputies received 16 hours training, provided by the full cultural awareness course. Effective September 1996, the in-service curriculum also includes training at the Museum of Tolerance.²⁰⁹ As of the date of the Commission’s hearing, approximately 90 percent of the 12,000 sworn and civilian members of the LASD had received the 8- to 16-hour segment of training, and this initial wave of in-service training was scheduled for completion by the end of 1996.²¹⁰ Aspects of cultural awareness are also woven throughout other categories of training such as force training and academy role-playing problems.²¹¹

The first 8-hour block of instruction, Cultural Awareness I, includes 4 hours of video presentations, lecture, exercises, and open discussion regarding prejudice, discrimination, perception, bias, and stereotyping. This segment is designed to identify specific examples of comments and actions that are perceived to be prejudicial or discriminatory by certain ethnic groups. It acknowledges, according to Commander Stonich, that all people in some degree have certain biases or prejudices based upon their backgrounds and environment. The basic message of the

²⁰⁰ Bobb, *LASD 1st Semiannual Report*, p. 47. Training in cultural and gender diversity is also required by the terms of the August 4, 1993 *Bouman* consent decree, under which the department agreed to provide “mandatory cultural and gender diversity training for all of the Department’s executives, managers, supervisors, and deputies to sensitize them to the concerns of and issues pertaining to the management of a culturally and gender diverse work force.” *Ibid.*

²⁰¹ Stonich Interview.

²⁰² Stonich Testimony, *L.A. Hearing*, vol. 2, p. 232; Stonich Interview.

²⁰³ Stonich Testimony, *L.A. Hearing*, vol. 2, p. 232; Stonich Interview; Block Testimony, *L.A. Hearing*, vol. 2, p. 139.

²⁰⁴ Block Testimony, *L.A. Hearing*, vol. 2, p. 91.

²⁰⁵ Stonich Interview.

²⁰⁶ Stonich Testimony, *L.A. Hearing*, vol. 2, pp. 231–32.

²⁰⁷ *Ibid.*, p. 232; Stonich Interview.

²⁰⁸ Block Testimony, *L.A. Hearing*, vol. 2, pp. 138–39.

²⁰⁹ *Ibid.*, pp. 96–97, 138–39; Stonich Testimony, *L.A. Hearing*, vol. 2, p. 232.

²¹⁰ Stonich Testimony, *L.A. Hearing*, vol. 2, p. 233; Block Testimony, *L.A. Hearing*, vol. 2, pp. 96–97.

²¹¹ Block Testimony, *L.A. Hearing*, vol. 2, p. 97; Stonich Testimony, *L.A. Hearing*, vol. 2, pp. 232–33.

training, however, is that it is wrong to make disrespectful comments about someone's race or ethnicity or to engage in any kind of action that discriminates on the basis of race or ethnicity. The curriculum for this portion of the training is adapted from materials provided by the Anti-Defamation League and the National Conference of Christians and Jews. The second half of the Cultural Awareness I is 4 hours of training regarding sexual harassment.²¹²

The second day, under the heading Cultural Awareness II, is an 8-hour course of instruction that is "ethnic specific." Classes are smaller to encourage open discussion. A segment on mainstream American beliefs, which emphasizes the similarities in values and goals of all ethnic groups, is followed by segments on African American, Latino, and Asian Pacific Islanders' "cultural history and customs to assist the officers to understand and interact with each group."²¹³ Deputies who are white, African American, Hispanic, and Asian discuss issues of concern to their particular community. The focus of the discussion is to make sure that everyone receives a minimum level of education about the customs and cultures of that particular group, as well as "flashpoints" of concern to each community—comments and actions that are considered highly offensive and discriminatory. Commander Stonich said that to stimulate dialogue instructors draw on incidents like the Rodney King incident, the 1992 civil disturbance, or other incidents that have gotten a great deal of media attention, such as the South El Monte beating incident.²¹⁴

The Simon Wiesenthal Center's Museum of Tolerance in Los Angeles is a \$50 million state-of-the-art, interactive, multimedia, and computer facility that chronicles the Nazi Holocaust as the ultimate example of man's inhumanity to man. Participants are challenged to draw parallels among those conditions and conditions around the world and in their communities. Participants pass through a darkened "whisper tunnel" where they are exposed to fast and furious racial and ethnic epithets intended, according to

²¹² Stonich Interview; Bobb, *LASD 1st Semiannual Report*, p. 54.

²¹³ Bobb, *LASD 1st Semiannual Report*, pp. 54–56; Stonich Interview. Segments also include sensitivity training with respect to the gay and lesbian community.

²¹⁴ Stonich Interview.

one cadet, to put them "in the place of minorities that get called this stuff every day." The cadet reportedly commented that it helped him "grasp the insidiousness of name-calling." The LASD cadets and deputies also go through a series of "workshops on human behavior. . . . [The program includes] a multiscreen video host [that] peppers visitors with examples of bigotry [as] recruits pass from exhibit to exhibit. . . . Later in the day [they] are lectured on cultural programming that predisposes them to judge others." Issues such as eye contact, handshakes, and the use of English are discussed. Lloyd Wilkey, a museum instructor, acknowledges the limitations of this training, but says that it "plants the seeds of awareness that these cadets have to understand their own prejudices before they can react and govern themselves on the streets."²¹⁵

Merrick Bobb noted in his first post-Kolts report that in some classes "the breadth of the discussion of such issues [as prejudice, perception, stereotyping, and discrimination] was compromised, in the view of the instructors, by lack of ethnic and gender diversity among the trainees."²¹⁶ He further reported that efforts "in the area of cultural diversity are widely perceived to be sops to outside political pressures" and that deputies exhibited "significant resistance" to the cultural awareness training. He stated, "strong leadership is critical for deputies to overcome the cynicism they bring to the course. This training will succeed only if the department's top management shows that they believe in it and are not merely offering it to propitiate outside critics."²¹⁷ He also recommended "an infusion of executive level reinforcement on the second day [of training], and the development of Departmental positions on some of the most sensitive issues" considered by the classes.²¹⁸ More recent reports

²¹⁵ See Daniel B. Wood, "L.A. County Sends Sheriffs to Tolerance Training—at Museum," *Christian Science Monitor*, June 17, 1996, p. 3.

²¹⁶ Bobb, *LASD 1st Semiannual Report*, p. 54.

²¹⁷ *Ibid.*, pp. 47, 54. For example, Bobb noted that several deputies expressed hostility toward this "career survival class," and that one deputy argued that "the community is the one that's disrespectful. They should learn our culture." Another said that it's "not just this class we're objecting to. It's the whole spectrum of changes. We're making the wrong adaptations. As the streets get wilder, they're asking us to be softer." *Ibid.*, p. 55 (emphasis in original).

²¹⁸ *Ibid.*, p. 56.

have not indicated whether these suggestions have been implemented, and there was no testimony on these points at the Commission's hearing.

In his second post-Kolts report, Mr. Bobb noted some improvements in other areas of cultural awareness training. The department's decision to hold training sessions before a mixed audience of sworn and civilian personnel, he said, "gives some assurance that the students in the cultural diversity class include a significant number of women and ethnic minorities." This new makeup, he continued, "permits the deputies to hear alternative points of view and prevents a group-think mentality from developing in the class." He also noted that instructors had developed more effective methods of dealing with confrontations and racist, sexist, or other discriminatory statements. He said:

the Training Bureau now follows a procedure to isolate that individual and focus the class's attention on the inappropriateness of the trainee's comment or action. Apparently this method has proven effective not only in helping the entire class understand important cultural issues, but has also proven effective at aiding the offending individual understand the inappropriateness of his or her remark.²¹⁹

Nevertheless, resistance to cultural awareness training among deputies has remained detectable. A more recent report noted that although "the department has devoted substantial time and resources to developing a curriculum to help educate deputies about the ethnic diversity of Los Angeles County," a significant number of rank-and-file deputies have been resistant to such instruction. Notwithstanding this observation, however, "the department's greatest progress has been in the Professional Standards and Training Division, which was targeted specifically for reform in the Kolts report."²²⁰

Community groups, as previously noted, insist that the cultural awareness training of both the LAPD and the LASD can be augmented and improved through the establishment of "Community Academies" in each LAPD division

²¹⁹ Special Counsel Merrick J. Bobb & Staff, *The Los Angeles County Sheriff's Department: 2nd Semiannual Report* (April 1994), p. 80 (hereafter cited as Bobb, *LASD 2nd Semiannual Report*).

²²⁰ Jay T. Kinn, "Lawyers Help Reform Office of L.A. Sheriff," *National Law Journal*, Mar. 20, 1995, p. C-1.

and LASD station. Through these academies, residents of the community—not law enforcement personnel—would provide officers with orientation and instruction about the community served by the station, its demographic makeup, cultural differences, and major institutions and community groups.²²¹ Neither department has been receptive to this suggestion.²²²

Language Issues

The issue of how local law enforcement agencies provide equivalent service to monolingual, non-English speaking residents of the city or county of Los Angeles is, as noted by Board of Police Commissioners member Edith Perez, an issue "of recent awareness. . . it was not part of the Christopher Commission recommendations" or of the Kolts Commission's recommendations.²²³ Rather, it "arose out of a [highly publicized] situation that caused a number of community groups to cry out for the need. . . to look at having a systematic methodology" for the provision of police services to members of the community who cannot speak English, do not speak it well, or are able to communicate more effectively in another language.²²⁴ In the Los Angeles area this is a critical need. In the city of Los Angeles, 49.9 percent of the population report speaking a language other than English at home.²²⁵ Approximately 17.5 percent of the city's population does not speak English well.²²⁶ In Los Angeles County, 45.4 percent of the population speak a language other than English at home.²²⁷

²²¹ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 194.

²²² See notes 186-90 and accompanying text for a discussion of the Community Academy proposal and the departments' response.

²²³ Perez Testimony, *L.A. Hearing*, vol. 2, p. 292.

²²⁴ *Ibid.*, pp. 292-93.

²²⁵ U.S. Bureau of the Census, Table 3, "Cities With 200,000 or More Population Ranked," <<http://www.census.gov/statab/cdb/ccdb307.txt>>, "Percent of Persons Speaking Language Other than English at Home, 1990." See note 125.

²²⁶ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics, California* (1990 CP-2-6) (Washington, DC: Government Printing Office, 1992), Table 167, "Language Spoken at Home," p. 856. This class consists of those who report that they speak English "not at all" or "not well." The other two allowable responses for persons speaking a non-English language at home are that they speak English "very well" or "well."

²²⁷ 1990 Census Data, *Los Angeles County*, Table "Language Spoken At Home."

This is a rate well above New York (29 percent) and over three times the national average. Moreover, 25 percent do not speak English well in Los Angeles County, a rate that is nearly twice as high as New York's (13 percent).²²⁸

The LAPD's and LASD's struggle to deal with this reality encompasses a number of language issues ranging from methods for communicating with the non-English speaking public to the recruitment, deployment, and payment of bilingual officers, and the availability of the departments' citizen complaint systems to monolingual non-English speaking residents.

The Tong Sik Chong case highlighted the LAPD's lack of a policy for dealing with the non-English speaking public. K.S. Park, general counsel for the Korean Immigrant Workers Association, testified that on December 28, 1995, Tong Sik Chong, an 81-year-old Koreatown man who was hard of hearing and did not speak English, got lost on the way home from a daily walk. When he failed to return home by sunset, the family got worried and filed a missing persons report with the LAPD.²²⁹ Mr. Chong mistakenly tried to enter the wrong house; the occupants called the police, and LAPD officers arrested him and took him to a police station near Koreatown. He was detained there for a few hours.²³⁰ Mr. Chong maintained that the police simply released him at around 3 a.m., whereupon, still lost, he tried to find his way home.²³¹ The police maintain that they thought that Mr. Chong was drunk and took him to a downtown detoxification center, which released him in the unfamil-

iar area at 3 a.m. the following morning.²³² Mr. Chong was robbed of \$70, beaten and found 2 days later near a freeway ramp. Paramedics brought him to the emergency room at Good Samaritan Hospital with gashes that required 10 stitches on his forehead and bruises on the cheek and eyes. He also was treated for pneumonia.²³³ At the hospital, a social worker heard a report about a missing Korean man on the radio and brought a Korean-speaking nurse to Mr. Chong. Mr. Chong told the nurse that he was lost and she called the radio station, which got in touch with Mr. Chong's daughter.²³⁴

Mr. Chong was elderly, hard of hearing, and obviously did not speak English. Nevertheless, during the time he was at the LAPD station, no one tried to find an officer who spoke Mr. Chong's language. Mr. Park said that there were a number of Korean-speaking personnel at the police station, but the officers who detained Mr. Chong did not attempt to get one of them to communicate with Mr. Chong.²³⁵ The officers also did not attempt to use a 24-hour AT&T interpreter program with which the city had contracted at considerable cost.²³⁶ The program, in existence since 1993, readily provides interpreters for around 144 languages.²³⁷ Moreover, even though the family had filed a missing persons report, the police did not check the reports for a description similar to Mr. Chong.²³⁸ Missing persons reports are available to all patrol and sta-

²²⁸ David E. Lopez, "Language Diversity and Assimilation," in *Ethnic Los Angeles*, eds., Roger Waldinger and Mehdi Bozorgmehr (New York: Russell Sage Foundation, 1996), p. 141, Table 2, "Language Use in the Home" (citing U.S. Department of Commerce, 1990 U.S. Census of Population, *Social and Economic Characteristics* (Washington, DC: Government Printing Office, 1990), p. 266).

²²⁹ Park Testimony, *L.A. Hearing*, vol. 2, pp. 174-75.

²³⁰ *Ibid.*, p. 175; Park Interview; Yip, "Advocates Demand LAPD Investigation."

²³¹ Park Testimony, *L.A. Hearing*, vol. 2, p. 175. Mr. Chong told one reporter that he was handcuffed and taken to the police station. The handcuffs were removed later at the station, but no one spoke to him. Several hours later, he said, he was dozing in a chair, when he was awakened by the tapping of his foot by an officer, who pointed at the door. It was around 3 a.m. when he walked out, he said. K. Connie Kang, "Ordeal Spurs Criticism of L.A. Police," *Los Angeles Times*, Feb. 7, 1996, p. B-1 (hereafter cited as Kang, "Criticism of L.A. Police").

²³² Yip, "Advocates Demand LAPD Investigation"; Perez Interview. Mr. Chong's family reported that he did not drink. Park Interview.

²³³ Park Testimony, *L.A. Hearing*, vol. 2, p. 175; Kang, "Criticism of L.A. Police"; Yip, "Advocates Demand LAPD Investigation."

²³⁴ Park Testimony, *L.A. Hearing*, vol. 2, p. 176; Kang, "Criticism of L.A. Police."

²³⁵ Park Testimony, *L.A. Hearing*, vol. 2, p. 175; Park Interview.

²³⁶ Park Interview; Kang, "Criticism of L.A. Police."

²³⁷ Perez Testimony, *L.A. Hearing*, vol. 2, p. 253; Kroeker Testimony, *L.A. Hearing*, vol. 2, p. 175. Commissioner Perez stated that "if you have a language that's not commonly spoken, it may take a little bit longer to get the AT&T operator with that particular language on the phone." *L.A. Hearing*, vol. 2, p. 253. Officers are supposed to carry a laminated card with the telephone number of the service and a listing of the languages available. Perez Interview.

²³⁸ Park Testimony, *L.A. Hearing*, vol. 2, p. 175; Yip, "Advocates Demand LAPD Investigation."

tion personnel.²³⁹ The LAPD's Internal Affairs Division nevertheless subsequently found that "there was no violation of police department rules or regulations by the involved employees," according to a letter from the department to Mr. Chong's son-in-law.²⁴⁰ There were apparently no LAPD rules or regulations that required officers to check missing persons reports, attempt to interview an arrestee, try to find an officer who speaks an arrestee's language, or attempt to use the AT&T interpreter service.²⁴¹

The incident left Mr. Chong paranoid and depressed, and he never again ventured out of the house. He died on April 19, 1996, of an asthma attack in his sleep. Mr. Chong's family maintains that his asthma was revived by the pneumonia he suffered as a direct result of the actions of the LAPD. On behalf of the family, Mr. Park filed a wrongful death suit against the department and city on May 1, 1996.²⁴²

The Chong case mobilized a multiethnic coalition of civil rights groups to demand establishment of an LAPD policy for dealing with non-English speaking city residents. The coalition met with the Board of Police Commissioners on February 6, 1996, which responded by forming the Police Commission's Language Policies Task Force. Commissioner Edith R. Perez was asked to chair the task force.²⁴³ According to published accounts, Luke Williams, executive director of

the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), said that "[i]n a city where 500,000 people do not speak English, the police department has the responsibility to be culturally sensitive to the needs of its diverse population." "They just didn't care," said Rey M. Rodriguez, board president of Project Pastoral. And Marcia Choo of the Asian Pacific American Dispute Resolution Center asked: "Why are they paying for AT&T's 24-hour emergency language service if they don't use it?"²⁴⁴ Mr. Park testified that the Chong case raised two issues: resources and respect. The first issue, he said, is whether the LAPD placed "adequate resources at the right place so that they could provide adequate service to the monolingual populace." Secondly, he asked whether the incident showed respect toward the non-English speaking residents of the city, or a desire to serve them with equal dedication.²⁴⁵

Allan Parachini, public affairs director for the ACLU of Southern California, said that the Chong case indicates that the insensitivity, if not hostility, that he has seen by some LAPD officers toward Latinos extends to Asian immigrants as well. Moreover, Mr. Parachini said that the Chong incident illustrated the extent to which the LAPD is capable of having "paper systems" that are supposed to be in place, but "aren't used at all or properly on the street." It is, he said, "a laboratory embodiment of what's wrong in terms of getting power and reform from the Chief's office to the patrol car."²⁴⁶ Commissioner Perez agreed that regardless of whether Mr. Chong was released or taken to a detoxification center by the police, an effort should have been made to find an interpreter through the city's AT&T interpreter service or through the use of a Korean-speaking officer.²⁴⁷ The *Los Angeles Times* noted that the LAPD does have Korean-speaking officers and through an editorial, stated:

²³⁹ Park Interview. Mr. Park indicated to Commission staff that representatives of the LAPD said at a later date that Mr. Chong looked like a transient.

²⁴⁰ Althea Yip, "Pressure Mounts on LAPD: Advisory Council Demands Policy Changes in Treatment of Non-English Speakers," *Asian Week*, Jan. 23, 1997, p. 10 (hereafter cited as Yip, "Pressure Mounts on LAPD").

²⁴¹ According to Commander Tim McBride of the LAPD, the officers did not try to communicate with Mr. Chong because they did not have to. "We don't have to interview people," McBride said. "[T]hey could have arrested him and booked and never interviewed him because we have to do the same thing if someone exercises their Miranda rights. Theoretically, they don't have to say anything, so you just arrest them." "LAPD Practices Called into Question," *Asian Week*, Feb. 9, 1996.

²⁴² Park Testimony, *L.A. Hearing*, vol. 2, p. 176; Park interview; Yip, "Advocates Demand LAPD Investigation"; "Police Misconduct Suit Filed in Death of Korean Immigrant," *Los Angeles Times*, May 2, 1997, p. B-4. The case was expected to go to trial in 1997. See "Civil Rights Work: LAPD Accountability Campaign," *KIWA News*, vol. 5 (Spring 1997), p. 11.

²⁴³ Park Testimony, *L.A. Hearing*, vol. 2, pp. 177, 213-14; Park Interview.

²⁴⁴ Kang, "Criticism of L.A. Police."

²⁴⁵ Park Testimony, *L.A. Hearing*, vol. 2, pp. 176-77. Mr. Park maintains that the Chong case is definitely indicative of a larger problem. There are many times, he said, that police officers show an unwillingness to serve, or sometimes hostility toward, those who do not speak English. Monolingual, non-English speakers often feel like they are being discriminated against or that they are not being properly served, according to Mr. Park. Park Interview.

²⁴⁶ Parachini Interview.

²⁴⁷ Perez Interview.

The LAPD should make better use of the many ethnic community resources that exist in Los Angeles. Be it Korean or Spanish or Farsi, there's no reason why translation help should ever be far away. The sooner the LAPD gets to the bottom of the Chong incident, the sooner it can be prepared for cases with similar circumstances.²⁴⁸

The Language Policies Task Force formed as a result of the Chong incident sought to examine the LAPD's policy for dealing with non-English speaking residents. Representatives from CHIRLA, MALDEF, the Hispanic Advisory Council, the Asian Pacific Islander Advisory Council, and K. S. Park of the Korean Immigrant Workers Advocates, among others, are the community representatives on the panel. Deputy Chief Michael Bostick and Captain Paul Kim, the highest ranking Asian American on the force, are also members.²⁴⁹ The task force found that a number of efforts are being made within academy training to emphasize the need to communicate with non-English speaking residents.²⁵⁰ However, the task force "discovered that the department, as [is the case with] a number of neighboring law enforcement agencies, does not have a language policy. . . at all" for dealing with non-English speakers.²⁵¹ The ad hoc method of the LAPD for dealing with perpetrators, victims, and witnesses who do not speak English well consists of deploying bilingual officers, making the AT&T interpreters service available, and developing a group of volunteer interpreters from the community.

Commissioner Perez testified that the "approach to providing language services. . . is primarily a haphazard approach leaving it to the area commanders" to determine the level of bi-

²⁴⁸ "Police and Non-English Speakers," *Los Angeles Times*, Feb. 8, 1996, p. B-8.

²⁴⁹ Perez Testimony, *L.A. Hearing*, vol. 2, p. 250; Park Testimony, *L.A. Hearing*, vol. 2, p. 176; Perez Interview.

²⁵⁰ Perez Interview.

²⁵¹ Perez Testimony, *L.A. Hearing*, vol. 2, p. 248. Commissioner Perez indicated that there are two views as to why no written policy exists. One school of thought maintains that there is a clear understanding that officers should try to find some way to communicate with a non-English speaker to whom they must provide police services and most officers understand that obligation. Thus, a written policy is unnecessary. The other maintains that if a written policy is established, officers will not want to deal with non-English speakers because if they do not comply with the letter of the policy, they will suffer discipline. Perez Interview.

lingual officer staffing at each station.²⁵² The area commander's recommendation is subject to the approval of the chief of police, and ultimately the overall bilingual staffing level is subject to the budgetary approval of the City Council, since authorized bilingual positions receive 2.75 percent or 5.5 percent incentive pay.²⁵³ Commissioner Perez testified that some commanders "base it on the 1990 census," some check with the community, and some "do a little of both. . . . But it is not a uniform, department-wide methodology."²⁵⁴ There has never been an effort to assess the need for bilingual officers systematically by station. Moreover, statistics currently are not kept regarding the number of police encounters involving an individual who speaks a language other than English. Therefore, the department does not have information as to whether it deploys enough bilingual officers either in the aggregate, or to the appropriate stations.²⁵⁵

Dr. Ellen Touchstone, a member of the Language Policy Task Force and a language consultant, has been asked "to work up a proposal for a foundation grant to do a . . . language needs assessment" to determine more accurately the language requirements of the 18 geographic stations of the LAPD.²⁵⁶ This will involve deter-

²⁵² Perez Testimony, *L.A. Hearing*, vol. 2, pp. 249-50.

²⁵³ City of Los Angeles Administrative Code §4.170; Perez Interview. The code's language vests approval of the premium of 2.75 percent of salary or wages in the "chief administrative officer of . . . the Police Department." This code section authorizing premium pay for officers possessing bilingual skills became effective in April 1973. Los Angeles Administrative Code §4.170. The program began with the authorization of 483 positions at the 17 geographic divisions existing in January 1974. Letter from C. Erwin Piper, city administrative officer, to Edward M. Davis, chief of police, Jan. 11, 1974. In 1984 Los Angeles Administrative Code §4.170 was amended to provide that that the premium would be 2.75 percent for employees whose duties require that they converse fluently in a language other than English and would be 5.5 percent for employees whose duties require that they interpret and write a language other than English, in addition to conversing fluently in the language. City of Los Angeles Ordinance No. 158612. These sources were provided by Joseph Gunn, special assistant to the mayor.

²⁵⁴ Perez Testimony, *L.A. Hearing*, vol. 2, p. 249.

²⁵⁵ *Ibid.*, pp. 249, 264; Perez Interview.

²⁵⁶ Perez Testimony, *L.A. Hearing*, vol. 2, p. 264. Ms. Touchstone has a Ph.D. in applied linguistics and is a professor at the University of Southern California and a consultant in language planning for government and private organizations. Dr. Touchstone has applied for a grant and is currently working pro bono. Perez Interview.

mining which languages are needed in each station and conducting a professional assessment of the language capabilities of the officers. The results will give the LAPD a realistic picture of the unfulfilled language need division by division. The department can then, along with the Board of Police Commissioners, city council, and mayor, determine how to best close that gap using bilingual officers, the AT&T service, and/or volunteer interpreters, as well as determining whether to issue an official policy for dealing with non-English speaking residents. Ideally, according to Commissioner Perez, there would also be periodic reassessments to determine changes in community language needs.²⁵⁷

As of March 6, 1996, there were 1,388 authorized bilingual positions for the entire city, of which 232, or 16.7 percent remained vacant.²⁵⁸ By 1998 there were 1,560 authorized bilingual positions, of which 203, or 13 percent remained vacant.²⁵⁹ Commissioner Perez testified that the city has "not been able to recruit officers who speak . . . the vacant position languages."²⁶⁰ The vacancies are particularly concentrated in the Spanish and Korean languages (200 and 16, respectively).²⁶¹ The 1990 census reported that there were approximately 2,555,000 people who spoke Spanish at home in Los Angeles County, and about 124,000 who spoke Korean.²⁶² Commissioner Perez testified that two factors impeded filling these vacancies. One is that:

²⁵⁷ Perez Interview. Commissioner Perez said that she favored making the Language Policies Task Force a standing task force for a considerable time until the police department adopts it within one of its divisions and makes it a stand-alone group. *Ibid.*

²⁵⁸ Perez Testimony, *L.A. Hearing*, vol. 2, p. 250. Assistant Chief Bayan Lewis indicated in his July 18, 1996 interview with staff that 17 languages are recognized for purposes of the bilingual incentive. Lewis Interview.

²⁵⁹ Memorandum from the Language Policies Task Force to the Los Angeles Board of Police Commissioners (April 24, 1998), p. 3 (hereafter cited as Language Policies Task Force Memorandum).

²⁶⁰ Perez Testimony, *L.A. Hearing*, vol. 2, p. 250.

²⁶¹ Asian Pacific Islander Advisory Council Petition to the Los Angeles Police Commission, "Petition Demanding LAPD Commitment to Serve All City Residents Regardless of the Language They Speak" (1996).

²⁶² Lopez, "Language Diversity," p. 142, Table 1, "Language Spoken at Home in Los Angeles County, 1990" (citing U.S. Department of Commerce, 1990 U.S. Census of Population, *Social and Economic Characteristics* (Washington, DC: Government Printing Office, 1990), p. 266).

these bilingual positions stay within the division. They do not move with the officer. So even though the officer possesses the skills, as they move from division to division, and there are 18 divisions in the city, they leave that position vacant. And . . . they may go to an area that does not have a position of the particular language that that officer speaks. . . It is not a very logical system.²⁶³

Another serious problem is "a hesitancy among a number of officers who do speak a language other than English to be pegged within those positions, because. . . it is not something that is viewed positive[ly] as they promote within the department."²⁶⁴

According to Tom Saenz, regional counsel for the Mexican American Legal Defense and Educational Fund (MALDEF), designated bilingual positions have the effect, first, of not paying a substantial number of bilingual officers the incentive to which they are entitled, even though they use the language on a daily basis. Second, designating positions concentrates bilingual officers in areas that have the highest number of slots, when those allocations were established long ago and have never been adjusted in a systematic manner. Mr. Saenz maintains that in the context of the rapidly changing demographics of Los Angeles, the LAPD is far behind the times in deployment of bilingual officers.²⁶⁵ Commissioner Perez testified that the task force wants to use the language needs assessment to reevaluate the number of bilingual officers needed and their deployment, and to ensure that bilingual ability is recognized as a positive factor in promotion decisions.²⁶⁶ She noted that the Board of Police Commissioners Personnel Task Force is in the process of preparing a new evaluation form for all personnel from P1s up to the chief. Commissioner Perez observed "that there needs to be something in writing to the effect that [bilingual ability] is a plus and something that enhances promotability as opposed to a stigma."²⁶⁷

²⁶³ Perez Testimony, *L.A. Hearing*, vol. 2, pp. 250-51.

²⁶⁴ *Ibid.*, p. 250.

²⁶⁵ Saenz Interview.

²⁶⁶ Perez Testimony, *L.A. Hearing*, vol. 2, pp. 249, 265.

²⁶⁷ *Ibid.*, p. 265. Commissioner Perez also testified that there are many officers who contribute their language skills without pay and get saddled with paperwork that goes along with an incident requiring dealing with non-English victims, witnesses or suspects. That situation "needs to be moni-

Commissioner Perez testified that at the time of the hearing, the AT&T interpreter service had been in effect for about 3 years. It is extremely expensive and is paid for by the city.²⁶⁸ There are over 144 languages readily available and speakers of more uncommon languages can be located, although it may take additional time. Officers in the field "call the central communication service, which is where the 911 operators are, and they put them in touch with an AT&T operator that speaks a particular language. It is not automatic through their patrol car."²⁶⁹ The system is only useful, however, if it is used. Prior to formation of the task force, the last time laminated cards were issued listing the languages for which interpreters were available and AT&T telephone number was in 1994. Shortly after the Language Policies Task Force began meeting, the LAPD reissued the cards and began showing a videotape about the service at roll-call. Commissioner Perez asked the department, which agreed, to issue the cards and play the videotape on a more regular basis, and also to bring to the attention of officers other resources for dealing with non-English speaking residents.²⁷⁰

Commissioner Perez also testified that "we have 18 community police advisory boards [and] those board members are now being asked to help provide people who can be on an on-call basis for officers. . . so that . . . they have a number of different alternatives and resources. . . they can tap to communicate" with non-English speaking individuals.²⁷¹ As of the date of the Commission's hearing, this resource was undeveloped. K. S. Park urged, however, that while anything to enhance the LAPD's ability to serve non-English speaking residents is welcome, volunteer interpreters should remain supplementary to the LAPD's own resources.²⁷²

tored," she said, "and those particular officers need to have that set forth in their evaluation." Ibid.

²⁶⁸ Ibid., pp. 252, 255.

²⁶⁹ Ibid., p. 253.

²⁷⁰ Ibid., p. 255.

²⁷¹ Ibid., p. 252.

²⁷² Mr. Park testified that the expenditure of immigrant and community group resources for the LASD's Volunteer Interpreter Service sets, in his view, a dangerous precedent whereby law enforcement may come to depend on outside resources instead of developing its own internal capabilities. Park Testimony, *L.A. Hearing*, vol. 2, pp. 173-74.

Mr. Park testified that the Language Policies Task Force continued to meet periodically, but "the process has been painfully slow."²⁷³ He stated that "the representatives of the LAPD showed. . . strong resistance and strong inertia against receiving. . . input from the community. . . as represented by the groups participating in the task force."²⁷⁴ He noted that in April 1996, the community organizations on the task force submitted a five point proposal for improvement's in the LAPD's ad hoc language policy, which they considered "very reasonable and feasible." In early September, 1 week before the Commission's hearing, the first recommendation was implemented by the LAPD. It involved simply the "immediate issuance of a Special Bulletin by Chief Williams" to all officers reminding them that LAPD language resources, including the AT&T service and 1,151 LAPD personnel fluent in non-English languages who can be located through dispatcher assistance, are available and should be used in communicating with a victim, witness, or suspect in custody who appears to speak little or no English.²⁷⁵

The other four proposals from the community groups on the task force called for the LAPD to: (1) conduct a competent language needs assessment followed by vigorous action needed to fill the necessary positions; (2) retain current bilingual positions, strengthen recruitment of bilingual hires as a budgetary priority, and fill any vacancies determined under the language needs assessment; (3) allow officers who use their bilingual ability to benefit the department to transfer with their bilingual incentive pay while the division from which the officer transferred out of retained the right to fill the bilingual position; and (4) include bilingual skills as a criterion for promotion and advancement by explicitly including such skills in the job descriptions and announcements for listed coveted positions.²⁷⁶ Frustrated by the LAPD's failure to act

²⁷³ Ibid., p. 177.

²⁷⁴ Ibid., p. 213.

²⁷⁵ Ibid., p. 178; Asian Pacific Islander Advisory Council to the Los Angeles Police Commission, "Petition Demanding LAPD Commitment to Serve All City Residents Regardless of the Language They Speak" (1996).

²⁷⁶ Ibid. Luke Williams indicated that because every bilingual officer does use his ability to benefit the department, all such officers should receive incentive pay, whether they are specifically in a position slotted as bilingual, or not. Williams Interview.

on these proposals, the community representatives circulated a petition demanding the establishment of a language policy with these five elements and are seeking to build community support.²⁷⁷ Commissioner Perez indicated that she did not attempt to dissuade them from this course, because it may demonstrate to the department that these members of the committee represent the 500,000 non-English speaking people in Los Angeles and are not "radicals" hostile to the department.²⁷⁸

When no further action on these proposals had taken place by January 1997, the Asian Pacific Islander Advisory Council (APAIC) to the Los Angeles Police Commission sent a 6-page letter to LAPD Chief Willie Williams again outlining its recommendations for improving police services to the non-English speaking public. Robin Toma, chair of the council and a human relations consultant for the Los Angeles County Human Relations Commission, said:

as the year has passed since this incident occurred, we have been patiently working to avoid a repetition of this. But we have met with resistance from the department. . . . This is not an isolated incident. I really do not want to go to another "Mr. Chong's" funeral because of a failure to communicate on the part of the police.²⁷⁹

On April 24, 1998, the Language Policies Task Force (LPTF) issued a report to the Board of Police Commissioners containing 20 short-term and long-term recommendations that would require all LAPD employees "to ensure that appropriate and effective communication is made in all community contacts."²⁸⁰ The recommendations were unanimously approved by the Board of Police Commissioners on May 5, 1998.²⁸¹ The recommendations essentially re-

quire the LAPD to increase the recruiting of, and rewards for, bilingual employees, while holding top LAPD managers accountable for effectively training and deploying bilingual officers. The LPTF recommendations concur with the previously noted recommendations of the community groups on the task force, except that they allow authorized bilingual officers to transfer with their incentive pay to another geographic division only if the commanding officer of the division to which they are going has a bilingual vacancy, based on the most recent annual audit of language needs. The recommendations also do not call for automatically filling the position vacated at the officers prior division; it, likewise, will be filled only if the most recent annual audit indicates that it is needed.²⁸²

Police Chief Bernard Parks said that the department will implement the recommendations "as quickly as possible." Robin Toma said that the Police Commission's action strengthens the LAPD's community-based policing program in general.²⁸³ Mr. Toma further stated that the policy as a whole is "clearly a cutting-edge policy," and that if it had been in place 2 years ago, he said he would like to think what happened to Mr. Chong would not have happened.²⁸⁴ Police Commission President Edith Perez said that from now on the task force will meet quarterly to review the department's progress in implementing the recommendations.²⁸⁵

The 20 recommendations are organized by the issues they address. Some of the recommendations are summarized below. Under "Management Commitment," the LPTF recommended that a "new Special Order be published which articulates the LAPD's commitment to effectively serve non-English speakers and persons with communication disabilities."²⁸⁶ Under "Training," the task force said that a Training Bulletin entitled "Overcoming Language Barri-

²⁷⁷ Park Interview.

²⁷⁸ Perez Interview.

²⁷⁹ Yip, "Pressure Mounts on LAPD." Some found further evidence of the LAPD's low level of concern with this issue in the letter from LAPD Internal Affairs advising Mr. Chong's son-in-law that "there was no violation of Police Department rules or regulations by the involved employees." The letter referred to Mr. Chong as "Mr. David Wong." For Mr. Toma, this was a disturbing sign of incompetence and lack of respect for both Mr. Chong and the case. Ibid.

²⁸⁰ Language Policies Task Force Memorandum, p. 3.

²⁸¹ Ibid., p.1 (dated approval stamp of Board of Police Commissioners initialed by the Secretary); Matt Lait, "Police

Panel OKs Bilingual Guidelines," *Los Angeles Times*, May 6, 1998, p. B-3.

²⁸² Language Policies Task Force Memorandum, pp. 4-5.

²⁸³ Paul O'Donoghue, "Police Languages," *City News Service*, May 5, 1998, available in LEXIS, News Library, Curnws File (hereafter cited as O'Donoghue, "Police Languages").

²⁸⁴ Matt Lait, "Better Community Policing Urged: Panel Offers 20 Ways To Improve Communication with Non-English Speakers," *Los Angeles Times*, May 1, 1998, p. B-1.

²⁸⁵ O'Donoghue, "Police Languages."

²⁸⁶ Language Policies Task Force Memorandum, p. 3.

ers" should be prepared and communicated to all employees, sworn and civilian. The bulletin details the "procedures line officers are to follow when they encounter individuals who are non- or limited-English speakers or have communication disabilities." Officers will be held accountable following these procedures.²⁸⁷ Under "Effective Management of Bilingual Personnel," a number of recommendations detail how the LAPD Personnel Division and each area commanding officer will conduct a comprehensive annual audit of bilingual positions in the department and of general population trends. The LPTF and the Police Commissioners also recommend that the Los Angeles Administrative Code be amended to allow management employees at or above the rank of detective III to be eligible for the bilingual premium.²⁸⁸

Six recommendations address "Promotional and Advancement Incentives." The LPTF recommended that the selection process and employee evaluation reports be revised to give greater emphasis to language skills; that the LADP make available to its employees information regarding language and cross-cultural courses offered outside traditional in-service training and encourage participation; that commanding officers be evaluated on their performance in filling bilingual positions, utilizing bilingual employees and evaluating bilingual subordinates; and that a third tier of bilingual pay be established for certified interpreters, in addition to compensating the ability to speak and write a second language.²⁸⁹ Two recommendations address making the recruitment of bilingual employees a priority and developing incentives to attract them.²⁹⁰ The LPTF and Police Commissioners also recommended that representation of non-English speaking communities be added to the Community Police Advisory Board guidelines to ensure that CPABs more accurately reflect the linguistic, cultural, and racial diversity of the communities they represent.²⁹¹

Another aspect of the provision of police services to the non-English speaking residents of the Los Angeles region is the availability of a

law enforcement agency's citizen complaint system. The ACLU-SC contends that this may be a critical determinant of residents' confidence in the entire system for the provision of police services.²⁹² This position is underscored by the contention of some immigrant and civil rights leaders that incidents of excessive force against non-English speaking immigrants, like the Riverside deputy beatings, are not isolated incidents. This view is represented by the comments of Latino activist Gus Chavez of San Diego, who said, "it happens all the time. This time, the brutal assault just happened to be recorded by a news media helicopter."²⁹³ Luke Williams testified that the "Riverside County Sheriff's deputy beatings in South El Monte really. . . brought [to] all of our attention" that some in law enforcement have "adopted this general anti-immigrant posture or. . . [do not] have the sensitivity that's needed to deal with communities where different languages are spoken, where different cultures are in effect."²⁹⁴

Local law enforcement officials respond that few complaints have been substantiated and that such behavior is neither typical nor tolerated. The LAPD has also pointed out that the number of LAPD unauthorized use of force complaints has gone down for each of the last 3 years and the first half of 1996. The number of such complaints are as follows: 1990, 172; 1991, 252; 1992, 328; 1993, 241; 1994, 173; 1995, 163; and 1996, as of July 31, 1996, 65.²⁹⁵ A report by

²⁹² The ACLU-SC has written: "We believe it is clearly true that: If the citizen complaint process discourages the filing of complaints; if officers, through ignorance or indifference refuse or fail to make complaint materials available and explain procedures accurately, and if members of the community repeatedly encounter a department whose officers seem indifferent to and uninformed about the complaint process, the entire system for review of misconduct is compromised." ACLU-SC, *Reform Delayed: Five Years After the Christopher Commission—Los Angeles Police Department Citizen Complaint Procedures 1991–1996* (July 9, 1996), p.2 (hereafter cited as ACLU-SC, *LAPD Citizen Complaint Procedures*).

²⁹³ Leonel Sanchez, "Latinos Call Excessive Force Frequent Here," *San Diego Union-Tribune*, Apr. 10, 1996, p. B-10; Williams Interview; Saenz Interview; Park Interview; Vivian Andrade, director of immigration, Mexican American Legal Defense and Educational Fund, telephone interview, July 26, 1996 (hereafter cited as Andrade Interview).

²⁹⁴ Williams Testimony, *L.A. Hearing*, vol. 2, p. 170.

²⁹⁵ Letter from Willie L. Williams, chief of police, and Mark A. Kroeker, deputy chief and commanding officer, Operations,

²⁸⁷ *Ibid.*, pp. 3–4.

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*, pp. 6–8.

²⁹⁰ *Ibid.*, pp. 8–9.

²⁹¹ *Ibid.*, p. 9.

the ACLU-SC entitled *Reform Delayed: Five Years After the Christopher Commission—Los Angeles Police Department Citizen Complaint Procedures 1991–1996*, however, suggests that one contributing factor to this decrease in complaints may be the difficulty the public, especially the non-English speaking public, has in locating a complaint form. The study duplicated a 1992 study in which the ACLU “sent teams of interns to police stations throughout the city to assess the availability of complaint forms and materials and the willingness of officers to courteously provide accurate information about how to seek redress for officer misconduct.” The ACLU “found major flaws in the entire process despite a series of highly specific Christopher Commission recommendations for change” and said: “If we were grading the department on its citizen complaint performance, we would give it an F in 1992, and only found improvement to the level of a D in 1996.”²⁹⁶

Allan Parachini testified that “in very few station houses were all of the materials that were supposed to be there actually present, and those materials include not just the complaint form, but a multilingual instructional form that tells the person what to do with the complaint form.”²⁹⁷ Only 6 of 18 stations provided department-required displays incorporating *any* complaint materials, and only one of the LAPD’s division stations had a publicly accessible, fully supplied display offering the range of materials required by LAPD policies that provide supposedly objective, accurate information on procedures for filing misconduct complaints.²⁹⁸

Moreover, only four of the city’s police stations had forms available in all four languages mandated by the department: English, Spanish, Chinese, and Korean. Two stations could not produce a single complaint form in any language. Several stations did not have complaint forms in the dominant languages spoken in their areas, including two divisions that offered no complaint forms in English.²⁹⁹ In addition, interns were “instructed to use pretexts that would

afford officers an opportunity to make racist or anti-immigrant remarks.” In one case, an Asian-Pacific woman was instructed to say that she had a Latino boyfriend and that he was undocumented. “When she did that at one station. . . she asked the officer on the desk what would happen if he came in to make a complaint, the officer said: ‘Well, if he’s undocumented, then if he wants to come in here and complain about police misconduct, then being deported and turned over to the I.N.S. is a chance this young man will have to take.’”³⁰⁰

Mr. Parachini testified that “we found moreover that the worse problem is that officers. . . [were] extremely uninformed and consistently [gave] erroneous, just flat out wrong, or no information” to someone coming in to find out how to file a complaint.³⁰¹ Thirteen officers (35 percent) of those contacted by phone said that the LAPD does not accept citizen complaints by telephone. Only 5 of 37 officers (14 percent) were able to provide the toll-free citizen complaint hotline number. Seven officers (19 percent) told callers that a complaint must be filed at the station that covers the area where the alleged incident occurred and where the officers who allegedly engaged in the conduct work. The ACLU-SC suggested that:

while many officers in the LAPD are courteous to try and assist people inquiring about citizen complaint procedures, the department and division commanders have provided completely inadequate levels of training and material support to permit even officers who want to be of assistance to provide reliable, useful information on a consistent basis.³⁰²

Within 3 hours of the July 9, 1996, release of the ACLU-SC’s report, Chief Willie Williams issued an unprecedented order in which he gave his division commanders 8 days to rectify the deficiencies noted in the report. On July 18, the ACLU-SC surveyed every station house again. Although “many had improved, many others were still in violation of basic LAPD directives on complaint procedures.” The ACLU-SC, therefore, “renewed a long-standing recommendation for an improved, aggressive community marketing program to widen public awareness of the

South Bureau, LAPD, to U.S. Commission on Civil Rights, July 31, 1996.

²⁹⁶ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 182–83.

²⁹⁷ Parachini Testimony, *L.A. Hearing*, vol. 2, p. 210.

²⁹⁸ ACLU-SC, *LAPD Citizen Complaint Procedures*, p. 10.

²⁹⁹ *Ibid.*

³⁰⁰ Parachini Testimony, *L.A. Hearing*, vol. 2, pp. 202–03.

³⁰¹ *Ibid.*, pp. 210–11.

³⁰² ACLU-SC, *LAPD Citizen Complaint Procedures*, p. 11.

complaint process via supermarkets, drugstores, and community organizations.”³⁰³ It then launched a citywide public education program to inform residents of their right to file complaints regarding the service they receive from the LAPD. The central element of the campaign is the introduction of special displays in the offices of community organizations informing local community members of their rights and providing them with multilingual materials to use to make complaints with the LAPD. The ACLU-SC intends to expand the program into retail stores, supermarkets, convenience and drugstores, but is experiencing strong resistance from the LAPD.³⁰⁴

The Los Angeles Sheriff's Department's efforts to deal with similar issues have not received nearly the same level of scrutiny as the LAPD. Sheriff Block testified that the LASD has three methods for communicating with non-English speaking arrestees, witnesses or victims. The department has identified deputies and civilian employees “within the department who speak specific languages” and relies upon “a very large staff of volunteer interpreters who can be called upon to assist us in incidents where we need a particular language.”³⁰⁵ The LASD also places “a very high priority” on recruiting deputies with bilingual abilities, according to Sheriff Block. However, the department apparently does not specifically include bilingual ability as a criterion in hiring, but rather uses ethnicity as a proxy for such ability. Sheriff Block testified that the “reality is that we recruit people of a particular ethnic group with the expectation that they speak the language, and we find out that they don't. We recruit Hispanics. . . Asians. . . [and] others who are second or third generation here and don't speak the language.”³⁰⁶ While the LASD “work[s] very hard on trying to develop a representative work force,” as of the date of the Commission's hearing, it has “never been ordered by a court to engage in any particular

quota hiring. . . [or] entered into any consent decrees” concerning the racial, ethnic or linguistic makeup of the department.³⁰⁷

Sheriff Block said bonus pay is available to bilingual officers who can be of assistance to the department.³⁰⁸ Compensation is at the rate of \$40 per pay period or, if the employee is paid on an hourly basis, \$0.46 per hour.³⁰⁹ Ten bilingual languages are authorized for such pay: Spanish, Japanese, Chinese, German, Russian, Arabic, Korean, Vietnamese, Tagalog, and sign language.³¹⁰ Over 750 sworn and civilian employees are listed on a roster of bilingual employees, but there was no testimony regarding the number who receive bilingual pay.³¹¹ Unit commanders are responsible for requesting deployment of bilingual officers and the LASD is likely to grant such requests, within its capabilities. The need, however, cannot always be filled.³¹² Moreover, like the LAPD, the sheriff's department has never conducted a professional language needs assessment. Rather, it has relied upon the judgment of unit commanders at each station.³¹³ The LASD also has a similar problem to the LAPD, in that bilingual positions are allocated by sta-

³⁰³ Ripston Written Statement, pp. 6-7.

³⁰⁴ Parachini Interview.

³⁰⁵ Block Testimony, *L.A. Hearing*, vol. 2, p. 140. A limited number of hours in basic Spanish instruction is taught at the Sheriff's Department Academy, because it is the most common non-English language encountered. It is limited, however, to learning certain essential phrases a deputy might have to use. Stonich Interview.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*, p. 139.

³⁰⁸ *Ibid.*, p. 141. The LASD Manual section regarding “Bilingual Bonus” provides, in part: “County employees who are fluent in English and a foreign language, and are assigned to a position requiring use of the bilingual skill, shall be compensated in accordance with the County Code.” Criteria for eligibility are: “the assignment requires bilingual skill of the employee in order that the public service responsibility of the Department to the foreign language group may be met; the Unit commander concurs on the need for the bilingual skill in the assignment; the absence of an employee with the required skill would hamper the effectiveness of the Department in the discharge of its responsibilities; the need for the bilingual skill is a continuing and frequent one which measurable contributes to the efficiency of the office.” Los Angeles Sheriff's Department Manual of Policy and Procedures, § 3-02/180.00 (April 1996), *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

³⁰⁹ Los Angeles County Code §6.101.40.

³¹⁰ Los Angeles County Sheriff's Department, “Bilingual Languages for the Department” (undated), *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

³¹¹ Los Angeles County Sheriff's Department, “Roster of Bilingual Employees for Barney Use,” (undated), *L.A. Hearing*, subpoena duces tecum document, Exh. 8a. Department employees may be called upon occasionally to assist in the Volunteer Interpreter Program, and yet not meet the criteria of eligibility for bilingual pay. See note 311 and text accompanying note 319.

³¹² Stonich Testimony, *L.A. Hearing*, vol. 2, pp. 260-61.

³¹³ *Ibid.*

tions, and a deputy moving from one station to another leaves the former position vacant and cannot receive bilingual pay unless there is a vacant bilingual slot available at his or her new assignment.³¹⁴

As previously noted, the department appears to rely heavily upon its Volunteer Interpreter Program, composed of "civilian volunteers from the community who do not receive pay, but who volunteer their services."³¹⁵ Helen H. Reardon, director of special programs for the LASD and administrator of the program, is the only LASD employee assigned to the interpreter program. The program was initiated 1 year before the 1984 Olympics in Los Angeles with 300 volunteer interpreters. As of August 1996, 170 volunteers were enrolled in the program. While the program conserves financial resources, it offers coverage only to approximately 40 languages, compared with the 144 readily available languages accessible through the AT&T interpreter service made available to the LAPD.³¹⁶

Commander William Stonich testified that deputies are required to "make sure that [they are] able to communicate with [a non-English speaking] individual, if not through another deputy or civilian member of the department, then to call upon other resources such as the volunteers that are available."³¹⁷ They are, moreover, subject to discipline for failing to do so.³¹⁸ The Volunteer Interpreter Program, according to Commander Stonich, has "become an integral part of the daily operations in a number of our stations."³¹⁹ Individuals are called from a roster to assist not only the LASD, but also the FBI, U.S. Secret Service, local schools, and other organizations in the community. According to Helen Reardon, they receive some calls directly from the field, but usually serve as interpreters for relatives of jailed individuals or for arrestees at a station jail or otherwise in custody.³²⁰ Deputies are required to carry an interpreter guide card, which lists 39 available languages, including sign language. An individual who speaks a

language with which available deputies are unfamiliar is asked to locate his language on the card.³²¹ The card contains, for each of the 39 listed languages, these two sentences: "Please wait. We are calling an interpreter to help you."³²²

Special Counsel Merrick Bobb testified that "[t]he policy of the Los Angeles County Sheriff's Department is that all complaints will be taken, however trivial, however inherently unbelievable, and that they will be investigated."³²³ Moreover, he stated that his staff has:

at times also attempted, and there are other organizations in the community that I know have attempted, to determine whether there are barriers to the filing of the citizen's complaint within the sheriff's department. . . . [W]e have not found that such barriers currently exist. We have found, again, on an auditing-on-the-spot basis that when you go into a station and you attempt to make a complaint you are able to do so.³²⁴

Citizen complaint forms are normally available in English, Spanish, Chinese, and Vietnamese.³²⁵ Sheriff Block testified that forms are available in other languages, "[d]epending on the prevailing groups within the community." Forms printed in Samoan are available at the "Carson station, for example, . . . because there are a lot of Samoans in that community."³²⁶

Forms are required to be available at each sheriff's station, the field offices of the contract cities served by the LASD, the field offices of Los Angeles County supervisors, and beginning in May 1994, at the office of the newly created Los Angeles County Ombudsman.³²⁷ There is also a

³¹⁴ Ibid., p. 260.

³¹⁵ Block Testimony, *L.A. Hearing*, vol. 2, p. 141.

³¹⁶ Perez Testimony, *L.A. Hearing*, vol. 2, p. 253.

³¹⁷ Stonich Testimony, *L.A. Hearing*, vol. 2, p. 279.

³¹⁸ Ibid., pp. 278-79.

³¹⁹ Ibid., p. 279.

³²⁰ Reardon Interview.

³²¹ Block Testimony, *L.A. Hearing*, vol. 2, p. 141; Los Angeles County Sheriff's Department, "Interpreter Guide" (undated).

³²² Los Angeles County Sheriff's Department, "Interpreter Guide" (undated).

³²³ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 144.

³²⁴ Ibid., pp. 144-45.

³²⁵ Ibid., pp. 145-46.

³²⁶ Block Testimony, *L.A. Hearing*, vol. 2, p. 146.

³²⁷ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 145; Bobb, *LASD 2nd Semiannual Report*, p. 49; Special Counsel Merrick J. Bobb, *The Los Angeles County Sheriff's Department: 4th Semiannual Report* (June 1995), p. 79 (hereafter cited as Bobb, *LASD 4th Semiannual Report*). One of the ombudsman's specific charges is "making the process for filing complaints easier and less intimidating." Bobb, *LASD 4th Semiannual Report*, p. 79.

toll-free number available to record a complaint, and LASD radio cars have a bumper sticker displaying the 800 number.³²⁸ Merrick Bobb stated that “[w]e wanted to set up a system so that one would not have to go into the sheriff’s department in order to file a citizen’s complaint.”³²⁹ In his April 1994 report, however, Mr. Bobb noted that of the 42 contract cities served by the sheriff’s department, only 45 percent (19) made the forms available; 55 percent (23) did not.³³⁰ Six cities indicated that they routinely send complaining individuals to the local sheriff’s station and four used their own complaint form. Special Counsel Bobb noted that the:

absence of forms at contract cities does not mean that the various [sheriff’s] stations did not distribute them. But it does mean that the Department may not be receiving all the complaints against it. . . . The contract cities account for more than half of the individuals served by the LASD. If citizens are attempting to lodge complaints through the cities’ complaint procedures. . . and if those complaints are not being consistently forwarded, the statistics on the numbers of citizens’ complaints being received by the LASD are inaccurate and may give a misleading impression to the Department as a whole and to captains who have several contract cities.³³¹

The number of complaints received directly by the ombudsman’s office may also have been affected by reports that of the 40 completed investigations from October 1, 1994, to April 30, 1995, the ombudsman has not disagreed with the LASD’s adjudication of *any* complaint, while 54 percent of complainants disagreed with the results. In no instance has the ombudsman formally recommended in writing that the sheriff conduct further investigation of or readjudicate a citizen’s complaint, and the ombudsman has not yet referred a matter to a member of a panel of judges, as he is obligated to do in serious force cases.³³² Some community organizations do not view this record as inspiring public confidence in

the complaint adjudication system or encouraging citizens to file complaints they feel are meritorious.³³³

Given these facts, the report of declining numbers of complaints in the first half of 1996 as compared to 1995 was viewed by some in the community with skepticism. The LASD reported that in 1994 there were 2,131 personnel complaints and 695 complaints about service (2,826 total). In 1995 these figures were 2,573 and 941, respectively (3,514 total). For the first 6 months of 1996, there were 1,154 personnel complaints and 492 service complaints (or 1,646 total complaints).³³⁴ The ACLU–SC’s report, however, shows that at the end of 1996 there was a sharp rise in the number of complaints filed, despite the promising beginning in the first half of 1996. The ACLU, based on data supplied by the LASD, concluded that:

the LASD continues to have a serious community relations problem between its officers and its many communities, reflected in inordinately high numbers and ratios of personnel and service complaints. The numbers and ratios of complaints against LASD sworn personnel have increased steadily overall since the end of 1993 and, although a handful of stations have recorded decreases, the majority of LASD installations continue to experience rapid increases in complaint volumes.³³⁵

Specifically, the data revealed that:

- In 1994, 2,048 personnel complaints (67 complaints per deputy assigned) were filed against sworn officers assigned to 17 stations; 610 service complaints were filed (.2 per deputy).
- In 1995, 2,510 personnel complaints were filed (.83 per deputy); 769 service complaints were filed (.25 per deputy).

³²⁸ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 145; Block Testimony, *L.A. Hearing*, vol. 2, p. 146. Sheriff Block testified that the LASD gets “many commendations over the 800 number as well as complaints.” Block Testimony, *L.A. Hearing*, vol. 2, p. 146.

³²⁹ Bobb Testimony, *L.A. Hearing*, vol. 2, p. 145.

³³⁰ Bobb, *LASD 2nd Semiannual Report*, pp. 49–50.

³³¹ *Ibid.*, p. 50.

³³² Bobb, *LASD 4th Semiannual Report*, pp. 79–80.

³³³ Parachini Interview.

³³⁴ Special Counsel Merrick J. Bobb, *The Los Angeles County Sheriff’s Department: 6th Semiannual Report* (September 1996), p. 44. Service complaints concern policies or procedures of the LASD. Personnel complaints address alleged actions of LASD personnel, such as discourtesy or excessive force. ACLU–SC, *Disturbing Trends: Examining Complaints Against the Los Angeles County Sheriff’s Department* (September 1997), p. 1 (hereafter cited as ACLU–SC, *Disturbing Trends*).

³³⁵ ACLU–SC, *Disturbing Trends*, p. 19. The ACLU–SC received data on 17 sheriff’s stations. *Ibid.*, p. 4. There are 21 stations within the LASD. Stonich Interview. Slight differences in the yearly totals of the ACLU–SC report and that of Merrick Bobb will therefore be noticed.

- In 1996, 2,787 personnel complaints were filed (.92 per deputy); 1,118 service complaints were filed (.37 per deputy).

These figures represent a 37 percent increase in personnel complaints and an 83 percent increase in service complaints in the 3-year period.³³⁶

The ACLU-SC also reported that the LASD took two steps concerning the recording of complaint data in the new computerized Personnel Performance Index (PPI) that will “materially damage the department’s ability to analyze complaints from the public and act on [the] results of any such analysis.” Within the 12 months from August 1996 to August 1997, the LASD failed to transfer existing data on the race, gender, and age of complainants to the PPI and decided to eliminate the blocks on the standard complaint form that indicated the race and age of the complainant. The ACLU-SC asserts that by these actions, “the LASD has essentially destroyed its own ability to assess the demographics of its civilian complaints.”³³⁷

The ACLU-SC recommended, among other actions, that the Board of Supervisors act immediately to require the LASD to alter its data-gathering system so that full demographic data on civilian complainants is gathered and preserved in database systems used by the department, so as to permit analysis of civilian complaints by race, age, gender, and other relevant factors. It also recommended an investigation by the special counsel into the “circumstances surrounding decisions to omit demographic data gathered prior to Jan. 1, 1996 from the PPI database system and to remove data blocks for race and age from forms used by LASD personnel to report civilian complaints.”³³⁸ Also among its suggestions was the recommendation that the LASD and the special counsel “immediately begin investigations of the apparently steep recent increase in personnel and service complaints in the LASD and identify the causes for these trends and produce, within six months, a coherent and specific plan—incorporating strict timelines—for corrections of all deficiencies.”³³⁹

³³⁶ ACLU-SC, *Disturbing Trends*, p. 14.

³³⁷ *Ibid.*

³³⁸ *Ibid.*, p. 20.

³³⁹ *Ibid.*

Local Law Enforcement Interaction with the INS

The videotaped beating on April 1, 1996, by Riverside County sheriff’s deputies of two Mexican nationals in South El Monte followed a high speed pursuit, as did the March 1990 Rodney King beating by LAPD officers. Hispanic leaders and immigrant rights and civil rights groups expressed outrage over the incident and likened it to the Rodney King beating. The South El Monte beatings differed from that incident, however, in that the chase was begun by the U.S. Border Patrol and transferred to the Riverside County Sheriff’s Department.³⁴⁰ In addition to raising the issues of high speed pursuit policies and excessive force against documented and undocumented immigrants who are often minorities, the South El Monte incident has also refocused debate over the proper role of local law enforcement in situations involving the U.S. Immigration and Naturalization Service (INS) or Border Patrol and alleged undocumented immigrants. The LAPD’s and LASD’s policies regarding interaction with the INS or Border Patrol, their high speed pursuit policies, and the variety of joint law enforcement initiatives conducted by the LAPD and LASD with the INS can, and often do, affect the level of racial and ethnic tension in the Los Angeles area and the relationship of the LAPD and the LASD with the Los Angeles immigrant community.

The *Los Angeles Times* reported:

the relationship between police officers and Immigration and Naturalization Service agents is a hazy one, varying from jurisdiction to jurisdiction. The Los Angeles Police Department, for instance, has an internal policy barring officers from conducting investigations solely to determine immigration status. But the department’s Special Order 40 allows for some situations in which police contact immigration authorities to pursue criminal investigations.³⁴¹

³⁴⁰ Kenneth Noble, “Before They Beat Mexicans, Police Gave Orders in English,” *New York Times*, Apr. 10, 1996, p. A-12; “Taped Aliens’ Beating Sparks Protests,” *Facts on File World News Digest*, Apr. 11, 1996, p. 245 D-3.

³⁴¹ Marc Lacey, “Beating Raises Concern About Policing; Deputies Striking of Mexican Nationals Show that Local Officers Aren’t Up to Handling Immigration Cases, Some Say,” *Los Angeles Times*, Apr. 9, 1996, p. A-5 (hereafter cited as Lacey, “Beating Raises Concern About Policing”). Local police are also allowed to accompany the INS on patrols of the U.S.-Mexican Border, but they focus their attention on violations of State and local law and assistance to

The LAPD and LASD maintain similar rules regarding contacting the INS for the same policy reasons. The official policy of the INS also encourages observance of these rules. Civil rights, immigrant and community groups strongly support LAPD Special Order 40 and the LASD's similar rule. They charge, however, that the rules are sometimes ignored or circumvented on a widespread basis, such as in the 1992 civil disorder following the Rodney King verdict, and are more frequently ignored by individual officers who initiate contact with the INS, even though an individual has not been arrested for criminal activity as required by the LAPD's and LASD's rules. In addition, provisions in immigration and welfare laws enacted by Congress in 1996 pose a more recent threat to the LAPD's and LASD's policies on this matter.

The Los Angeles Board of Police Commissioners adopted a policy statement concerning the LAPD's interaction with undocumented aliens on March 20, 1979. Special Order 40 was issued on November 27, 1979 by Chief Daryl Gates, incorporated the policy into the LAPD Manual as Section 1/390, and amended related Manual provisions. Special Order 40 provides that "Officers shall not initiate police action with the objective of discovering the alien status of a person. Officers shall not arrest nor book persons for violation of Title 8, Section 1325 of the U.S. Immigration Code (Illegal Entry)." The LAPD may notify the INS only when "an undocumented alien has been arrested for multiple misdemeanor offenses, a high grade misdemeanor or a felony offense, or has been arrested for the same offense a second time."³⁴² The policy underlying

Say," *Los Angeles Times*, Apr. 9, 1996, p. A-5 (hereafter cited as Lacey, "Beating Raises Concern About Policing"). Local police are also allowed to accompany the INS on patrols of the U.S.-Mexican Border, but they focus their attention on violations of State and local law and assistance to Federal officials in transporting undocumented suspects. *Ibid.*

³⁴² Office of the Chief of Police, *Special Order No. 40: Undocumented Aliens*, pp. 1-2 (Nov. 27, 1979). Assistant Chief Lewis indicated that "multiple misdemeanors" requires only two such offenses and that one example of a high grade misdemeanor is a narcotics violation which is not a felony. Lewis Interview. Possible undocumented immigrants are identified during booking because LAPD Manual Section §604.41 requires that: "When an arrestee is booked into Department custody and the city, county, state and country of the arrestee's birthplace is known or can be obtained, that information shall be entered in the birthplace (BP) field of the Decentralized Automated Booking Information System

these mandates is also set forth in Special Order 40:

The Department is sensitive to the principle that effective law enforcement depends on a high degree of cooperation between the Department and the public it serves. The Department also recognizes that the Constitution of the United States guarantees equal protection to all persons within its jurisdiction. In view of those principles, it is the policy of the Los Angeles Police Department that undocumented alien status in itself is not a matter for police action. It is therefore incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public.

....
In fulfilling its obligations, the Department will provide courteous and professional service to any person in Los Angeles, while taking positive enforcement action against all individuals who commit criminal offenses, whether they are citizens, permanent legal residents, or undocumented aliens. . . . To ensure that these principles can be effective, the Department will encourage the willing cooperation of all persons in programs designed to enhance community-police cooperation. Police service will be readily available to all persons, including the undocumented alien, to ensure a safe and tranquil environment. Participation and involvement of the undocumented alien community in police activities will increase the Department's ability to protect and serve the entire community.³⁴³

In 1982 officers were reminded of the policy of the department as set forth in Manual Section 1/390.³⁴⁴ LAPD Deputy Chief Mark Kroeker testified at the Commission hearing that Special Order 40 means that "the immigration status of [a] person [is] not. . . a factor in any of our preliminary or ongoing work, whether as a victim, witness, suspect, first contact, [or] community police advisory board member and the like. We do not inquire as a policy."³⁴⁵ LASD Commander William Stonich testified that the sheriff's department maintains a similar policy.³⁴⁶ Noting

(DABIS) 'DBK 1' screen at the time of booking. NOTE: When the arrestee is foreign born, the booking employee shall ensure that an 'X' is entered as the first character in the birthplace field." LAPD Manual, §4/604.41.

³⁴³ Office of the Chief of Police, *Special Order No. 40: Undocumented Aliens*, p. 1 (Nov. 27, 1979).

³⁴⁴ Office of the Chief of Police, *Memorandum No. 5: Enforcement Policy Regarding Undocumented Aliens*, p. 1 (June 17, 1982).

³⁴⁵ Kroeker Testimony, *L.A. Hearing*, vol. 2, pp. 281-82.

³⁴⁶ Stonich Testimony, *L.A. Hearing*, vol. 2, p. 282.

that recently "there have been questions raised regarding our law enforcement role when we observe or receive complaints about undocumented immigrants," a March 1, 1996, announcement from the office of the sheriff was issued "to rebrief the Department's practice relative to these issues":

It is a civil violation of Federal law to remain in this country illegally. However, local and state authorities have no authority to enforce the civil provisions of Federal immigration laws. This is the responsibility of the Immigration and Naturalization Service (INS).

Undocumented immigrants who have been arrested for local or state criminal [violations] are sometimes contacted by INS after they enter our jail system. Since it is a civil violation of Federal law, we have no responsibility to report undocumented immigrants simply because we believe they are here illegally. The United States District Court has enjoined Proposition 187's provisions requiring local law enforcement to report suspected undocumented immigrants to INS. As a practical matter, reporting persons to INS who are merely suspected undocumented immigrants prevents those who are victims of crime or who may be witnesses to crimes from coming forward and cooperating with local law enforcement officials.

Consequently it has long been the practice of this Department that we do not inform, notify or request the Immigration and Naturalization Service for enforcement action involving suspected undocumented immigrants unless they are involved in criminal activity.³⁴⁷

Sheriff Block also wrote a letter to a Lomita city council member in which he further explained the LASD's policy. He explained:

Department members are not authorized to question victims, witnesses, or suspects regarding their immigration status. Because of the complexity of the federal criminal immigration statutes, I do not permit my deputies to make arrests for criminal violations of the immigration code. The enforcement of the federal immigration statutes is a federal responsibility. It is the responsibility of local law enforcement agencies to enforce state and local law.

The fact that someone is an illegal alien does not prevent that person from being arrested for violations of local or state law. For example, in cities that prohibit

³⁴⁷ Office of the Sheriff, *Undocumented Immigrants*, Mar. 1, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

soliciting work or selling of goods on the public highway, persons who engage in that conduct will be arrested regardless of immigration status. However, they are arrested for violation of state or local law and not for violation of the federal immigration code. The Department also enforces California Penal Code Sections 113 and 114 which were added by Proposition 187.³⁴⁸

The LASD Manual of Policy and Procedures, however, is less clear than the above pronouncements. Section 4-04/035.00 of the manual states: "If, during routine Department Business it is found that the subject is here illegally, no arrest or detention is mandatory. Forward all pertinent information to U.S. Immigration and Naturalization Service for disposition."³⁴⁹ This provision seems to contradict statements that the INS is not to be contacted unless a violation of State or local criminal law is involved. In addition, another section provides: "Notification concerning violations of immigration laws shall be made by the arresting unit to the U.S. Immigration Service. The case is to be assigned to the Sheriff's Headquarters Bureau, International Liaison Section. A joint assignment shall be made when another crime is involved."³⁵⁰

The official policy of the INS encourages observance of rules such as the LAPD's and LASD's. The latest revision in 1983 of the applicable U.S. Department of Justice (DOJ) policy on the relationship of State and local police to the INS, however, removed a clear statement urging State and local police forces to observe rules like Special Order 40 and added a paragraph encouraging joint operations. This revision was intended to encourage "state and local police to become more actively involved in enforcement of

³⁴⁸ Letter from Sheriff Sherman Block to David Albert, council member, city of Lomita, Aug. 9, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a. Section 113 of the California Penal Code makes it a misdemeanor to manufacture or sell a false government identification document(s) with the knowledge that the false document is intended to conceal the true citizenship or resident alien status of another person. Section 114 makes the use of false documents with the specific intent to conceal one's true citizenship or resident alien status a felony. Cal. Penal Code §§ 113-114 (West 1996).

³⁴⁹ Los Angeles Sheriff's Department Manual of Policy and Procedures, § 4-04/035.00 (April 1996), *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

³⁵⁰ *Ibid.*, §4-01/090.35, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

the immigration laws.”³⁵¹ The issuance of this revision likely contributed to the description by the *Los Angeles Times* of the current relationship between police officers and INS agents as “hazy.”³⁵² The former policy issued by Attorney General Griffin B. Bell in 1978 stated that DOJ would:

continue to urge state and local police forces to observe the following guidelines:

1. Do not stop and question, detain, arrest or place an ‘immigration hold’ on any persons not suspected of crimes, solely on the grounds that they are deportable aliens;
2. Upon arresting an individual for a non-immigration criminal violation notify the [INS] immediately if it is suspected that the person may be an undocumented alien so that the [INS] may respond appropriately.

INS officials will continue to work with state and local law enforcement officials to carry out this policy.³⁵³

The revision approved by Attorney General William French Smith in 1983 and currently in effect, reads as follows:

It is Department of Justice policy for the Immigration and Naturalization Service to cooperate with local and state law enforcement officers who notify the Service of suspected violations of the immigration laws. The Service will review the immigration status of individuals detained by local or state law enforcement authorities for other than immigration violations upon request and as available resources permit.

INS agents and local officers may also engage in joint operations which are expected to uncover violations of both immigration and state laws. The INS recognizes that local authorities provide valuable support for mutual law enforcement efforts. INS agents will remain responsible for all arrests for immigration violations.³⁵⁴

Civil rights and immigrant rights groups support policies that prohibit officers in most

situations from inquiring about a person’s immigration status, unless the person is a bona fide criminal suspect, because the officers are “critical to public safety.” As Ramona Ripston of the ACLU–SC testified, they alleviate “the fear of being deported that might prevent immigrants from contacting police about crime, acting as witnesses, or seeking emergency help.”³⁵⁵ Luke Williams, executive director of the Coalition for Humane Immigrant Rights of Los Angeles, testified that “one of the things that you really have to understand. . . when dealing with the newcomer community is that there is a great deal of fear about reporting to police officials,” based, in part, on the perceived “relationship between the local police department, the sheriff’s department, and immigration officials.”³⁵⁶ Special Order 40 and the LASD’s similar policy are, he testified, “a good first step” in interacting with the immigrant community, building a positive relationship, and “allaying some of the fears,” if the policies are “utilized and taken seriously by rank and file officers and encouraged by the appropriate commanding officials.”³⁵⁷

LAPD Deputy Chief Kroeker testified that Special Order 40 is “given significant and continuing treatment” in the police academy, rollcall training, and in cultural awareness classes. He also stated that “in order to get this policy to be totally permeated among all of our officers, the first thing we in leadership must do is set the example in the manner in which we relate to it, articulate it and give it command emphasis.” He characterized discipline as the “teeth of the whole policy,” and said that he would like to think that “almost all of our officers can articulate the policy, know it quite clearly, and are not anxious to violate it because they know that there will be consequences.”³⁵⁸ LASD Commander William Stonich similarly testified that the LASD’s policy for dealing with undocumented aliens “is distributed to every member of our department, and it is adhered to, and violation of. . . it subjects the individual to discipline as well.”³⁵⁹

³⁵¹ Department of Justice News Release. “Policy Revised on State and Local Police in Immigration Cases,” Feb. 10, 1983, *L.A. Hearing*, subpoena duces tecum document, Exh. 12b.

³⁵² Lacey, “Beating Raises Concern About Policing.”

³⁵³ Department of Justice News Release. “Policy Revised on State and Local Police in Immigration Cases,” Feb. 10, 1983, *L.A. Hearing*, subpoena duces tecum document, Exh. 12b.

³⁵⁴ *Ibid.*

³⁵⁵ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 181–82.

³⁵⁶ Williams Testimony, *L.A. Hearing*, vol. 2, p. 166.

³⁵⁷ *Ibid.*, p. 196.

³⁵⁸ Kroeker Testimony, *L.A. Hearing*, vol. 2, pp. 289–90.

³⁵⁹ Stonich Testimony, *L.A. Hearing*, vol. 2, p. 290.

Representatives from civil rights and immigrant community organizations, however, presented a different picture. Ramona Ripston testified that she did not know of any cases in which discipline had been imposed upon officers for violation of Special Order 40, and that the ACLU-SC's experience "is that many officers are completely unfamiliar with Special Order 40."³⁶⁰

Ms. Ripston testified that "[d]uring the civil unrest here [in late April and May of 1992], Special Order 40 was just forgotten, and people were rounded up and deported just based on skin color."³⁶¹ She noted in her written statement to the Commission that the ACLU-SC's report *Civil Liberties in Crisis: Los Angeles During the Emergency*:

documented the chaos that was created within the criminal justice system as a result of inconsistent and poorly articulated implementation of emergency curfew powers and the wholesale arrests of hundreds of people—some of whom were legitimately identified as criminal suspects, but many of whom were not. Among our findings was that the LAPD, as well as the Los Angeles County Sheriff's Department effectively suspended Special Order 40 during the course of the emergency. This resulted in forced detentions of hundreds of people, primarily Mexican nationals turned over to the Immigration and Naturalization Service after they were taken into custody. . . There was a concerted effort during the unrest to uncover and detain dozens of people whose only offense was being in the country without documentation. Given the gravity of the emergency, our law enforcement resources should have been committed to restoring order and protecting public safety. . . [A]bout 40% of the calls to the offices of a prominent immigrant service center during the unrest were from people who said they were stopped by the police even though they were not engaging in any criminal activity. Moreover, these people said they were not charged with any offense, but were closely questioned about their immigration status.³⁶²

Ms. Ripston argued that although this example of wide-scale suspension of the LAPD and LASD rules regarding contacting the INS might be considered "ancient history" by some, it is relevant to the continuing dangers facing the immigrant community and public safety. She said, "[the] continuing surge in anti-immigrant senti-

ment and legislation at the federal level [would] prevent state and local governments from enforcing rules like Special Order 40. Specifically it would prevent them from directing state and city employees not to report persons seeking help to the immigration authorities unless it appeared that those persons were committing or had committed crimes."³⁶³

The LAPD maintains that during the civil disturbance, and after, it has scrupulously followed Special Order 40's mandate to ignore a person's immigration status, unless they are booked for multiple misdemeanors, a high-grade misdemeanor, or a felony.³⁶⁴ The INS acknowledged that after the civil disturbance had continued for a day or two they deployed INS officers to many of the patrol cars of the LAPD and LASD. The Los Angeles district director for the INS maintains, however, that the Service had people at the command center to make sure that the line between local law enforcement functions and the INS function was not crossed.³⁶⁵ Similarly, Paul Smith, supervisory special agent in the Los Angeles District office, testified on behalf of the INS that the Service:

was brought in as part of a Federal task force deployed to Los Angeles at the direction of the U.S. Attorney General. . . The INS and Border Patrol officers deployed to Los Angeles as part of that effort took their orders from a command center established to oversee the Federal contingent. . .

The Border Patrol was summoned to Los Angeles not to enforce immigration laws, but to help restore order. In those instances where our agents apprehended suspected looters and curfew violators, those individuals were turned over to local law enforcement. If it was later determined that those individuals were in the country illegally, they were then turned over to the Los Angeles District INS office, which initiated the process to effect their removal.³⁶⁶

³⁶³ *Ibid.*, pp. 10–11. This legislation is discussed later in this chapter.

³⁶⁴ Kroeker Interview; Lewis Interview.

³⁶⁵ Richard Rogers, Los Angeles district director, U.S. Immigration and Naturalization Service, telephone interview, July 18, 1996 (hereafter cited as Rogers Interview). Due to a conflict, Director Rogers was unable to testify at the Commission hearing. Instead, he designated an agent from his office, Paul M. Smith, supervisory special agent, Investigations Branch, to appear.

³⁶⁶ Paul M. Smith, supervisory special agent, Investigations Branch, Los Angeles District, U.S. Immigration and Natu-

³⁶⁰ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 196–97.

³⁶¹ *Ibid.*

³⁶² Ripston Written Statement, pp. 9–10.

In response to a Commissioner's question, Smith denied that following the Rodney King verdict in late April 1992, the INS and Border Patrol were brought in purposefully to conduct a general roundup of undocumented immigrants, using the emergency as an excuse.³⁶⁷ He did testify, however, that it is possible for an alien to be "arrested for a crime, prosecuted or a decision not to prosecute is made, and we are then called in to make a determination [regarding immigration status]."³⁶⁸ He further stated, "[f]rom my personal experience, within the City and County of Los Angeles, any alien that's brought [to] our attention has criminal charges or criminal activity surrounding that person's being in the custody of law enforcement."³⁶⁹ In his interview with Commission staff, Agent Smith indicated that during the civil disturbance the scenario would lend itself to having the INS interview the person on the street, determine alien status and deportability, and take them into custody.³⁷⁰ Thus, an individual apparently may be either taken into custody for suspicion of criminal activity, reported as a possible alien to the INS and never charged with a crime, or be arrested, subjected to INS inquiry, and subsequently have the criminal charges dropped. This activity, civil rights and immigrant rights groups charge, violates the spirit, if not the letter of Special Order 40 and the LASD's similar policy.³⁷¹

In its report on the 1992 civil disturbance, the ACLU-SC cited other evidence that such violations did indeed occur. The report stated as follows:

At the time the state of emergency was declared in Los Angeles on April 29, 1992, the LAPD's cooperation with the INS began. The LAPD assisted in sweeps throughout Los Angeles in direct violation of [Special Order 40, which] prohibit[s] the LAPD from detaining persons based on their immigration status or handing them over to the INS unless they have

ralization Service, testimony, *L.A. Hearing*, vol. 2, pp. 241-42 (hereafter cited as Smith Testimony).

³⁶⁷ *Ibid.*, p. 266.

³⁶⁸ *Ibid.*, pp. 239-40.

³⁶⁹ *Ibid.*, p. 239.

³⁷⁰ Paul M. Smith, supervisory special agent, Investigations Branch, Los Angeles District, U.S. Immigration and Naturalization Service, telephone interview, Aug. 20, 1996 (hereafter cited as Smith Interview).

³⁷¹ Williams Testimony, *L.A. Hearing*, vol. 2, pp. 188-89; Williams Interview; Saenz Interview.

been charged with multiple or serious misdemeanors or felonies.

On May 4, an INS officer with the Deportation Branch of the Los Angeles INS District confirmed to Public Counsel that the INS was engaged in immigration sweeps and that the INS had begun to arrest suspected undocumented immigrants in large numbers. The INS also confirmed that Border Patrol SWAT teams sent into Los Angeles as part of the 1,000 federal police officer deployment were also involved in making immigration arrests. The INS also confirmed that many suspected undocumented immigrants were being turned over directly to INS by the LAPD. The Border Patrol and LAPD activities violated constitutional protections when ethnicity—not the commission of a crime—became the basis for arrest.

The Los Angeles City Council on May 6, 1992, at the request of various immigrants' rights groups, unanimously passed a resolution requesting the "Federal Government and all its law enforcement agencies currently deployed for assistance with the Los Angeles riots to cease all immigration enforcement activities against law abiding bystanders who happen to be undocumented."³⁷²

The report also noted that LAPD Lieutenant John Dunkin acknowledged in a May 6, 1992, *Los Angeles Times* story that "suspects turned over to the INS by the city police officers tended to be those for whom there was no 'probable cause' of prosecution for riot-related offenses."³⁷³ The ACLU-SC also obtained, pursuant to a Freedom of Information Act demand, data from the Los Angeles INS office on the number of undocumented individuals turned over to the Service by the LAPD and the LASD from April 29 to May 20, 1992. The civil unrest began on April 29 and May 5, 1992, is the date "most law enforcement agencies have used as the consensus conclusion of the unrest." The ACLU-SC also asked for data from April 22 through 24 for use as a control period to determine normal turnover rates in the absence of civil unrest.

³⁷² ACLU-SC, *Civil Liberties in Crisis: Los Angeles During the Emergency* (June 23, 1992), p. 7 (hereafter cited as ACLU-SC, *L.A. During the Emergency*). The report stated that "LAPD Deputy Chief Bernard Parks confirmed that Border Patrol agents, acting without police cooperation, swept through the MacArthur Park area and picked up about a dozen suspected undocumented person during the civil unrest." *Ibid.*, p. 9.

³⁷³ *Ibid.*, p. 11.

This data, the report stated, provides "further evidence of ongoing deviation from Special Order 40 by the LAPD...[B]oth LAPD and LASD continued to turn over higher numbers of undocumented people to INS two weeks after the emergency's consensus conclusion."³⁷⁴

In the control period, the LASD turned over slightly more than 25 people a day to the INS.³⁷⁵ The department permits INS agents to interview all individuals scheduled for release from the Los Angeles County jail to determine immigration status and deportability.³⁷⁶ During the civil disturbance of April 29 through May 5, 1992, the LASD turned over 196 people to the INS, and the total between April 29 and May 20 was 1,090. A peak of turnovers was reached on May 7 and 8, when 131 and 139 people, respectively, were turned over to INS custody. The ACLU-SC characterized these figures as "not entirely surprising," given the predictable "cycle through the criminal justice and jail systems of some criminal suspects arrested in the disorder," and added, "Although LASD was still turning over larger than average numbers of people as late as May 20 [71 people], the disparity may continue to reflect disorder-related people caught in the jail system."³⁷⁷

The ACLU-SC noted that the LAPD figures, however, reflect:

a far more irregular and seemingly alarming pattern. During the three-day control period, LAPD recorded no turnovers to INS. The department reached its peak of 185 individuals surrendered to INS on May 3. Curiously, this was not the date on which LAPD made its greatest number of arrests during the emergency—that was April 30, according to data secured by the ACLU from the Los Angeles Municipal Court and analyzed by the Rand Corporation.

³⁷⁴ Ibid., p. 8.

³⁷⁵ Ibid.

³⁷⁶ Smith Testimony, *L.A. Hearing*, vol. 2, p. 262; Stonich Testimony, pp. 261-62. The INS has agents permanently stationed at the downtown Los Angeles County jail, from which all inmates are released. Rogers Interview; Smith Interview; Ripston Interview. Many individuals booked by the LAPD end up in the county jail system. For example, if a person is sentenced to 90 days for drunk driving, he or she serves those 90 days in a Los Angeles County jail, not in the city of Los Angeles jail. When someone is initially arrested they might be in a city jail, but when they are convicted they will be transferred to a county jail. Smith Interview.

³⁷⁷ ACLU-SC, *L.A. During the Emergency*, pp. 8, 11a (bar graph based on INS data).

Although several days passed between the May 5 end of the disorder and May 20 on which LAPD turned over no immigrants, the department continued to channel many more people than normal—albeit sporadically—throughout the period. As recently as May 18, the LAPD surrendered 17 people to the INS on one day.³⁷⁸

During the emergency, the LAPD turned over 372 people to the INS, and the total between April 29 and May 20 was 452.³⁷⁹ The ACLU-SC concluded:

non-citizens were turned over to INS on what appear to be ostensibly emergency-related grounds, well after the danger in Los Angeles had ceased. This appears to raise the possibility that Special Order 40 was ignored substantially longer than the civil unrest continued—and that LAPD may continue to ignore it. . . . The root of widespread fear and apprehension of the police by the Los Angeles immigrant community was the LAPD's refusal to adhere to Special Order 40. Immigrants who were the victims of the civil unrest were reluctant to seek police assistance for fear of deportation. With such high numbers of immigrants as are found in Los Angeles, any public safety program in the city would break down if huge portions of the population feared to use it.³⁸⁰

Some civil rights and immigrant rights organizations charge that beyond situations like the civil unrest in 1992 in which Special Order 40 and the LASD's similar rule may be widely ignored, individual officers frequently ignore these policies by inquiring about immigration status or reporting suspected undocumented immigrants to the INS when no criminal violation is involved. These organizations call for more command emphasis and accountability in getting rank and file officers to take these rules seriously.³⁸¹ Luke Williams testified that the rising climate of anti-immigrant sentiment is manifested in situations in which "you have police officers asking on a routine traffic stop, 'Do you have a green card? Do you have permission to be in the U.S.?'"³⁸² He noted that CHIRLA had "submitted documentation to support this, of instances where people on routine kinds of mat-

³⁷⁸ Ibid., p. 8 (emphasis in original).

³⁷⁹ Ibid., pp. 8, 11a (bar graph based on INS data).

³⁸⁰ Ibid., pp. 7-8.

³⁸¹ Williams Testimony, *L.A. Hearing*, vol. 2, pp. 166, 196, 201.

³⁸² Ibid., pp. 189-90.

ters have been questioned and asked things that we consider in violation of Special Order 40.”³⁸³ Both Luke Williams and Ramona Ripston testified that individual officers can easily either ignore or circumvent rules like Special Order 40.³⁸⁴ One way is to manufacture some basis other than skin color (and, therefore, suspected undocumented status) for why a person was requested to produce their documentation.³⁸⁵ Mr. Williams noted that, if an officer is inclined, he may make an arrest and book someone—thereby triggering possible INS contact—even if charges are later withdrawn.

In his interview with Commission staff, Mr. Williams stated that individual officers have sometimes decided to ignore Special Order 40 or the LASD’s similar rule on the ground that if they suspect that someone is undocumented, they should bring them to the INS’ attention. Williams said that Proposition 187 increased the incidence of these types of violations of the intent and spirit of Special Order 40.³⁸⁶ Tom Saenz of MALDEF also asserted in his interview that there are instances in which creative officers use laws against having false documents as a way of circumventing Special Order 40.

It usually involves a traffic stop. The person takes out a wallet to show a driver’s license and the officers says something to the effect of “I see a social security card in your wallet. Let me have it.” The officer then determines that it is phony. He uses that to arrest the person under state law for false documents.³⁸⁷

Some charge that, in addition, certain groups are specifically targeted—day laborers in particular. The police conduct identification sweeps of day laborers and they target people who look Mexican American with no apparent law enforcement objective, absent intent to determine immigration status, according to MALDEF.³⁸⁸ Saenz says that the police often contend that they are responding to complaints of people harassing passersby or urinating in public. Nevertheless,

³⁸³ *Ibid.*, p. 190. See notes 27–32 and 36–40, and accompanying text.

³⁸⁴ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 200–01; Williams Testimony, *L.A. Hearing*, vol. 2, p. 201.

³⁸⁵ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 200–01.

³⁸⁶ Williams Interview.

³⁸⁷ Saenz Interview.

³⁸⁸ Andrade Interview.

Saenz maintains that “within the LAPD it’s pretty clear to us that there’s not a unanimous belief in Special Order 40. We’ve even been made aware of training officers who talk about ways of circumventing it.”³⁸⁹

Civil and immigrant rights groups contend that circumvention of both Special Order 40 and the LASD’s similar policy will be exacerbated if these policies are not maintained and given command emphasis. Ms. Ripston said the participation of the immigrant community in community policing, their willingness to report crime, serve as witnesses, or to call for assistance would decline precipitously. “Rescinding or diluting Special Order 40,” she said, “would. . . contribute greatly to our current public safety problem.”³⁹⁰ According to Ms. Ripston, similar safety concerns underlie the fear based upon provisions in welfare and immigration reform measures passed by Congress in 1996 “[that] the new welfare bill will really mean an end to Special Order 40 and the order that the. . . City of New York has, which is similar.”³⁹¹

Section 434 of the Personal Responsibility and Work Opportunity Act of 1996³⁹² (the Welfare Reform Act) signed into law on August 22, 1996, entitled “Communication between State and Local Government Agencies and the Immigration and Naturalization Service,” provides:

Notwithstanding any other provision of Federal, State or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration

³⁸⁹ Saenz Interview.

³⁹⁰ Ripston Written Statement, p. 11.

³⁹¹ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 197. Executive Order 124, signed by Mayor Edward Koch in 1989 provides that no city officer or employee can turn over information regarding any alien to Federal immigration authorities unless the employee’s agency is required by law to disclose such information, the alien gives the agency written permission to do so, or the alien is suspected of engaging in criminal activity, including an attempt to obtain public benefits through the use of fraudulent documents. “Over the years, several members of Congress have tried to have the order overturned, but not until the welfare law was passed did any such attempts succeed.” David Firestone, “Court Strikes Down an Order on Reporting Illegal Aliens: City Workers Allowed to Report Immigrants,” *New York Times*, July 19, 1997, p. A-12.

³⁹² Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104–193, §434, 110 Stat. 2105 (1996).

status, lawful and unlawful, of an alien in the United States.³⁹³

As explained in the House Conference Report to the bill:

The conference agreement. . . does not require, in and of itself, any government agency or law enforcement official to communicate with the INS.

The conferees intend to give State and local officials the authority to communicate with the INS regarding the presence, whereabouts, or activities of illegal aliens. This provision is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS. The conferees believe that immigration law enforcement is as high a priority as other aspects of Federal law enforcement, and that illegal aliens do not have the right to remain in the United States undetected and unapprehended.³⁹⁴

Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996³⁹⁵ (the Immigration Reform Act) signed into law on September 30, 1996, entitled "Communication Between Government Agencies and the Immigration and Naturalization Service," provides:

(a) IN GENERAL—Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.—Notwithstanding any other provision of Federal, State or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (c) Sending such information to, or requesting such information from, the Immigration and Naturalization Service
- (d) Maintaining such information.
- (e) Exchanging such information with any other Federal, State, or local government entity.³⁹⁶

The Senate Judiciary Committee indicated in its report that:

Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.³⁹⁷

On October 11, 1996, Mayor Rudolph Giuliani of the city of New York filed a suit for declaratory and injunctive relief in Federal court, alleging that the two Federal laws violated the 10th amendment and guarantee clause of the United States Constitution and principles of federalism, because

- (1) they directly prohibit States and localities from engaging in the central sovereign process of passing laws or otherwise determining policy; and (2) they usurp States' and local governments' administration of core functions of government, including the provision of police protection and regulation of their own workforces, in a statute that is not of general applicability.³⁹⁸

New York City's rule, Executive Order 124, is broader than Special Order 40 and the LASD's similar policy in that it applies to all city work-

³⁹³ *Id.*

³⁹⁴ H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 383 (1996), reprinted in 1996 U.S.C.C.A.N. 2649, 2771.

³⁹⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 642, 110 Stat. 3009 (1996).

³⁹⁶ *Id.*

³⁹⁷ S. Rep. No. 249, 104th Cong., 2d Sess. 19-20 (1996).

³⁹⁸ *City of New York v. U.S.*, No. 96, Civ. 7758, 1997 U.S. Dist. LEXIS 10448, at *1 (S.D.N.Y. July 18, 1997); Carol Vinzant, "N.Y. Sues Over Laws on Immigration: Giuliani Says Provisions Violate Constitution," *Rocky Mountain News*, Oct. 23, 1996, p. A-50 (hereafter cited as Vinzant, "N.Y. Sues Over Laws on Immigration"); Alexandra Marks, "Social Workers Reject Role as INS Agents," *Christian Science Monitor*, Aug. 1, 1997, p. 4 (hereafter cited as Marks, "Social Workers Reject Role as INS Agents"). The 10th amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X. The guarantee clause provides: "The United States shall guarantee to every state in the Union a Republican form of government." U.S. CONST. art. IV, §4.

ers. As applied to the police, however, the Mayor Giuliani's lawsuit echoed the rationale cited by city and county of Los Angeles officials. The complaint stated that "[t]he reasons for this policy are evident: undocumented aliens who are witnesses to or victims of crime must not be deterred from coming forward for fear of deportation."³⁹⁹ That argument, the *Christian Science Monitor* reported, "held little weight in Washington." Mark Wilson, "labor policy fellow at the Heritage Foundation, a conservative think tank in Washington," said that when immigrants "entered the country illegally, they knew they were breaking the law and should have to face the consequences."⁴⁰⁰ The *Monitor* continued, "Giuliani, a former prosecutor, won't argue with that logic, but contends it's overridden by the need to cope with the people who are already here."⁴⁰¹

On July 18, 1997, the U.S. District Court for the Southern District of New York dismissed the city's claims and granted the U.S. Attorney General's motion for judgment on the pleadings, thereby striking down Executive Order 124.⁴⁰² The court held that because sections 434 of the Welfare Reform Act and 642 of the Immigration Reform Act did not require city employees to turn in undocumented workers to the INS, they did not impinge sufficiently upon the city's rights to violate the 10th amendment or principles of federalism. The court noted that sections 434 and 642:

direct only that City officials be allowed, if they so choose, to share information with federal authorities. The statutes do not even require any City official to provide any information to federal authorities. They only prevent the City from interfering with a voluntary exchange of information. Although the statutes can be characterized as interfering with a City policy that prevents its officials from cooperating with federal immigration authorities except in accordance with certain procedures, that effect on local policy is not the type of intrusion that is sufficient to violate the Tenth amendment or principles of federalism.⁴⁰³

³⁹⁹ Vinzant, "N.Y. Sues Over Laws on Immigration."

⁴⁰⁰ Marks, "Social Workers Reject Role as INS Agents."

⁴⁰¹ *Ibid.*

⁴⁰² *City of New York v. U.S.*, No. 96, Civ. 7758, 1997 U.S. Dist. LEXIS 10448, at *30 (S.D.N.Y. July 18, 1997).

⁴⁰³ *Id.* at *18. Sections 434 and 642 differ from the wording of that portion of California's Proposition 187, which mandated that police, among others, report "suspected" undocu-

The court declined to engage in a substantive 10th amendment analysis to determine which functions of city government were core functions of State sovereignty immune from Federal regulation.⁴⁰⁴ It also dismissed the claim that sections 434 and 642 violate the guarantee clause of the U.S. Constitution, noting that the Supreme Court has traditionally found that claims brought under this clause present nonjusticiable political questions and that "any protection under the Guarantee Clause could hardly be more extensive than the protection afforded the States under the Tenth Amendment and principles of federalism, which are not violated by Sections 434 and 642."⁴⁰⁵

New York City is appealing the ruling, but in the meantime "the best the Mayor can do is 'urge' his employees not to report illegals. The result is widespread uncertainty and fear. . . . Social service workers at domestic-abuse shelters, homeless shelters, and victims service agencies contend illegal immigrants will be driven further underground and exposed to more exploitation."⁴⁰⁶ The change has prompted controversy and many cities are balking at changing their policies. They contend that the Federal provisions "undermine their need to be sure all their residents—documented or not—feel free to call for help." Along with New York and Los Angeles, Chicago and several other cities have policies that forbid some or all municipal employees from turning undocumented immigrants into the INS, unless they are suspected of criminal activity. Chicago has filed a similar suit, which is still

mented immigrants to the INS and to the State attorney general's office. Proposition 187 also required that all law enforcement agencies cooperate with the INS, and it voided any laws and regulations specifically limiting such cooperation. A Federal district court issued an injunction in 1995 blocking implementation of these provisions, ruling that they constituted an illegal State "scheme" to regulate immigration, which is exclusively the domain of the Federal Government. On March 3, 1997, the same court held that section 434 of the Welfare Reform Act and section 642 of the Immigration Act do not give the State authority to implement these Proposition 187 provisions. Patrick J. McDonnell, "Judge Upholds Curbs On Police-INS Cooperation," *Los Angeles Times*, Mar. 4, 1997, p. A-3.

⁴⁰⁴ *City of New York v. U.S.*, No. 96, Civ. 7758, 1997 U.S. Dist. LEXIS 10448, at *25-27 (S.D.N.Y. July 18, 1997) (citing *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985)).

⁴⁰⁵ *Id.* at *29-30.

⁴⁰⁶ Marks, "Social Workers Reject Role as INS Agents."

pending. Mark Wilson said, "In Los Angeles and other municipalities, officials are keeping their heads down and policies in place."⁴⁰⁷ An additional element of uncertainty derives from the fact that the new welfare law "contains no mechanisms to enforce [section 434] and it remains unclear what kind of enforcement, if any, will emerge."⁴⁰⁸

Los Angeles Mayor Richard Riordan asked City Attorney James Hahn to review the prospective impact of the Welfare Reform Act in September 1996, saying at the time, "I have a big problem making schools and local police departments the ones who are responsible for policing illegal immigration."⁴⁰⁹ On June 24, 1996, several months before the Welfare Reform Act was passed, the Los Angeles Police Commission voted against making any changes to Special Order 40, after a 6-month review of the matter. Following a *Los Angeles Times* series on the 18th Street gang—which, according to law enforcement authorities, has many members who are undocumented immigrants—the City Council's Public Safety Committee asked the department to determine whether any changes in policy would help the LAPD deal with street gang crime. The Police Commission and LAPD leaders agreed with civil rights and minority groups "that a change in the policy would severely hamper the department's community policing efforts and make some member's of minority groups fearful of working with police to report and prevent crime."⁴¹⁰ A change in the policy could further exacerbate racial and ethnic tension in Los Angeles. LAPD Deputy Chief John White said he feared change in Special Order 40 could result in a focus mostly on gang members who are Latino

and Asian to the exclusion of other ethnic groups who are in the country illegally. "It becomes a matter of selective enforcement," he said. "I don't feel that's fair enforcement."⁴¹¹

Deputy Chief White, police commissioners, and Latino activists all said that current policy is sufficient to deal with undocumented immigrants who commit serious crimes. Deputy Chief White also noted that anyone charged with a crime spends time at the county jail, where four INS agents are assigned full-time to investigate the immigration status of anyone booked into the jail who is foreign born.⁴¹² INS officials are also "wary of the prospective avalanche of new reports and requests from local governments to their historically understaffed agency long criticized for its inability to even find and deport illegal immigrants who are in jails and prisons." "We have no capability of responding to every inquiry," said Richard Rogers, Los Angeles district director for the INS.⁴¹³

LAPD officials say their officers are busy enough, without becoming immersed in the immigration thicket. "We have enough trouble trying to keep up with priorities of crime that are out there," said Deputy Chief Mark Kroeker.⁴¹⁴ Police Commissioner Art Mattox said that any change in Special Order 40 "would make it difficult for police officers to do their other duties if we make them pseudo immigration officers."⁴¹⁵ In her testimony before the Commission, Police Commissioner Perez agreed with these sentiments, saying:

our police officers in enforcing the local laws and carrying out all the community service programs that they carry out. . . have their hands full. And if we have an agency that is charged with enforcing other laws, my officers tell me on ride-alongs that they

⁴⁰⁷ Ibid.

⁴⁰⁸ Patrick J. McDonnell, "Welfare Law May Affect Police Role, Immigrants," *Los Angeles Times*, Sept. 30, 1996, p. A-1 (hereafter cited as McDonnell, "Welfare Law May Affect Police Role").

⁴⁰⁹ Ibid.

⁴¹⁰ Matt Lait, "LAPD to Keep Rules on Dealing With Immigrants," *Los Angeles Times*, June 25, 1996, p. B-1. As part of a story in September 1996 on the potential changes wrought by section 434 of the Welfare Reform Act, the *Times* reported that workers at a major day-laborer gathering site were stunned at the prospect of police officers calling in the INS. A 23-year-old undocumented worker from Guadalajara, Mexico, reportedly stated: "This will be a disaster for Los Angeles. No one will trust the police." McDonnell, "Welfare Law May Affect Police Role."

⁴¹¹ Patrick McGreevy, "LAPD Passes on Immigration: Commission Spurns Request for Increased Involvement In Handling Illegals," *Daily News of Los Angeles*, June 25, 1997, p. N-4 (hereafter cited as McGreevy, "LAPD Passes on Immigration").

⁴¹² Ibid.

⁴¹³ McDonnell, "Welfare Law May Affect Police Role."

⁴¹⁴ Ibid. "You might as well arrest virtually the entire city of Los Angeles," veteran LAPD Sgt. Greg Baltad said recently as he drove his cruiser through the streets of East Los Angeles, which has one of the highest concentrations of immigrants. "If I see someone with a gun, my first thought isn't 'What nationality is that guy?'" Ibid.

⁴¹⁵ McGreevy, "LAPD Passes On Immigration."

really appreciate that because they have more than enough to do in just keeping this community together.⁴¹⁶

Deputy Chief White said that any broadening of Special Order 40 "would get us into the immigration business and we're not prepared to do that. . . . We don't have the training to do that."⁴¹⁷ INS Supervisory Special Agent Paul Smith testified regarding the extensive training that would have to be provided to State or local police charged with knowledge or enforcement of Federal immigration law:

[T]he training that both the Border patrol and other INS agents receive is significant. . . 91 days. . . which is a considerable block of training. Much of that is language training, and the rest of it for the most part is law. So if anyone were to undertake enforcing the immigration laws it would be my knee-jerk reaction that they would pretty much have to have absorbed all of that information or almost all of it in order to be effective. The immigration law is very complex. There is nothing simple about them. . . I was a Phoenix police officer, and I understand the issues on the street as a police officer. And I've been in law enforcement for 22 years, and I can tell you that I've never encountered anything as complex as enforcement of the immigration laws. . . It would not be an easy undertaking.⁴¹⁸

⁴¹⁶ Perez Testimony, *L.A. Hearing*, vol. 2, p. 281. On July 29, 1997, Commissioner Perez was unanimously elected president of the Police Commission. Matt Lait, "Perez to Head Police Commission, Vows to Boost Morale, Cut Crime," *Los Angeles Times*, July 30, 1997, p. B-1.

⁴¹⁷ McGreevy, "LAPD Passes On Immigration."

⁴¹⁸ Smith Testimony, *L.A. Hearing*, vol. 2, pp. 282-83. Agent Smith was asked about proposals to allow the Attorney General to deputize local law enforcement officers to enforce the Immigration and Nationality Act. *Ibid.*, p. 282. Attorney General Reno proposed starting a pilot program in Utah to give its police officers enforcement powers in immigration cases. The INS Commissioner acknowledged that deputizing local police to handle immigration issues is "an extremely sensitive issue [and that] the absolute premium will be on training." She said that public comment would be accepted before a broader program is initiated. Vince Horiuchi, "More Fed Agents for Utah," *Salt Lake Tribune*, July 1, 1997, p. A-1. The project sought to implement provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to "cross-deputize" local and State law enforcement officers. Kimberly Murphy, "Utah May Receive INS Powers," *Salt Lake Tribune*, July 5, 1997, p. D-1. By a 4-3 vote, however, the Salt Lake City Council refused to approve an agreement between the police and INS that would have deputized 20 officers to identify, detain, and transport suspected undocumented immigrants. Shawn Foster, "SLC Council Says No to Cross-Deputization," *Salt Lake Tribune*, Sept. 2, 1998, p. C-1.

High Speed Pursuits

Police pursuits and post-pursuit behavior "have been a controversial topic in academic and legal circles for years,"⁴¹⁹ and have also been significant factors in increasing racial and ethnic tensions in the Los Angeles area. Both the 1991 beating of Rodney King and the 1996 beating of the two undocumented immigrants in South El Monte followed high speed pursuits.⁴²⁰ Hispanic leaders, the Mexican Government, and civil rights and immigrant rights groups all expressed outrage over the incidents. Ramona Ripston testified that experts "have come to call this phenomenon high speed pursuit syndrome in which officers inflict a form of street justice at the conclusion of pursuits. Although not unique to the LAPD, it constitutes a very important issue in this community and immigrants are, sadly, frequently the victims."⁴²¹ High speed pursuit syndrome increases the likelihood that officers, "who are 'high' on adrenaline during a chase," will "beat their quarry at the end of the chase."⁴²² Former LAPD officer and author Joseph Wambaugh describes the state as "fright and rage, resulting in an adrenaline rush that can be overpowering."⁴²³ This state may also increase the likelihood that racial or ethnic prejudice or anti-immigrant sentiments will result in excessive force against racial and ethnic minorities, particularly undocumented immigrants.⁴²⁴ In addition to post-pursuit injuries inflicted on the driver, there are also significant dangers to pursuing officers, passengers in the fleeing vehicle, and to the general public. Five days after the beatings in South El Monte, a pickup truck being

⁴¹⁹ Jim Newton, "Orange County Sheriff's Pursuit Policy Lauded as a Model in Study: ACLU-SC Report Blasts the LAPD, Other Regional Agencies for Rising Number Of Chases," *Los Angeles Times*, June 14, 1996, p. A-1.

⁴²⁰ Kenneth Noble, "Before They Beat Mexicans, Police Gave Orders in English," *New York Times*, Apr. 10, 1996, p. A-12 (hereafter cited as Noble, "Before They Beat Mexicans").

⁴²¹ Ripston Testimony, *L.A. Hearing*, vol. 2, pp. 184-85.

⁴²² "Police Commission Directs LAPD to Start Tracking Post-Pursuit Injuries," *City News Service*, Oct. 1, 1996, available in LEXIS, News Library, Curnws File.

⁴²³ Joseph Wambaugh, "Many Exploiting California's New Police Brutality Incident," *Minneapolis Star Tribune*, Apr. 22, 1996, p. A-13 (hereafter cited as Wambaugh, "Many Exploiting California's New Police Brutality Incident").

⁴²⁴ See Noble, "Before They Beat Mexicans"; Wambaugh, "Many Exploiting California's New Police Brutality Incident."

chased by the U.S. Border Patrol careened off a winding mountain road near Temecula in Riverside County, killing 7 men and injuring 18 others.⁴²⁵

The U.S. Border Patrol policy on high speed pursuits, "issued in July 1992 in response to controversy over the safety of Border Patrol pursuit operations,"⁴²⁶ requires that all four of the following conditions be met in order to justify a vehicular pursuit: (1) the suspect must clearly attempt to avoid arrest in a vehicle by speeding away in order to avoid apprehension for a "felony or misdemeanor that would require a full custody arrest"; (2) the driver refuses to stop when ordered to do so by an officer; (3) the suspect, if allowed to flee, would "present a danger to human life or cause serious injury"; and (4) the officer complies with regulations concerning notifying radio communication personnel of his/her actions.⁴²⁷ Doug Becketl, deputy assistant regional director for the U.S. Border Patrol, Western Region, testified that it is "the policy of the Border Patrol that a vehicular pursuit begin and continue only when the agent believes that the pursuit can be done with reasonable safety."⁴²⁸ INS Los Angeles District Director

Rogers indicated that, if possible, the supervisor controls the pursuit by radio and determines, based on radio transmission from the pursuit vehicle, whether the danger to the agents, the suspected undocumented immigrants, or the public is too great to continue. If the pursued vehicle is speeding excessively or is exhibiting reckless driving, the Border Patrol will discontinue pursuit, advise local law enforcement that they are discontinuing pursuit, and inform them of their observations regarding hazardous driving and any other possible violations of local law.⁴²⁹ Paul Smith, INS Supervisory Special Agent in the Los Angeles office, testified that the Investigations Branch is generally responsible for immigration law enforcement in the interior of the country. "Investigations Branch," he testified, "does not conduct vehicular pursuits period. So our policy within the interior is not to pursue."⁴³⁰

Although the Border Patrol's fairly firm policy prohibiting dangerous pursuits is favorably noted in the ACLU-SC's report,⁴³¹ and the INS policy prohibiting vehicular pursuits in the interior of the country by its agents is also praised,⁴³² the patrol's ad hoc policy of "handing off" a pursuit to local law enforcement authorities is criticized by civil rights and immigrant rights groups. For example, Luke Williams observed that it is "very convenient" for Border Patrol or INS officials to be able to say that "what happened in South El Monte did not involve our agents and our policy is to discontinue dangerous high speed pursuits. We pulled back and the local authorities took over." It is in effect a way to get around the INS/Border Patrol's own policy guideline against high speed pursuits, while providing the agency cover if anything goes wrong.⁴³³ He testified at the Commission hearing that:

the concern that we have is just really the human safety factor. The reason why the INS has an official policy. . . of not pursuing in [the interior] is because once someone has reached the interior of the country. . . it really does pose a threat to public safety when you have this kind of freeway chase[]. And so if. . .

⁴²⁵ Tony Perry, Josh Meyer, and Henry Weinstein, "7 Die as Truck Evading Border Agents Crashes," *Los Angeles Times*, Apr. 7, 1996, p. A-1.

⁴²⁶ ACLU-SC, *Not Just Isolated Incidents: The Epidemic of Police Pursuits in Southern California* (June, 1996), pp. 13-14 (hereafter cited as ACLU-SC, *The Epidemic of Police Pursuits*). This study began after the South El Monte incident and focused on 12 large local law enforcement agencies in southern California, including the LAPD and the LASD. Information from an investigation begun in 1993 into U.S. Border Patrol and California Highway Patrol policies was also included in this report. *Ibid.*, p. 3.

⁴²⁷ *Ibid.*, p. 14 (citing U.S. Border Patrol Manual, §1120.02 "High speed Vehicular Pursuits," July 17, 1992).

⁴²⁸ Doug Becketl, deputy assistant regional director, U.S. Border Patrol, Western Region, testimony, *L.A. Hearing*, vol. 2, p. 243. Becketl was quoting from a policy statement issued by the Border Patrol setting forth "guidelines for the implementation" of the manual provisions discussed above. U.S. Border Patrol, *Policy Statement: Operation of Border Patrol Vehicles During Vehicle Stops and Pursuits* (undated), p. 1, *L.A. Hearing*, subpoena duces tecum document, Exh. 12a. The policy lists 11 factors agents are to consider in determining "reasonable safety," involving the pursuit of suspect vehicles, including agent experience, suspect characteristics (such offensive maneuvers or indications of intoxication, etc.), roadway and weather conditions, and availability of good communications to call ahead for assistance, road clearing, or to obtain coordination from a supervisor. *Ibid.*, pp. 4-5.

⁴²⁹ Rogers Interview.

⁴³⁰ Smith Testimony, *L.A. Hearing*, vol. 2, p. 267.

⁴³¹ ACLU-SC, *The Epidemic of Police Pursuits*, pp. 13-14.

⁴³² Williams Testimony, *L.A. Hearing*, vol. 2, p. 205.

⁴³³ Williams Interview.

one agency has said that we don't feel it's appropriate for our agents or patrol. . . to engage in this kind of activity, I think that there is a real question that ought to be raised: then why is it permissible for those officers to call and contact another law enforcement agency to do the same kind of behavior?⁴³⁴

Widely varying high speed pursuit policies from jurisdiction to jurisdiction is a significant problem and was addressed in a meeting co-hosted by the INS and the Riverside County Sheriff several months after the South El Monte incident. The objective was to try to develop fairly consistent local law enforcement policies on high speed pursuits, which would effectively balance law enforcement and public safety needs.⁴³⁵ The conclusions of conference participants were that consistency was essential to several critical elements in the transfer of such pursuits: (1) the Border Patrol needs to advise local law enforcement fully regarding why the vehicle is being pursued, the factual situation they have, and why pursuit is being discontinued; (2) all parties need to be more consistent regarding when the transfer occurs; (3) the determination whether to continue pursuit is made by the local law enforcement agency according to their policy; (4) local law enforcement agency supervisors must be involved in that decision; and (5) all parties need to work on solutions to intercommunication problems.⁴³⁶ One obstacle to effective communication between different departments or agencies, according to the ACLU-SC, is that there is no single "emergency frequency" on the radios of every law enforcement vehicle in Southern California. If there were, when a pursuing vehicle entered into another agency's jurisdiction, the officer could simply turn to that emergency frequency.⁴³⁷

An extensive July 1996 ACLU-SC study examined data from the California Highway Patrol Statewide Pursuit Information Database and Resource (SPIDR) system on 5,766 pursuits conducted by 12 southern California law enforce-

ment agencies in 1993, 1994, and 1995.⁴³⁸ The study found that "despite massive media attention to the pursuit controversy throughout the last decade, the number of pursuits in Southern California had increased overall, with the LAPD recording the greatest increase."⁴³⁹ At the Commission's hearing, Ramona Ripston testified:

Unfortunately we found the Los Angeles Police Department to be one of the most deficient. I remind you that the Rodney King incident was a post-pursuit beating. Nevertheless, we found that the LAPD still exhibits alarmingly high proportions of pursuit-related injuries to both officers and suspects that occur after pursuits conclude.⁴⁴⁰

Allan Parachini testified that overall, in the five southern California counties that the study covered, there was one high speed pursuit every 4½ hours, and that just under 50 percent of all pursuit-related injuries both to officers and suspects occurred after pursuits conclude.⁴⁴¹ For all others, "the risk of injury is overwhelmingly greatest during the pursuit itself—as a result of pursuit-related traffic crashes."⁴⁴²

In her written testimony to the Commission, Ms. Ripston stated that regarding the LAPD, the study found: "The department was disproportionately represented in almost every category in our data set that represented questionable performance. The department accounts for about 37 percent of the personnel in the 12 agencies we studied, but accounted for 47 percent of individuals killed, 50 percent of officers injured and 46 percent of suspects injured."⁴⁴³ She further noted that:

⁴³⁸ Since the beginning of 1992, law enforcement agencies have been required to report pursuit incidents to the SPIDR system, using a standardized Highway Patrol data form (CHP 187). ACLU-SC, *The Epidemic of Police Pursuits*, p. 3.

⁴³⁹ Ripston Written Statement, p. 15.

⁴⁴⁰ Ripston Testimony, *L.A. Hearing*, vol. 2, p. 183.

⁴⁴¹ Parachini Testimony, *L.A. Hearing*, vol. 2, pp. 211-12. The five counties included in the study were: Los Angeles, Orange, Riverside, San Bernadino, and Kern. Four agencies accounted for 4,842 pursuits, or 84 percent of the total of 5,766 pursuits by the 12 agencies studied during the 3-year period. These were the LAPD, LASD, Riverside County Sheriff's Department, and the San Bernadino Sheriff's Department. ACLU-SC, *The Epidemic of Police Pursuits*, p. 3.

⁴⁴² ACLU-SC, *The Epidemic of Police Pursuits*, p. 8.

⁴⁴³ Ripston Written Statement, p. 14 (emphasis in original). Within the four department subset that accounted for 84 percent of the pursuits, of 30 fatalities, 18 (60 percent) died during or after pursuits conducted by the LAPD. The next

⁴³⁴ Williams Testimony, *L.A. Hearing*, vol. 2, p. 205.

⁴³⁵ Rogers Interview. The LAPD was the only major law enforcement agency in southern California that did not participate in the conference. *Ibid.*

⁴³⁶ *Ibid.*

⁴³⁷ Parachini Interview.

In the critical examination of *when* suspects and officers were injured—whether during or after a pursuit—the LAPD also performed poorly. Nearly half of the suspect injuries and more than 80% of the officer injuries in pursuit incidents in the LAPD [occurred] after the pursuit had concluded.

What that tells us is that LAPD officers conclude pursuits under circumstances where entirely too many officers and suspects end up being hurt. While CHP data we utilized do not detail circumstances of the injuries, there is ample evidence that the adrenaline rush that affects both officers and suspects during a pursuit spills over into violence after the pursuit concludes.⁴⁴⁴

The ACLU report found that the LAPD “conducts by far the largest number of pursuits and its pursuits result in . . . disproportionately more deaths and injuries to officers, suspects and others than any other department in the region.” Strikingly, more than 83 percent of officer injuries in LAPD pursuit incidents occur after the pursuit has concluded—276 officers were hurt after pursuits over a three year period. The report continued:

The LAPD’s performance in pursuits has established such an extreme record of death and injury that the department and the Los Angeles Police Commission should begin immediately a complete review of the policies, supervision, training and underlying institutional philosophy that governs pursuit tactics and deployment by the LAPD. The LAPD and the Los Angeles Police Commission should consider suspending immediately the current LAPD pursuit policy and issuing a substitute order limiting pursuits to incidents in which vehicle occupants are suspected of committing serious violent felonies including murder, assault, robbery, rape, and kidnapping. At minimum, the LAPD should adopt the precepts of the Orange County Sheriff’s Department policy [which bar deputies from initiating pursuits based only on the commission of a traffic infraction] pending complete ree-

highest death toll—9 killed during and after LASD pursuits—was only half the total of the LAPD. ACLU–SC, *The Epidemic of Police Pursuits*, p. 5.

⁴⁴⁴ Ripston Written Statement, pp. 14–15. In his testimony, Allan Parachini said that although the CHP data did not specify the nature of post-pursuit injuries, “we believe that many of those are incidents similar to the Riverside beating and that the only thing that differentiates the Riverside beating from many other incidents. . . was the presence of three television helicopters.” Parachini Testimony, *L.A. Hearing*, vol. 2, p. 212.

valuation of LAPD pursuit policy, training and procedures.⁴⁴⁵

Unlike the Orange County policy, the LAPD pursuit policy provides only that pursuits “should be initiated only when law violators clearly exhibit an intention to avoid arrest by using a vehicle to flee.”⁴⁴⁶ The ACLU–SC report found that LAPD pursuits that result in fatal collision injuries to suspects or others are most often initiated as a result of alleged vehicle code violations, such as speeding, failure to stop at a stop sign or red light, and railroad crossing violations. “These offenses would not, of themselves, justify the use of lethal force by police in apprehending suspects accused of committing them, much less justify engaging in pursuits that resulted in death.”⁴⁴⁷ Following issuance of the ACLU–SC report, the Los Angeles Police Commission directed the LAPD to begin keeping statistics on post-pursuit injuries, which police had not been tracking. The Police Commission did not, however, ask the LADP to change its pursuit policy.⁴⁴⁸

Regarding the Los Angeles County Sheriff’s Department, the report noted that “pursuits were initiated generally for serious criminal behavior,” such as murder and assault with a

⁴⁴⁵ ACLU–SC, *The Epidemic of Police Pursuits*, p. 12. Ms. Ripston stated in her written statement: “Let me emphasize that the ACLU–SC does not oppose use of the pursuit tactic by police agencies. We believe that there are circumstances involving the urgent need to apprehend suspects involved in serious, violent crime that may justify pursuit.” Ripston Written Statement, p. 15.

⁴⁴⁶ Office of the Chief of the Police, *Special Order No. 17: Vehicle Pursuit Policy*, p. 1 (Aug. 12, 1994). The policy does require officers to “weigh the seriousness of the offense against the potential dangers to themselves or members of the community” and to weigh eight factors in assessing whether to initiate a pursuit: whether vehicular and/or pedestrian safety is unreasonably compromised; traffic conditions; the nature of the area of the pursuit—residential, commercial or rural; whether the suspect can be apprehended at a later time; weather conditions; seriousness of the crime and its relationship to community safety; whether lack or quality of communication between the primary unit and Communications Division or the supervisor causes an unreasonable risk to the public; and familiarity with the area. Other safety provisions of the policy include calling in an air unit (helicopter) if possible, and maintaining supervisor monitoring and control of the pursuit. *Ibid.*, pp. 1–2.

⁴⁴⁷ ACLU–SC, *The Epidemic of Police Pursuits*, p. 12.

⁴⁴⁸ “Police Commission Directs LAPD to Start Tracking Post-Pursuit Injuries,” *City News Service*, Oct. 1, 1996, available in LEXIS, News Library, Curnws File.

deadly weapon. Pursuits were also initiated "over the crimes of grand theft auto and felony burglary, which, although they are property crimes, do not of themselves imply acts of serious violence."⁴⁴⁹ The report concluded:

While the LASD's share of suspect injuries after pursuits conclude is slightly below the regional average, its rate of post-pursuit officer injuries is nearly 71% —a situation that implies further review of agency pursuit policies may be appropriate. The departments' pursuits resulted in injuries to 72 officers, 182 suspects and 6 others during the three-year period. The department's existing pursuit policy is worded vaguely in terms of circumstances that can justify initiation of a pursuit and the policy essentially ignores post-pursuit behavior issues.⁴⁵⁰

Merrick Bobb's April 1997 report found continuing problems with the application of LASD pursuit policies, noting that watch commanders are failing in high numbers to submit required paperwork on pursuits:

leading to a possible undercount of the number of pursuits that are taking place. Moreover, a high percentage of the pursuits that are reported are ultimately found to be out of policy, and watch commanders and deputies are failing to cancel substantial numbers of policy pursuits after they have been initiated. Similarly pursuits have been allowed to continue for longer than is prudent or at speeds that are faster than is reasonable, and in some cases the reasons given for commencing the pursuit were either insufficiently developed or flimsy (e.g., the pursued vehicle is "possibly" wanted for some felony).⁴⁵¹

The ACLU-SC report noted that although "there are clear problems among law enforcement agencies in this region in terms of post-pursuit injuries, fatalities and officer behavior," there is no body of research focusing on post-pursuit issues, nor are there training materials or guidelines that focus on issues of control of the post-pursuit situation.⁴⁵² The ACLU-SC con-

cluded that "[u]nless or until this aspect of the pursuit dynamic is addressed successfully, it is inevitable that results like this reported here will continue to occur."⁴⁵³

Criminal Deportation Policy

The INS conducts a number of programs and joint initiatives with local, county, and State law enforcement that also affect racial and ethnic tension in Los Angeles and the relationship of the LAPD and the LASD with the Los Angeles immigrant community. Paul Smith testified on behalf of the Los Angeles district office of the INS that one of the agency's priorities the past several years has been "increasing the number of deportable aliens removed from the United States with particular emphasis on the removal of criminal aliens."⁴⁵⁴ A "heightened spirit of cooperation has given rise to an array of groundbreaking initiatives," he said, that have enabled the INS to remove an unprecedented number of criminal aliens from the United States in 1996. California lead the Nation with more than 10,000 criminal alien removals in the first 10 months of the 1996 fiscal year, a 6 percent increase over the previous year's record pace.⁴⁵⁵

The California identification (CAL ID) program allows local law enforcement authorities to identify individuals previously deported as criminal aliens, and hold them for INS pickup. If no local charges are pending, the INS takes custody of the individual for immediate removal or felony prosecution for reentry after deportation. Under the program, which was launched in 1994, the fingerprints and files for more than 10,000 criminal aliens and aliens convicted of aggravated felonies have been entered into a special California Department of Justice database accessible to local law enforcement agencies throughout the State.⁴⁵⁶

during a pursuit. POST'S materials essentially ignore issues of control of the post-pursuit situation and they fail to provide insight, training guidelines or methodologies to permit departments and officers to avoid post-pursuit injuries and/or fatalities to suspects, officers and others." Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ Smith Testimony, *L.A. Hearing*, vol. 2, p. 236.

⁴⁵¹ Ibid.

⁴⁵² Ibid., p. 237. Under the Institutional Hearing Program (IHP), "criminal aliens have their deportation hearing while serving time in state institutions, paving the way for their immediate deportation upon completion of their sentences."

⁴⁴⁹ ACLU-SC, *The Epidemic of Police Pursuits*, p. 8.

⁴⁵⁰ Ibid., p. 13.

⁴⁵¹ Special Counsel Merrick J. Bobb & Staff, *The Los Angeles County Sheriff's Department: 7th Semiannual Report* (April 1997), p. 56.

⁴⁵² Ibid., p. 15. Written and video training materials, as well as training guidelines adopted by the California Commission on Peace Officer Standards and Training (POST): "focus almost exclusively on . . . initiation of a pursuit and, to a greater extent, on driving and other tactical operations

Agent Smith testified that the INS also has a number of highly effective enforcement programs in place at the local level. For example, "the INS now maintains a permanent presence at the Los Angeles and Orange County jails, two of the busiest jails in California. The aim is to identify deportable criminal aliens within the county jail population, paving the way for the alien's swift removal from the United States once the judicial process is complete."⁴⁵⁷ Los Angeles County has six locations where arrestees are housed, but releases individuals from only one facility, the downtown Los Angeles County jail. This allows the INS to interview inmates identified as foreign born prior to their release when they pass through the release line to determine their immigration status and deportability.⁴⁵⁸ Most of these individuals are self-

More than 14,000 criminal aliens have been removed from California Department of Corrections institutions under the IHP program since fiscal year 1992. *Ibid.*, pp. 236-37.

⁴⁵⁷ *Ibid.*, p. 238.

⁴⁵⁸ Rogers Interview. Agent Smith testified that the INS assigns "agents to the county jails and they interview all the inmates coming off the release line and determine alienage and deportability." Smith Testimony, *L.A. Hearing*, vol. 2, p. 262. In both Agent Smith's and Director Rogers' interviews, however, they indicated that only inmates identified as foreign born are interviewed coming off the release line. INS documents submitted at the hearing confirm the latter process. In June 1995, the INS began a 1-month study of the number of deportable aliens who are released from the Los Angeles County jail. The memorandum to INS agents conducting the study of the pilot project states: "At the release line, agents will be required to interview every alien released from the facility. . . . A Form W-24 is to be filled out on every alien interviewed at the release line, regardless of whether the alien is taken into custody. . . . It is essential that every inmate's release jacket be scrutinized carefully to ascertain the inmate's claimed place of birth, and a 424 completed on every inmate who claims foreign birth." Memorandum, "Los Angeles County Jail Criminal Alien Pilot Project," from Richard A. Rhone, section chief, ACAP, INS, Los Angeles, to All Agents, Section C, Los Angeles, May 22, 1995 (emphasis in original), *L.A. Hearing*, subpoena duces tecum document, Exh. 8a (hereafter cited as Rhone, "Los Angeles County Jail Criminal Alien Pilot Project"). LASD correspondence also confirms that only foreign born inmates scheduled for release are interviewed by the INS. In notifying LASD personnel at the jail of the month long pilot project, Captain Earnest Maldonado noted that agents stationed at the jail 24 hours a day "will be interviewing foreign born inmates prior to their release in order to determine their immigration status. Those individuals identified as deportable will have a detainer form filled out, and the inmate will be released in-custody to INS that same day." Letter from Earnest Maldonado, LASD captain, Inmate Reception Center, to all personnel, Inmate Reception Cen-

identified when they are booked by the LAPD or the LASD.⁴⁵⁹ When someone is booked for a crime, one of the questions on the booking form is whether they were born in the United States. If they answer no, their records will reflect "foreign born," making them eligible for interview by the INS agents permanently stationed at the Los Angeles County jail.⁴⁶⁰ The Los Angeles County jail houses approximately 18,500 inmates at any one time. Approximately 180,000 new bookings are entered into the system each year and around 350 inmates are released from the main jail each day.⁴⁶¹

Due to limited staff, until August 1996, the Los Angeles INS District was unable to assure 24 hour coverage. It stationed agents at the jail for 6 days a week, 16 hours a day.⁴⁶² According to LASD records, from October 1989 (as far back as the LASD kept records) through 1995, the INS "intercepted and detained 40,844 illegal aliens found within the male custody system."⁴⁶³ The INS was then identifying "approximately 30 illegal aliens a day by screening the [LASD] release lines."⁴⁶⁴ A month-long pilot project in June 1995 stationed agents at the jail 24 hours a day. The study determined that of 14,466 inmate releases during June 1995, 2,873 or 19.86 percent were criminal aliens.⁴⁶⁵ A similar study conducted in 1990 found that 11.1 percent of the 17,774 inmates released from the jail during

ter, May 23, 1995, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

⁴⁵⁹ LAPD arrestees usually spend a short time in city jail. Generally, if they are held after arraignment and before trial, it will be in the Los Angeles county jail system. Many individuals booked by the LAPD end up in the county jail system. For example, if a person is sentenced to 90 days for drunk driving, he or she serves those 90 days in a Los Angeles county jail, not in the city of Los Angeles jail. Although when someone is initially arrested they might be placed in a city jail, when they are convicted they are transferred to a county jail. Smith Interview.

⁴⁶⁰ *Ibid.*

⁴⁶¹ Rhone, "Los Angeles County Jail Criminal Alien Pilot Project."

⁴⁶² Rogers Interview.

⁴⁶³ Letter from Earnest Maldonado, LASD captain, Inmate Reception Center to Mark M. Squires, chief, Custody Divisions, LASD, Jan. 4, 1996, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ *Ibid.*

May of that year were deportable aliens.⁴⁶⁶ The 1995 study's increased numbers and an infusion of new INS agents from the academy led to a decision to station agents at the jail 24 hours a day.⁴⁶⁷ The LASD notified its relevant personnel that beginning August 27, 1996, "the USINS will now be screening inmates scheduled for release at the Inmate Reception Center (IRC) on a 24 hour basis."⁴⁶⁸ From the start of the Los Angeles County Jail Project in June 1995 through August 1996, Agent Smith testified, "the INS has taken custody of nearly 10,000 criminal aliens coming out of the jail and more than 9,500 of those individuals have already been removed from the United States or are in deportation proceedings."⁴⁶⁹ The *Los Angeles Times* reported that between October 1996 and June 1997, "about 5,000 inmates have been arrested and put into expulsion proceedings. . . In some cases, immigration judges are even hearing prison inmates' cases while they complete their sentences, thus assuring speedy expulsion once their time is completed."⁴⁷⁰

There is no program stationing INS agents in the city jails. One reason is that many arrestees are not held long enough for the INS to interview them. The agency, Agent Smith explained, has limited resources and requires a certain amount of lead time.⁴⁷¹ Another reason, according to Director Rogers, is the less cooperative relationship of the LAPD with the INS in general. It would not be an efficient use of INS resources, in any case, since the city of Los Angeles has at least six or seven jails and releases from all of them. It is more efficient to have INS criminal investigators stationed at one county facility, in his view. The LAPD booking slip contains a question concerning birthplace, and Special Order 40 requires the LAPD to notify the INS of the arrest of an "undocumented alien,"

⁴⁶⁶ Rhone, "Los Angeles County Jail Criminal Alien Pilot Project."

⁴⁶⁷ Rogers Interview.

⁴⁶⁸ Letter from Earnest Maldonado, LASD captain, Inmate Reception Center, to all personnel, Inmate Reception Center, Aug. 27, 1997, *L.A. Hearing*, subpoena duces tecum document, Exh. 8a.

⁴⁶⁹ Smith Testimony, *L.A. Hearing*, vol. 2, p. 238.

⁴⁷⁰ Patrick J. McDonnell, "Deportation of Criminals, INS Fugitives at New High," *Los Angeles Times*, June 23, 1997, p. A-1.

⁴⁷¹ Smith Interview.

when the arrest is for multiple misdemeanor offenses, a high grade misdemeanor, or a felony.⁴⁷² When the INS is notified, an agent may try to schedule an interview with these individuals to determine their status in the United States before they are released. Interviewing arrestees before their arraignment is thought crucial by some, because it makes a judge aware of their immigration status. This allows the judge to place a "hold" on an undocumented immigrant to prevent his or her release before trial.⁴⁷³ LAPD Assistant Chief, Director of Operations, Bayan Lewis, indicated that the Los Angeles City Council at one time recommended eliminating the question regarding birthplace from the booking slip. According to Lewis, Los Angeles County officials said that if the city omitted the question, the county would not allow the LAPD use the county computerized system for identifying individuals. County officials maintained that "birthplace" is a "required field," needed for identification purposes in the event the individual is arrested again.⁴⁷⁴

Agent Smith testified that the INS has provided, on several occasions, training to the LAPD and the LASD on the identification of false documents, as requested, and that this training has proven to be highly successful.⁴⁷⁵ The passage of Proposition 187 on November 8, 1994, added sections 113 and 114 to the California Penal Code.⁴⁷⁶ Section 113 makes it a misdemeanor to manufacture or sell a false government identification document(s) with the knowledge that the false document is intended to conceal the true citizenship or resident alien status of another person. Section 114 makes the use of false documents with the specific intent to conceal one's true citizenship or resident alien status a felony.⁴⁷⁷ The INS has worked with the LAPD and the LASD in operations focusing on street vendors of false documents. Local law enforcement focuses on violations of section 113 by street vendors on the ground that they are con-

⁴⁷² Rogers Interview; Office of the Chief of Police, *Special Order No. 40: Undocumented Aliens*, p. 1 (Nov. 27, 1979).

⁴⁷³ Rogers Interview.

⁴⁷⁴ Lewis Interview.

⁴⁷⁵ Smith Testimony, *L.A. Hearing*, vol. 2, pp. 247-48.

⁴⁷⁶ LAPD Office of Operations, *Order No. 5: Penal Code Sections 113 and 114*, p. 1 (Feb. 8, 1995).

⁴⁷⁷ Cal. Penal Code §§113-114 (West 1996).

sidered a menace on the streets. The INS focuses on putting the manufacturer of false documents out of business, because Federal penalties are significantly stronger than section 113. Director Rogers emphasized, however, that the INS has jurisdiction over all these criminal violations.⁴⁷⁸

Assistant Chief Bayan Lewis issued a departmental order on February 8, 1995, concerning sections 113 and 114, in which he noted:

Sections 113 and 114 have been added to the California Penal Code. They are very specific and relate only to the manufacture, sale and distribution of false documents (P.C. 113) to conceal true citizenship or resident alien status (P.C.114). In particular, mere possession of false documents other than for sale is not a violation of either section. The aforementioned

sections are narrow in scope and will probably require a minimal amount of enforcement action.⁴⁷⁹

The department also took the opportunity in this memorandum to reiterate its basic position, first outlined in Special Order 40, on undocumented status and police services, saying:

The issues of citizenship, legal status in the United States or undocumented alien status are not matters for police action. The Department values the great diversity of people in both our residential and business communities and serves all people with equal dedication. It is therefore incumbent upon all employees of the Department to make a personal commitment to equal enforcement of the law and quality service to the public regardless of citizenship.⁴⁸⁰

⁴⁷⁸ Rogers Interview. Director Rogers indicated that these joint operations have been particularly active in the Santa Ana area of Orange County, which has a huge false document problem. Ibid.

⁴⁷⁹ LAPD Office of Operations, *Order No. 5: Penal Code Sections 113 and 114*, p. 1 (Feb. 8, 1995).

⁴⁸⁰ Ibid.

Chapter 6

The Federal Role: Pattern or Practice Authority

Section I: The Federal Government's Role in Patterns of Police Misconduct

Introduction

Following the beating of Rodney King by officers from the Los Angeles Police Department (LAPD) and the publication of the Christopher Commission and Kolts Commission reports, the questions whether and to what extent the Federal Government had a responsibility to address misconduct and abuse by local police departments emerged with some urgency. At that time, the U.S. Department of Justice (DOJ) viewed its role as a backstop to State and local prosecutors, but not as part of "the front line troops."¹ In that capacity, the Federal Government only had the authority to investigate and prosecute alleged criminal civil rights violations by individual officers. The Federal Government, however, had no authority to investigate the policies or practices of an entire department or to seek civil injunctive relief. The lack of such authority and the inadequacy of other existing remedies created a situation where systemic police misconduct went largely unaddressed by the Federal Government.

Previous Remedies for Police Misconduct

Traditionally, the criminal section of the Civil Rights Division (CRD) of DOJ brings civil rights prosecutions based on its review of thousands of complaints received and investigated each year by the FBI.² Reports of alleged criminal civil

rights violations that can trigger Federal investigations are received by the criminal section of the CRD, FBI field and headquarters offices, and United States attorneys' offices via citizen correspondence, telephonic inquiries, and personal visits from complainants.³ In addition, print and electronic media reports may also trigger Federal investigations.⁴ Where allegations, if proven, would constitute a criminal violation, the FBI conducts an appropriate investigation and forwards the results of its investigations to the CRD and to the appropriate U.S. attorney's office.⁵

The most common statutes employed in Federal prosecutions of police officers and/or departments are 18 U.S.C. §§241 and 242, which prohibit conspiracies to violate civil rights, and official, willful violations of civil rights.⁶ Critics at the Commission's 1993 and 1996 hearings found a number of shortcomings with these statutes. Even though they can be used in individual cases of criminal action, as in the Federal prosecution of the LAPD officers in the Rodney King case, they are extremely difficult to win. Both statutes require proof of specific intent in order to prevail. This evidentiary burden is difficult to prove and to explain to juries, rendering the prosecution of such cases a formidable task.⁷

mission on Civil Rights, Los Angeles, CA, Sept. 12–13, 1996 (hereafter cited as *L.A. Hearing*).

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Dunne House Testimony.

⁷ Linda Davis, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality And Discrimination, Hearing Before the U.S. Commission on Civil Rights, hearing*, Los Angeles, CA, June 15, 1993, pp. 244–45 (hereafter cited as *1993 L.A. Hearing*); see also Paul Hoffman, "The Feds, Lies, and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America," *Southern California Law Review*, vol. 66 (1993), p. 1522; Steven Clymer, professor, Cornell University Law School, telephone interview, July 18, 1996 (hereafter cited as Clymer Interview).

¹ U.S. Congress, House Subcommittee on Civil and Constitutional Rights, *Hearings on Police Brutality*, 102d Cong., 1st Sess., 1991, pp. 3–4 (testimony of John Dunne, assistant attorney general, Civil Rights Division, U.S. Department of Justice) (hereafter cited as Dunne House Testimony).

² An average of 2,500 to 3,000 criminal civil rights investigations are conducted annually by the FBI. "Initiating a Civil Rights Investigation and Prosecution," document prepared by the Criminal Section, Civil Rights Division, Department of Justice, submitted by Steven Rosenbaum, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Hearing Before the U.S. Com-*

Furthermore, the criminal statutes are ineffective in addressing systemic problems of misconduct within police departments.⁸ In the case of Los Angeles, there had long been complaints of police brutality by the LAPD before the Rodney King incident, but the Federal Government had no means of addressing that alleged systemic pattern of misconduct.

Witnesses at the Commission's June 1993 hearing in Los Angeles maintained that the Federal Government had failed to use the criminal remedy in addressing police misconduct in the previous decade. Witnesses testified that the Government's posture had been one of "inaction and neglect." For example, Paul Hoffman, a local attorney, criticized the CRD which had brought only a handful of prosecutions against police officers in the city and county of Los Angeles.⁹ Others argued that the Federal Government should either be the first resort in cases of police brutality or should have a meaningful and effective backstop role.¹⁰ With respect to the LAPD, one witness alleged that although systems of accountability and discipline within the department had broken down, there was no oversight function by the DOJ and virtually no prosecutions for civil rights violations.¹¹ The Department of Justice was unable to monitor sufficiently the activities of the LAPD and other departments, in part, because it did not systematically evaluate complaints and did not identify trends in police practices and tactics.¹²

Existing legal precedent also had limited the means available to combat police misconduct through the courts. The Department of Justice in 1980 had attempted to bring a civil rights pattern or practice challenge under the existing statutes, but failed for lack of Federal authority. In *United States v. City of Philadelphia*,¹³ the Attorney General sued for declaratory and equitable relief against the alleged unconstitutional

practices of the Philadelphia Police Department, arguing that 18 U.S.C. §§241, 242 and the 14th amendment gave rise to an implied right of action for equitable relief. The Third Circuit Court of Appeals held that, absent specific statutory authority, the Attorney General did not have standing to bring the action.

The United States Supreme Court also essentially foreclosed the possibility of private citizens' seeking equitable or injunctive relief against the practice of police brutality by local departments in 1983. In *City of Los Angeles v. Lyons*,¹⁴ the plaintiff sought injunctive relief barring the use of chokeholds by the Los Angeles Police Department. The Supreme Court held that the plaintiff failed to demonstrate a case or controversy that would justify the equitable relief sought because he could not establish "standing." In other words, the plaintiff could not establish a real and immediate threat that he would be stopped again by an officer who would illegally choke him into unconsciousness without provocation. The case effectively prevents private civil litigants from bringing pattern and practice cases to seek injunctive relief against harmful practices.

Although citizens can bring actions to recover damages, these suits have proven ineffective in preventing future misconduct. As demonstrated by the Christopher and Kolts Commissions reports, even though the city and county of Los Angeles were paying millions of dollars each year in verdicts against their respective departments, there was no significant change in offending conduct.¹⁵ Individual damage actions also do little to prevent abuses that do not result in significant injury, such as pretext stops based on race, but create substantial tension between the department and the local community.¹⁶

¹⁴ 461 U.S. 95 (1983).

¹⁵ *Christopher Report*, pp. 55-60; *Kolts Report*, pp. 25-32; Clymer Interview.

¹⁶ Clymer Interview. Evidence introduced in two recent cases strongly suggests that minority groups are being stopped disproportionately. For example, in a New Jersey state criminal proceeding, Judge Robert Francis found that "defendants have proven at least a *de facto* policy on the part of the State Police out of the Moorestown Station of targeting blacks for investigation and arrest between April 1988 and May 1991 both south of exit 3 and between exits 1 and 7A of the Turnpike. . . . The statistical disparities and standard deviations revealed are indeed stark. . . . The utter failure of the State Police hierarchy to monitor and control a crackdown program like DITU or investigate the many

⁸ See Steven H. Rosenbaum, testimony, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality And Discrimination*, Hearing Before the U.S. Commission on Civil Rights, hearing, Los Angeles, CA, September 12-13, 1996, p. 31 (hereafter cited as *L.A. Hearing*).

⁹ Paul Hoffman, 1993 *L.A. Hearing*, pp. 106-07.

¹⁰ See e.g., *ibid.*; Jerome Skolnick, 1993 *L.A. Hearing*, pp. 142-43.

¹¹ Hoffman Testimony, 1993 *L.A. Hearing*, pp. 107-08.

¹² *Ibid.*; Dunne House Testimony, p. 247.

¹³ 644 F.2d 187 (3d Cir. 1980).

Witnesses at the Commission's 1993 hearing advocated legislation that would authorize the DOJ to bring civil pattern or practice cases against individual police departments. The U.S. Commission on Civil Rights itself recommended this course of action in a 1981 report evaluating police practices throughout the country.¹⁷ Paul Hoffman testified that such legislation could be used not only to target departments with a pattern of abusive conduct, but also specific police tactics that have caused excessive harm to citizens.¹⁸ In the case of Los Angeles, Federal action may have been extremely helpful in reining in a department that was perceived as out of control.¹⁹ In addition, the involvement of the Federal Government sends a strong message that civil rights will be protected and can counteract local pressures and conflicts that may hinder accountability.²⁰ Witnesses maintained that the Federal Government has the ability to collect data and identify trends, and needs to provide more expertise and financial and technical support to local authorities in combating police abuse.²¹

Section II: Implementation of Federal Pattern or Practice Authority

Pattern or Practice Authority

In September 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994.²² One section of this new law provides:

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or

claims of institutional discrimination manifests its indifference if not acceptance." *State v. Soto*, (N.J. Superior Ct., Mar. 4, 1996). See also *Washington v. Vogel*, 880 F. Supp. 1542 (M.D. Fla. 1995) (blacks constituted more than 60 percent of the drivers shown on videotapes of certain traffic stops conducted by the Volusia County, FL, sheriff's office between 1989 and 1993), *aff'd* 1997 U.S. App. LEXIS 916 (11th Cir. Jan. 7, 1997).

¹⁷ U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* (1981), pp. 164-65.

¹⁸ Hoffman Testimony, *1993 L.A. Hearing*, p. 154.

¹⁹ Skolnick Testimony, *1993 L.A. Hearing*, pp. 151-52.

²⁰ *Ibid.*, pp. 142-43; Hoffman, "The Feds, Lies, and Videotape," p. 1515.

²¹ Hoffman Testimony, *1993 L.A. Hearing*, p. 110; Patrick Murphy, *1993 L.A. Hearing*, p. 129.

²² Pub. L. No. 103-322, 108 Stat. 1796.

practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.²³

The legislation authorizes the Attorney General to bring a civil action to obtain equitable and declaratory relief whenever she has reason to believe that a violation of the above provision has occurred.²⁴ At the Commission's 1996 hearing, Steven Rosenbaum of the Department of Justice noted that the Attorney General may seek injunctive and other relief, including the suspension, termination, or repayment of Federal funds from a wayward department.²⁵ Finally, the statute requires the Attorney General to collect and publish data about the use of excessive force by law enforcement officers.²⁶

Implementation

In the fall of 1995, the Civil Rights Division at the DOJ established a police misconduct initiative to focus and coordinate their efforts better in addressing police misconduct. In his announcement of the Police Misconduct Initiative, former Assistant Attorney General Deval Patrick stated:

We have created a task force to identify our enforcement priorities and provide for appropriate coordination and supervision of those enforcement efforts. We plan to establish a comprehensive approach to combat and to prevent police misconduct, not only through deterrence, but through effective training and education.²⁷

The Special Litigation Section and the Coordination and Review Section, along with several attorneys who have been detailed to this effort, are handling implementation of the new pattern and practice authority. They have begun and will continue to work with local United States attorney's offices in the jurisdictions where investigations are underway; however, often the level of involvement of a particular U.S. attorney's office

²³ 42 U.S.C. § 14141(a).

²⁴ *Id.* § 14141(b).

²⁵ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 32.

²⁶ 42 U.S.C. § 14142.

²⁷ Memorandum from Deval Patrick, assistant attorney general, Civil Rights Division, to all Civil Rights Division Employees Nov. 3, 1995.

depends on its resources and interest in the case.²⁸ Those in the Civil Rights Division responsible for enforcement of the statute maintain that they have strong support and commitment from the Attorney General.²⁹

During the Commission's 1996 hearing, Steven Rosenbaum, chief of the Special Litigation Section of DOJ, indicated that the two main categories of issues currently being examined by the Department include the use of excessive force and discriminatory traffic stops.³⁰ Other evidence of an unlawful pattern or practice includes false arrests, failure to investigate allegations of criminal behavior based on impermissible criteria, failure to investigate allegations of misconduct or to discipline officers engaged in misconduct, engaging in a code of silence to protect persons guilty of misconduct, coercive sexual conduct, retaliation against persons alleging misconduct, and failure to train personnel in the proper use of force.³¹

Under the new authority, the Department of Justice has initiated investigations into numerous, diverse law enforcement departments throughout the country, including large and small departments and urban, suburban and rural departments.³² News reports indicate that an investigation is ongoing at the LAPD; however, DOJ officials declined to confirm or deny the existing of such an investigations.³³ Nevertheless, news reports indicate that the LAPD is cooperating with the reported DOJ investigation.³⁴ Justice Department officials have reportedly sought information about the status of reforms in the LAPD. According to reports, former Assistant Attorney General for Civil Rights Deval Patrick was concerned about the pace of the LAPD's reforms.³⁵ Some have argued, however, that a Justice Department probe could distract

from the work of the Police Commission and the LAPD in implementing the reforms.³⁶

Whether the DOJ has initiated a probe of the LAPD, it has filed two civil cases, one involving the Iberia Parish Sheriff's Department in Louisiana, and another against juvenile institutions in Kentucky.³⁷ As of the Commission's hearing, the DOJ was negotiating a settlement in the Iberia Parish suit and had entered a consent decree in the Kentucky suit.³⁸ On February 26, 1997, the DOJ filed a lawsuit against the city of Pittsburgh, Pennsylvania, alleging police misconduct. The complaint alleges that the police department has engaged in a pattern or practice of subjecting individuals to uses of excessive force, false arrests, and improper searches and seizures.³⁹ The Justice Department claims that the defendants tolerated the misconduct through their failure to supervise, train, investigate, and discipline individual police officers adequately.⁴⁰ In April 1997, a Federal judge approved a consent decree under which the city agreed, among other things, to hire an independent auditor to monitor the department, document all traffic stops and all arrests, require reports from officers each time they use force or conduct a warrantless search, develop an early-warning system for officers, and provide annual training in cultural diversity, integrity, and ethics.⁴¹ Some city and police officials contended that many of the reforms outlined in the consent decree are already under way.⁴²

²⁸ Rosenbaum Interview.

²⁹ Ibid.

³⁰ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 34.

³¹ Ibid.

³² Ibid.

³³ "Official Business: Justice Dept. to Review Fuhrman Case in its Probe of LAPD," *Los Angeles Times*, Oct. 19, 1996, p. B-2.

³⁴ Jim Newton, "Series of Meetings on LAPD Please Federal, City Officials," *Los Angeles Times*, Nov. 8, 1995, p. B-1.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Steve Rosenbaum, chief, Special Litigation Section, U.S. Department of Justice, telephone interview, Aug. 23, 1996 (hereafter cited as Rosenbaum Interview).

³⁸ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 35.

³⁹ Complaint at ¶¶ 7-9, *United States of America v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. 1997).

⁴⁰ Ibid., ¶11.

⁴¹ See generally Consent Decree, *United States of America v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. 1997). A similar consent decree was entered into between the Department of Justice and the police department in the city of Steubenville, OH. See Consent Decree, *United States of America v. City of Steubenville*, No. C2 97-966 (S.D. Ohio 1997).

⁴² See Johnna A. Pro and Jon Schmitz, "City Bows to U.S. on Police Reforms," *Pittsburgh Post-Gazette*, Feb. 27, 1997, p. A-1.

Concerns with Pattern or Practice Authority

Professor Steven Clymer testified before the Commission in September 1996 that investigations into police misconduct pattern and practice cases is "extremely complex and very labor intensive."⁴³ He emphasized the need for the Department of Justice to allocate specific resources to the area. Professor Clymer warned that:

If D.O.J. is forced to do nothing other than a reshuffle of attorneys and investigators and support staff from other areas to this area, I think that there will be harm done to other very necessary programs that the Department of Justice does. In short, I think if we're serious about this tool, there needs to be an allocation of resources to this objective rather than just sharing it with other objectives.⁴⁴

Paul Hoffman echoed Professor Clymer's concerns: "unless there's a commitment at the national level to put some more resources into this piece of legislation, without taking it away from other important objectives, it's not going to work at all. It will just be a paper tiger."⁴⁵

Scholars and practitioners who have advocated for such authority and evaluated the new law also anticipate some problems with its implementation. One of the primary obstacles identified by some observers will be the manner in which the DOJ collects information before bringing an action against a particular department.⁴⁶ Without criminal charges, use of a grand jury to gather evidence will not be an option available to DOJ. Similarly, prior to the actual filing of a complaint, civil discovery will not have begun.⁴⁷ Investigators with the DOJ will have to rely on voluntary cooperation by the local police department and time-consuming interviews.⁴⁸

The Department of Justice indicates that under other statutes with pattern or practice authority, the Department has been very successful in getting presuit cooperation. It is expected that such cooperation also will occur un-

der this statute. To date, this has proven to be the case.⁴⁹ Steven Rosenbaum testified that subpoena power does not seem necessary in the civil area but that the Department is sensitive to the issue.⁵⁰ Further, for cases involving law enforcement agencies that receive Federal funds and involve allegations of discrimination, the Department also can rely upon regulations requiring the cooperation of recipients of Federal funds.⁵¹

In working with the local United States attorney's office, DOJ may encounter additional difficulties. Primarily, the local U.S. attorney's office may be facing staffing shortages of its own, and thus, be unable to provide substantial assistance to DOJ. The local U.S. attorney's office also might have potential conflicts with any ongoing investigation or civil action, depending on the circumstances of a particular case.⁵² For example, a DOJ investigation could target certain officers within a local police department who may be potential witnesses in an ongoing criminal prosecution by the local office. DOJ is aware of the potential for conflict, both with a local U.S. attorney's office and within the DOJ itself. Steven Rosenbaum acknowledged that the Department must coordinate carefully with any criminal action where there may exist overlapping interests with respect to a particular matter.⁵³

Professor Clymer recommended a systematic method of identifying police departments targeted for investigation. He called the current approach "at best, an ad hoc approach. We may have crisis situations, like the videotaping of the Rodney King beating, that precipitates an investigation. We may respond to media stories. We may respond to complaints by active plaintiff's civil rights attorneys in various jurisdictions."⁵⁴ He advocated a more systematic approach and suggested that the Census Bureau include specific questions about constitutional violations by police on its periodic national crime victimization survey.⁵⁵

⁴³ Clymer Testimony, *L.A. Hearing*, vol. 2, p. 297.

⁴⁴ *Ibid.*, p. 298.

⁴⁵ Hoffman Testimony, *L.A. Hearing*, vol. 2, p. 327.

⁴⁶ Clymer Testimony, *L.A. Hearing*, vol. 2, p. 299.

⁴⁷ Clymer Interview.

⁴⁸ *Ibid.*; Laurie Levenson, associate dean, Loyola University Law School, telephone interview, July 25, 1996 (hereafter cited as Levenson Interview).

⁴⁹ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 34.

⁵⁰ *Ibid.*, p. 64.

⁵¹ Rosenbaum Interview.

⁵² Nora Manella, telephone interview, Aug. 12, 1996.

⁵³ Rosenbaum Interview.

⁵⁴ Clymer Testimony, *L.A. Hearing*, vol. 2, p. 298.

⁵⁵ *Ibid.*

Another important, but still uncertain aspect of the new law is the types of remedies that will be available to and sought by the DOJ. For the most part such strategies will be dependent on the specifics of the particular case. The types of procedures the DOJ is generally looking to reform, however, include complaints procedures, use of force forms, disciplinary systems, and training programs.⁵⁶ Some have posited, unfavorably, that the Department of Justice could become very involved in the operations of a local police department. Professor Clymer has stated:

if the Department of Justice could prove the internal affairs division was sweeping complaints under the rug or not properly investigating civilian complaints, then the department theoretically could ask the courts to require that all internal affairs decisions be approved by them. . . . This is all very speculative, but [orders could be issued to] have certain police officers taken off the streets or moved to other precincts, stop choke holds, change training requirements. The list goes on and on.⁵⁷

For some studying the issue, the new statute also raises troubling federalism concerns in that any relief will result in a Federal judge or the DOJ telling a local police department how it should be run. Professor Steven Clymer testified:

Local law enforcement is quintessentially a state function. And in an ideal world, local government would police themselves and take care of their own problems about violation of constitutional rights. . . [C]oupled with that, I think that Federal district court judges, at times, may be ill-equipped to get into issues about how local police departments train people, hire people, supervise people, and discipline people. And I think there are legitimate issues of police officers' safety and effectiveness that we have to consider when we're trying to ask for certain remedies and when courts are trying to shape those remedies.⁵⁸

In an interview with Commission staff, Professor Clymer suggested that the DOJ must tread carefully and seek input from police experts regarding what constitutes an appropriate police practice in any given situation.⁵⁹ Others do not consider the federalism issue a realistic concern,

based on the Department's action in other pattern or practice situations, as well as the lack of resources available to DOJ to effectuate a boundless intrusion into local police affairs.⁶⁰

For the most part, experts and the DOJ believe that the new statute has enormous, positive potential. Under a similar statute in which DOJ also has pattern or practice authority, the Civil Rights for Institutionalized Persons Act,⁶¹ the Department has been very successful. It has gathered information effectively and brought the best experts in the country into cases, which private attorneys would not have been able to do.⁶²

The Department of Justice observes that its presence already is having an impact. Steven Rosenbaum testified that:

The Civil Rights Division brings a special force to bear on this issue, and we have been able to get the attention of law enforcement agencies, even when we make the initial contact to let them know that we're interested in their agency and are conducting an investigation, we have found. . . that jurisdictions have been responsive to the concerns we've raised. . . They have so far, as a general matter, cooperated willingly with our investigations, and some have begun to undertake reforms even as our investigations have been ongoing.⁶³

The Federal presence also can put a city at ease and prevent a situation from escalating out of control. According to Professor Laurie Levenson, associate dean of Loyola University Law School, following the Riverside County beating incident, the announcement that the Federal Government would be conducting an investigation was enough to calm a city that could have exploded.⁶⁴

There has been dissatisfaction expressed by some, however, that the Department of Justice is not doing enough to prevent police brutality. In September 1997, about 200 protesters marched on the Justice Department demanding that the Federal Government do more to track and punish police brutality.⁶⁵ In particular, there was

⁵⁶ Rosenbaum Interview.

⁵⁷ Mark Curriden, "When Good Cops Go Bad," *ABA Journal*, May 1996, pp. 64-65.

⁵⁸ Clymer Testimony, *L.A. Hearing*, vol. 2, p. 300.

⁵⁹ Clymer Interview.

⁶⁰ Paul Hoffman, attorney, telephone interview, Aug. 22, 1996 (hereafter cited as Hoffman Interview).

⁶¹ Levenson Interview.

⁶² *Ibid.*

⁶³ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 45. See also Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 62-63.

⁶⁴ Levenson Interview.

⁶⁵ Michael A. Fletcher, "Police Brutality Protesters March on Justice Dept.," *Washington Post*, Sept. 13, 1997, p. A-6.

criticism over the lack of national statistics on the use of excessive force by police. Justice officials noted that the provision in the 1994 crime bill that directed DOJ to collect the information was never funded. However, a Department spokeswoman said that existing agencies at DOJ are attempting to develop ways to collect reliable data on police brutality.⁶⁶

Data Collection

The effectiveness of the other component of the section, the data collection requirement, is less certain. Of perhaps greatest concern is that the provision of the crime bill directing DOJ to collect the information was never funded. A DOJ spokeswoman noted that existing agencies within DOJ are attempting to develop ways to collect reliable data on police brutality. Many who attended a hearing of the Congressional Black Caucus in September 1997 indicated their belief that police brutality is on the rise. They noted, however, that they were unable to document their claim because there are not national statistics on the use of excessive force by police.

The Civil Rights Division is not involved in the data collection process, because the statute mandates that the data not be used for enforcement purposes. Mr. Rosenbaum believes that it will be very difficult to obtain useful data, pri-

marily because not all departments maintain such data or maintain it consistently. Moreover, the statute refers to collection of data on the use of excessive force, which creates a self-labeling problem. The Department of Justice has considered using the same kind of citizen survey instruments that it uses when it collects general crime data. Mr. Rosenbaum believes that the prohibition on using the data for enforcement purposes should not affect the Civil Rights Division's ability to implement the pattern and practice authority.⁶⁷ DOJ has access to information from other sources so that the data are not necessary to identify departments for investigation.⁶⁸

Conclusion

Given that the new pattern and practice authority has just recently been implemented, it may be too soon to assess its effectiveness. A number of concerns already have been expressed, however, by some scholars and legal experts. Moreover, there continues to be dissatisfaction expressed by some members of the public that the Department of Justice is not doing enough to prevent police brutality. The extent to which the pattern and practice authority is able to change this perception remains to be seen.

⁶⁶ Ibid.

⁶⁷ Rosenbaum Testimony, *L.A. Hearing*, vol. 1, p. 47.

⁶⁸ Rosenbaum Interview.

Chapter 7

Findings and Recommendations

Chapter 1: Introduction

Police-Community Relations in an Increasingly Diverse Los Angeles Findings

1.1 From a major metropolitan area that was over 80 percent non-Hispanic white in 1960, Los Angeles has been transformed into a city and county that is majority minority. U.S. Census data from 1990 show that neither the city of Los Angeles nor Los Angeles County now has any ethnic majority, although Hispanics seem likely to hit the 50 percent mark within the foreseeable future. In the city, approximately 39.9 percent of the population is of Hispanic origin, 37.3 percent of the city's residents are white non-Hispanic, 13 percent black non-Hispanic, 9.2 percent Asian, 0.3 percent American Indian and 0.3 percent other race. In Los Angeles County, 40.8 percent of the population is white non-Hispanic, 37.8 percent Hispanic, 10.6 percent black non-Hispanic, 10.2 percent Asian or Pacific Islander, 0.3 percent American Indian, and 0.3 percent other race.

1.2 Los Angeles has received more immigrants than any other city in the United States during the past several decades. As a result, Los Angeles has become a city of immigrants: Roughly 1 in 10 Los Angeles County residents immigrated to the United States after 1985, and roughly 17 percent arrived after 1980. Even these figures may underestimate the total immigrant population in Los Angeles, because immigration statistics, as well as census counts of the population, cannot estimate the undocumented immigrant population as accurately as they can the documented newcomers. Between 1970 and 1990 the proportion of foreign-born residents in Los Angeles County increased from 11 to approximately 33 percent, or 2,895,000 people. In the city of Los Angeles 38.4 percent of the population in 1992 was foreign born. Los Angeles continues to be a magnet for immigrants in the 1990s. Of the nearly 1 million immigrants ad-

mitted to the United States in fiscal year 1992, 130,000 indicated Los Angeles as their intended place of residence and another 60,000 selected the counties of Orange, Ventura, Riverside, and San Bernadino. Moreover, Los Angeles attracts a large number of undocumented immigrants, probably more than any other place in the United States, due to its proximity to the Mexican border. The Los Angeles region accounted for one-third of all the estimated undocumented immigrants during the 1980 census. Of the 1.8 million who applied for permanent resident status under the Immigration Reform and Control Act (IRCA) in 1990, 35 percent resided in Los Angeles County. In the Los Angeles region as a whole there were over 750,000 applicants for legalization. As of January 1992, it was estimated that there were as many as 1.5 million people who either received amnesty or were still unauthorized residents in Los Angeles.

1.3 Significant immigration from Mexico, Asia, and Latin America has, in addition to diversifying the racial and ethnic makeup of the Los Angeles area, greatly increased the variety of languages spoken in Los Angeles. There are approximately 160 languages spoken in Los Angeles County. The largest and most rapidly growing language groups in Los Angeles are also the fastest growing in the Nation. Spanish stands alone in size, establishment, and institutionalization, followed by rapidly expanding but still comparatively small Asian language groups. Use of Spanish and Asian languages in Los Angeles has roughly doubled in a decade. According to the 1990 U.S. census, in the city of Los Angeles, 49.9 percent of the population speak a language other than English at home. Approximately 17.5 percent of the city's population does not speak English well. In Los Angeles County, 45.4 percent of the population speak a language other than English at home. This is a rate well above traditionally polyglot New York (29 percent) and over three times the national average (14 percent). Moreover, 25 percent do not speak

English well in Los Angeles County, a rate which is nearly twice as high as New York's (13 percent). The Los Angeles Police Department (LAPD) and the Los Angeles County Sheriff's Department (LASD) face a significant challenge in communicating with a large portion of city and county residents who are relative newcomers to the United States and do not speak English well, if at all.

Recommendation:

- The LAPD and the LASD should continue to emphasize and improve programs that affect the relationship between law enforcement and minority and immigrant communities, as well as racial and ethnic tensions generally, in Los Angeles. Among others, these include programs concerning community policing, cultural awareness, language training for department personnel, translator services, bilingual recruiting and incentive pay, and the ready availability of complaint and commendation forms in a reasonable number of the more prominent non-English languages spoken in the Los Angeles area. More specific findings and recommendations concerning these programs appear in the section on chapter 5.

Chapter 2: Update on Christopher Commission Reforms

Use of Excessive Force

Findings

2.1 Historically, the strained relationship between local minority residents and the LAPD has repeatedly focused the Nation's spotlight on the city of Los Angeles. Observers who have witnessed or studied various confrontations between police officers and minorities in Los Angeles have contended that the department's use of excessive force significantly contributes to this tenuous relationship. Concomitantly, police officers cite factors such as suspects' increased use of drugs and violent behavior to explain their use of varying degrees of force. Although implementation of reforms recommended by both the McCone and the Christopher Commissions have begun, perceptions and incidents of the department's application of excessive force towards people of color continue

to occur in Los Angeles. As a result, lingering racial and ethnic tensions between minorities and law enforcement authorities remain.

2.2 A Christopher Commission survey of LAPD police officers revealed *inter alia* that "64% [of the respondents] said a lack of verbal communication skills may lead to the use of excessive force." Other sources, such as witness testimony elicited from the September 1996 Los Angeles hearing and a related recommendation from the Minnesota Advisory Committee to the U.S. Commission on Civil Rights (*Police Practices in the Twin Cities* (1981)) confirmed that additional training in conflict resolution and mediation could offer alternatives to use of excessive force.

Recommendation:

- The Los Angeles Police Department should investigate police training programs that offer conflict resolution and mediation. In addition, the LAPD could enlist the assistance of Community Police Advisory Boards in participating in this training. These skills may be useful in defusing some situations that could potentially escalate into violence.

Finding

2.3 Previously, the LAPD's policies canine policies generated a number of complaints of biased deployment against minorities, which resulted in several injuries. The LAPD revised its canine deployment and reporting policies and changed its K-9 Platoon's training approach from a "find and bite" method to a "find and bark" strategy. This modification has reduced injuries to suspects, lost individuals, and police officers. Further, a review of the department's K-9 Summary Report for July 1, 1995, though June 30, 1996, indicated that the greatest number of canine deployments occurred in the Newton division, and the highest number of canine physical contacts occurred in the Southwest division.

Recommendation:

- The Los Angeles Police Department should continue using its "find and bark" policies and other related strategies for canine deployment. However, the LAPD should also investigate the underlying reasons for its

rates of deployments and canine (physical) contacts in particular LAPD divisions.

Finding

2.4 Current legal precedent on law enforcement authorities' use of force maintain that police officers should use "reasonable" force based on viewpoint of a "reasonable officer on the scene." Similarly, LAPD use of force policies emphasize that police officers should not resort to force unless all other "reasonable alternatives have been exhausted or would clearly be ineffective under the circumstances." Determining the "reasonableness" of the type and amount of force that should be applied therefore lies with the police officer.

Recommendation:

- The Los Angeles Police Department should investigate training options that explore those uses of force that would be "reasonable" in commonly occurring confrontational situations. This may help to eliminate varying interpretations of what constitutes a "reasonable use of force" in particular circumstances.

Finding

2.5 A study of the department's use of Oleoresin Capsicum (OC or pepper spray) indicated that it is frequently used on African Americans and Hispanics. Overexposure to OC and exposure to pepper spray for individuals with preexisting respiratory, mental, or drug-related illnesses have been fatal to some individuals. However, the department's use of OC as a "nonlethal" use of force has increased in the past few years. Fatalities have also resulted from the combined practice of exposing suspects to pepper spray and subduing them by using the hobbling technique. Although the Police Commission recently prohibited the department from using hobbling as a restraint procedure, other police representatives in the Nation contend that without its use, violent or overly aggressive suspects will more likely be injured.

Recommendation:

- The inspector general of the Police Commission is currently reviewing the department's policies and practice of OC use in order to determine if it is being used as a punitive

device. Her findings should be incorporated into LAPD policies and training. If OC continues to be used by the department, police officers should continue to be trained in its proper application, in order to avoid overexposing suspects. Further, random checks of police officers' subduing techniques should be performed, in order to ensure compliance with the Police Commission's recent mandate. Other alternative restraint methods should be investigated and pursued to protect officers and bystanders from violent suspects.

Finding

2.6 A recent bank robbery in the North Hollywood section of Los Angeles demonstrated that the suspects used automatic weapons and protective body armor to withstand gunfire from law enforcement authorities. The LAPD's arsenal was not equipped with automatic weapons to confront these individuals. In response, legislation is pending that would prohibit the mail order sale of body armor, while the department has purchased M-16 weapons.

Recommendation:

- Further investigation is required to determine whether the department's policies on use of automatic weapons will differ from its use of regular weaponry. Although departmental policies on the use of deadly force offer some guidance, the input of representatives from the Police Commission, the LAPD, the Inspector General's Office, the Police Protective League, the Mayor's Office, CPABs (and local residents), and the Los Angeles City Council is needed to devise policies that will ensure safeguarding the lives of both police officers and community residents.

The Code of Silence

Finding

2.7 The "code of silence" continues to be a barrier to eradicating excessive force and discriminatory treatment in the LAPD.

Recommendation:

- The Inspector General should continue to meet privately with those police officers and

LAPD staff who wish to report allegations of infractions.

Racism and Bias

Finding

2.8 Historically, the department has had a strained relationship with Los Angeles' minority communities. In addition, the Christopher Commission also reported that bias exists within the LAPD against minority, female, and gay police officers. Although reform efforts have focused on reducing this problem, complaints of discriminatory treatment continue.

Recommendations:

- The Los Angeles Police Department should continue its efforts to improve its relationship with local residents, particularly in minority communities. Use of public police-community forums and CPABs that reflect the diversity of the LAPD's various police divisions would be helpful in this regard.
- To determine the scope of the problem of racism and bias within the department, the LAPD should work cooperatively with the Inspector General's Office to unify approaches in collecting statistical evidence of "ethnic remarks," "gender bias," etc.
- The LAPD should continue cultural diversity training efforts for sworn and nonsworn department staff.
- The LAPD should encourage use of bilingual officers and staff, as well as available communication resources (i.e., the AT&T interpreter service).
- The LAPD should ensure that police recruitment efforts are inclusive.
- The LAPD should intensify efforts to eliminate the impact of the "code of silence" in reporting and preventing instances of racism and bias.

Civilian Complaints

Finding

2.9 The public's access to civilian complaint forms has improved since the time of the Christopher Commission's report. Complaint forms are now located in nearly all department divisions. However, some police officers maintain that greater access to civilian complaint forms will encourage false complaints against police

officers. Outstanding issues that remain include: residents may not be aware of the status of their complaints or how to file a complaint; the department's Internal Affairs Department may not be adequately staffed to appropriately handle increasingly complex allegations and the volume of complaints; and the Office of the Inspector General and the department have differing methodologies in determining the actual number of civilian complaints.

Recommendations:

- The Los Angeles Police Department should implement the inspector general's recommendations on improving the civilian complaint process.
- The LAPD and the Inspector General's Office should agree upon one approach to determine the number of civilian complaints (i.e., those complaints that have been classified as "formal complaints" v. all complaints).

Officer Discipline

Findings

2.10 The Inspector General's Office and the special counsel to the Police Commission have recommended that the "miscellaneous memorandum" procedure be discontinued, due to an unbalanced application of this classification. The OIG's preliminary findings indicated that command staff received more miscellaneous memorandum classifications than rank-and-file officers. Rank-and-file officers also generally maintain that they are punished more severely than command officers for similar infractions, which ultimately affects police morale.

2.11 The Public Safety Officers Procedural Bill of Rights Act was recently enacted in California, which would prohibit punitive action from being taken against officers or denying them promotions for alleged infractions, if investigations of their complaints lasted longer than 1 year. Testimony revealed that it is unclear what impact this act will have on determining officers' potential behavior patterns (towards use of excessive force), if prior complaint history cannot be examined.

Recommendations:

- The OIG should work jointly with the LAPD to determine the future usefulness of the miscellaneous memorandum classification.
- Although mental health assistance is available for department staff, some officers may not wish to initiate treatment. In order to determine if referrals to psychologists, training, or other intervention are appropriate for officers with a disproportionate number of complaints (regardless of their status of the complaint), it may be necessary to examine an officer's personnel record. Cooperation of the Police Protective League, the California legislature, local politicians, and the department will be necessary.

Community Relations and Community Policing**Finding**

2.12 The Christopher Commission recommended that the LAPD institute a "community policing" model and philosophy, which focused upon including the input of neighborhood residents in solving those concerns that potentially contribute to crime. Initial efforts have yielded mixed results: CPABs have been established in local Los Angeles areas, and it is reported that some communities have an improved relationship with the LAPD (i.e., the Wilshire division, South Bureau area, the Hollenbeck/East Los Angeles sections, and the Valley). However, it has also been reported that not all of the department's police officers support the concept of community policing. In addition, there is a need for additional efforts for police officers to become more knowledgeable about diverse cultures, in order to improve relationships with immigrant communities.

Recommendations:

- The LAPD should increase its efforts to interact positively with its diverse communities. These exchanges should serve to educate the public on police services and to improve general relationships with civilians.
- The Los Angeles Police Department should have a central understanding about the concepts and application of community policing, if this should remain the continued focus for the LAPD. Employees who are resistant to

this policing strategy should be addressed through appropriate administrative procedures.

Chapter 3: Racial and Gender Bias in the Los Angeles Police Department**Racial and Gender Bias****Findings**

3.1 Gender bias has been, and continues to be, a significant problem within the Los Angeles Police Department as it is in other law enforcement agencies. Commissions, task forces, consultants, and police leadership have acknowledged problems of gender bias within the Los Angeles Police Department. Internal LAPD studies indicate significant numbers of women within the department who feel that sex discrimination and harassment are major problems facing the LAPD. An inquiry into working conditions for females in the West Los Angeles area revealed that an informal group of men who formed an association called Men Against Women "inhibited women from safely and effectively performing their duties and created fear in many women that these male officers would not provide back-up if they requested it in the field." An internal LAPD task force set up to investigate Mark Fuhrman's allegations of misconduct called the behavior towards women in the West Los Angeles station egregious and noted that it was unconscionable that supervisors and managers either directly or tacitly allowed the hostile environment to occur for nearly 10 years.

3.2 Signs of gender bias within the LAPD have continued even more recently. In July 1997, interim Chief Bayan Lewis said that he was launching a thorough audit of the entire LAPD to ferret out hostile work environments after pictures of scantily clad women and a crudely fashioned "trophy" in the shape of male genitalia were discovered decorating a vice office. In May 1997, the Feminist Majority Foundation and the National Center for Women & Policing called for an independent citizen's commission to investigate the problems of gender bias in the LAPD.

Recommendation

- Given the clearly recognized problem of gender bias within the LAPD, there is no need

for another commission to investigate the problem again. Rather, the LAPD must endeavor to take firm and decisive action to eradicate the gender bias that exists within the department.

Finding

3.3 There is a divergence of opinion about the level of racial and ethnic tension within the Los Angeles Police Department. While some believe that racial and ethnic tension within the department is decreasing, others believe that such tension is increasing. Whether or not racial and ethnic tensions are increasing in the Los Angeles Police Department, there exists a very real perception that such tensions are paramount. The perception, whether real or perceived, has created an environment in which groups of officers find it necessary to resort to legal action to address their complaints of discrimination.

Recommendation:

- The Los Angeles Police Department must make a concerted effort to counter the perception of increasing racial and ethnic tensions within the Department. To that end, the Los Angeles Police Department must ensure fairness and equity in hiring, discipline, promotions, and training. The LAPD must also foster an environment that feels open and inclusive to those of varying racial and ethnic backgrounds.

Finding

3.4 Despite the perception of some of an increased level of bias in the LAPD, formal complaints of bias within the LAPD have not increased dramatically in the last few years. In fact, according to documents provided by the Los Angeles Police Department, complaints of ethnic remarks remained fairly constant. There is criticism, however, of the LAPD's record-keeping. The inspector general noted that ethnic remark complaints are sometimes subsumed within other categories, such as discourtesy or unbecoming conduct. Moreover, Commission review of documents revealed inconsistencies in the numbers of gender bias complaints among documents produced by the LAPD.

Recommendation:

- The LAPD must make an effort to overhaul the record-keeping procedures to ensure accuracy and consistency. Without accuracy and consistency, any report of a decrease in bias complaints is meaningless. In addition, as recommended by the inspector general, the LAPD must make a greater effort to properly categorize ethnic remark complaints.

Finding

3.5 Some witnesses at the Commission's hearing alleged yet another problem with the records of bias complaints within the department. They contended that the number of complaints actually made does not reflect the level of bias within the department because officers are unwilling to come forward with complaints for fear of retaliation. According to some, officers are afraid that complaints of bias will lead to decreased promotional opportunities and less favorable assignments. They may even fear for their own safety on the job insofar as they fear that others will refuse to back them up. The Fuhrman Task Force recognized the hesitation in coming forward with complaints of bias. It noted that the disciplinary system seems to hinder people from coming forth with problems for fear of having to endure the disciplinary process itself. According to the task force report, some victims may only desire understanding rather than punishment.

Recommendation:

- The process for resolving complaints of bias must be improved to ensure that officers feel comfortable coming forward with their concerns. Complaints of bias within the department should be addressed and dealt with separate from other complaints. As much as is possible, confidentiality should be guaranteed to all complainants, as well as to those accused of bias. In addition to improving the formal complaint procedure, the LAPD should establish more informal ways for officers to voice their concerns of bias. The number of complaints of bias obtained through these informal routes should be tracked and considered by police leadership when it is considering the nature and extent of bias complaints within the department.

Finding

3.6 The inspector general found it “troublesome” that only a small percentage of ethnic remark complaints (6 percent) were sustained. She recommended that investigators should be trained to use “pattern and practice” evidence and to judge the credibility of witnesses.

Recommendation:

- The disposition of complaints of ethnic remarks should be regularly audited by the inspector general to determine whether it appears that an artificially low number of complaints are being sustained. Investigators should be trained to use “pattern and practice” evidence and to judge the credibility of witnesses when determining the disposition of ethnic remark complaints.

Employment Issues

Findings

3.7 The LAPD should be commended for the strides it has made in improving diversity on the police force. Los Angeles leads police departments across the state of California in the percentages of women and minorities on its force. With women at 17 percent of the force, however, the LAPD is still far below the goal set by the Los Angeles City Council of 40 percent for female representation.

3.8 Moreover, it is troublesome that the LAPD’s hiring of women and blacks declined markedly in the 6-month period preceding the Commission’s hearing. A perception exists that the LAPD is not aggressively recruiting women and minorities. It appears that recruiting of women and blacks has slowed considerably as the numbers of applicants from these groups declined markedly immediately prior to the Commission’s hearing.

Recommendation:

- The LAPD must continue to strive for diversity in its recruiting efforts. To that end, it should track the sources from which women and minority applicants are learning about employment opportunities at the LAPD. It must then aggressively target these sources in its recruiting efforts.

Finding

3.9 As part of the hiring process, applicants to the LAPD are interviewed by a panel of two police officers and one citizen. The interview is the only part of the hiring process that is scored; the other hiring components are graded as pass/fail. Thus the interview carries much weight in the hiring decision. As of September 1996, 79.8 percent of the interview boards for recruiting new officers included one female. Some former citizen members have noted that the scores for white male candidates are inflated because the officers on the panel believe an inflated score is necessary for a white male to compete. This creates an artificial disparity between male and female candidates and contributes to a perception among male officers that recruiting standards are lower for women.

Recommendation:

- The LAPD must make greater efforts to ensure diversity on its oral interview panels. Each interview panel should have female and minority representation. In an effort to bolster accuracy and consistency in scoring among candidates for police recruits, the LAPD should develop the following procedures: standardized written interview questions; uniform rating criteria; and procedures to ensure consistency of rating by different raters.

Performance of Female Police Officers

Finding

3.10 Studies have consistently found that women perform as effectively as men in most aspects of police work. Moreover, female officers are more likely to defuse violent situations without resort to an excessive use of force and are less likely to be involved in a serious lawsuit against the LAPD. In addition, female police officers are likely to deal with rape and battered victims better than male officers. Similarly, the Women’s Advisory Council to the Los Angeles Police Commission found that women provide more effective responses to violence against women.

Recommendation:

- The Los Angeles Police Department should consider it a high priority to attract, recruit, hire, and retain female officers.

Attrition Rates**Findings**

3.11 Historically, the attrition rate for LAPD officers and recruits who are minorities and/or female has differed significantly from that for white males. More recently, attrition among minorities and females has been close to or below their representation on the force. Among recruits, however, there are significant differences in attrition when race and gender are taken into account. From July 1993 through March 1995, women left the Academy at double the rate of males. The attrition rate among women was 14 percent versus 6.8 percent for men. The attrition rates become even more skewed when race is also taken into account. For example, black women were leaving the Academy at a rate of 26 percent. In contrast, the attrition among white males was just 4.1 percent. Attrition among black males and Hispanic males is 8.5 percent and 8.2 percent, respectively.

3.12 Some believe that the academy's emphasis on physical training has an adverse impact on the retention of women recruits. Training has ameliorated some of the disparity in attrition rates between males and females. According to the Los Angeles Police Department, the Crime Prevention Assistance Program, a training program developed by the LAPD in 1980 designed to deal with attrition, has led to improved attrition rates among female recruits. Upon implementation of CPAP, attrition rates for women were reported to have dropped dramatically. As noted above, however, disparity in attrition rates still remains.

Recommendation:

- The LAPD should determine the reasons female and/or minority recruits are leaving the academy at significantly higher rates than white males. The Crime Prevention Assistance Program should be evaluated to determine how it may deal more effectively with the continued disparity in attrition rates between males and females. Additionally, a program similar to the Crime Preven-

tion Assistance Program should be designed with an emphasis on addressing the disparity in attrition rates between minority and nonminority recruits. Minorities should be encouraged to participate in such a program.

In-Service Training**Finding**

3.13 The LAPD has expended considerable effort to improve its training program to counter racial and gender bias in the department. In developing a cultural awareness training program, the LAPD solicited input from various community groups to develop a training program for cultural diversity. As of the Commission's hearing, 51 percent of the LAPD had received cultural diversity training. With respect to gender bias, from March 1995 through June 1996, 93 percent of the LAPD's employees attended a sexual harassment training workshop.

Recommendation:

- The LAPD should be commended for its training efforts with respect to racial and gender bias. The LAPD should continue its efforts to offer its cultural awareness and sexual harassment training programs to the entire department. Moreover, the LAPD should ensure that its training efforts are supported by the words and actions of its commanding and supervisory officers.

Promotions**Findings**

3.14 The Hunter-La Ley consent decree addresses promotion of women and minorities. Documents produced for the Commission by the LAPD reflect that the department has not yet reached the goals set by the Hunter-La Ley consent decree since implementation of the decree in 1992. Although African American officers have made strides in attaining leadership positions, advocates for women, Latinos, and Asians continue to express dismay that these groups are clustered in the lower ranks.

3.15 Witnesses at the Commission's hearing testified to the importance of promoting women and minorities in the LAPD. They also alleged bias in the promotional system. The application of the three whole score band in the last 6 months of a promotional cycle leads to tensions

among minority group members who feel they must compete against each other for a limited number of positions.

Recommendation:

- The Los Angeles Police Department should place a high priority on diversity in its promotions. The LAPD should bring in outside consultants to analyze whether the promotional examination and/or the interviews are free from bias. The LAPD also should consider using alternative selection devices to eliminate adverse impact. Alternative selection devices should lead to fairer promotional opportunities for members of all groups throughout the 2-year promotional cycle which subsequently would lessen the tension that results among minority group members who feel they must compete against each other in the last 6 months of the promotional cycle.

Police Protective League

Finding

3.16 Tension exists between the police union and the black police officer's association based on a perception that the union does not adequately represent its black members. For example, the union has funded court challenges to affirmative action. The Police Protective League has also alleged that then Assistant Police Chief Bernard C. Parks engaged in a campaign to force the promotion of women and minorities at the expense of qualified white male candidates.

Recommendation:

- The Police Protective League and the Oscar Joel Bryant Foundation should engage in building a more constructive relationship. Representatives from both organizations should engage in dialogue that would allow both organizations an opportunity to voice their concerns and to respond to their respective concerns.

Disciplinary System

Finding

3.17 A perception exists that officers are subject to widely disparate penalties, even for the same type of offense, based on their race or ethnicity. Documents produced by the LAPD for

the Commission revealed that for the cases closed between July 1, 1994, and June 30, 1995, blacks received 25 percent of all discipline imposed on sworn personnel. Yet blacks only represented 14.9 percent of the force as reported in December 1995. A 1993 thesis analyzed the LAPD's data on penalties administered on sustained complaints. The thesis revealed that a disparity existed between the higher penalties accorded whites and minorities. The department's inspector general noted that she was closely observing the department's disciplinary process and was particularly concerned with looking at the consistency of penalties.

Recommendation:

- Complaints and penalties should be regularly audited by the inspector general concerning penalty equity and the fairness of the process. The inspector general should pay particular attention to fairness issues concerning the race, ethnicity, and gender of the complainant and the penalty imposed. The disposition of complaints of gender discrimination and/or harassment should also be audited regularly.

Finding

3.18 One witness expressed frustration over what she sees as inconsistent penalties applied to those who engage in gender discrimination or harassment. She believes the inconsistent penalties send a message that the leadership is not genuinely concerned with eradicating these problems. Consistent with her concern, an internal LAPD task force noted its concern that an specialized assignment after his personal involvement officer gained admission to a much sought after in the "Men Against Women" group was known.

Recommendation:

- Commanding officers should receive formal training on the methods of determining consistent penalties to eliminate any potential bias in the system. Such training should lead to more consistency and equity in their penalty recommendations. It should also lead to an improved perception of the fairness of the disciplinary system. An officer's disciplinary history should be considered an important

factor in determining future assignments and promotions within the department.

Finding

3.19 According to the LAPD's inspector general, a major accomplishment of the Disciplinary Task Force set up by the Police Commission has been the evaluation and recommendation of changes to the LAPD's Guide to Discipline, which attempts to standardize discipline for sustained misconduct.

Recommendation:

- The *Guide to Discipline* should serve as an objective guide that quantifiable criterion exists to ensure penalty equity. Commanding officers should be required to use and refer to it as an integral part of the disciplinary process. It should be used extensively in the training commanding officers receive with respect to the disciplinary system.

Chapter 4: Los Angeles Sheriff's Department

Finding

4.1 The LASD now has a fully operating computerized system (the Personnel Performance Index) with the ability to track various data, including the use of force, complaints, commendations, and lawsuits. However, the lack of timely, accurate entry of information into the system undermines its effectiveness. In some cases, errors are due to the absence of procedures for reporting and entering information into the database. Station personnel who are essential for relaying information from the public do not uniformly report the information. A breakdown in reporting or entering all relevant information undermines the quality of data available through the PPI.

Recommendations:

- The Los Angeles Sheriff's Department should conduct a review of the data contained in the PPI to verify the accuracy of the information. Inconsistencies and errors should be corrected to ensure that the data currently in the system is accurate.
- The LASD should conduct a review of how data is entered into the PPI to identify actual or potential areas of inconsistent re-

porting. The department should disseminate uniform reporting procedures to all appropriate personnel.

- The LASD should monitor and periodically test the accuracy of the data in the PPI to ensure that reporting procedures are being followed.

Finding

4.2 There is a longstanding belief among community members that force is used disproportionately on minorities. According to past practice, the LASD did not maintain data on the race of suspects subjected to the use of force, the type of force used, or the suspected crime. Such information is crucial to determining whether or not force is used disproportionately on minorities. If the allegations are true, the LASD should take action to correct any biases. If untrue, the department will have statistics to counter false perceptions and build better relations with the community.

Recommendation:

- The Los Angeles Sheriff's Department should utilize the capabilities of the PPI to track the race of suspects subjected to the use of force, the type of force used, the suspected crime, and whether or not the suspect was convicted of the crime for which he or she was arrested. Conviction rates within each racial group will allow the LASD to compare the conviction rates of different groups and determine whether there is any institutional bias to arrest individuals of any racial group.

Finding

4.3 Information from complaints filed with the LASD is an important source of feedback from the community. Data on the types of complaints may assist the LASD in identifying areas that need improvement. Demographic information about complainants may assist the department in gauging how it is perceived by different segments of the population. This information would be useful in determining trends, if any, in the LASD's relationship with different demographic groups.

Recommendation:

- The LASD should continue to maintain data in the PPI on the demographics of complainants, including the complainant's race, age, and the nature of the complaint. Complainants should be assured that the information is collected for statistical purposes only.

Finding

4.4 The public has little confidence in the LASD's ability to discipline its members. The Kolts Report found little or no discipline in many instances, even in cases resulting in large settlements or verdicts. Although there appears to be some improvement in the investigation of misconduct, little has changed in administering discipline for proven cases of misconduct.

Recommendations:

- The Los Angeles Sheriff's Department should uphold a commitment to discipline, particularly in cases of proven misconduct. The LASD should stand firm on a disciplinary decision even if it is appealed by the officer.
- Discipline should be proportional to the misconduct and consistently applied, not just in egregious cases.

Finding

4.5 Since the Kolts Report, the LASD has taken steps to make its complaint system more accessible to the public. These efforts include a toll free number for filing complaints and directives to personnel that they should not discourage or intimidate complainants. Nevertheless, obstacles to filing complaints remain at some stations. While LASD personnel are helpful and cooperative at some stations, they are hostile or intimidating at others.

Recommendation:

- Periodically, the Los Angeles Sheriff's Department should employ testers to investigate whether station personnel are cooperative with complainants. The department should make clear that hostile or intimidating behavior will not be tolerated.

Finding

4.6 The Office of the Ombudsman is a successful liaison between complainants and the

sheriff's department. Since its inception in 1994, the office has helped to reconcile misunderstandings between community members and department officials and has informed complainants on the progress of their complaint. However, the ombudsman has not made the LASD's complaint adjudication process more legitimate to the public. Thus, the establishment of the Office of the Ombudsman has done little to quell demands for civilian review. Civilian review systems do not find police officers at fault more often than internal systems. However, their decisions are more widely accepted by the public because they act independently of the police department. Where, as in the case of the LASD, there has been a history of mistrust by the community, any system of adjudicating complaints that is controlled by the department will be viewed with suspicion.

Recommendation:

- The Los Angeles County Board of Supervisors should establish a civilian review board with the power to investigate and adjudicate complaints of police misconduct. A civilian review board may be a combination of elected or appointed members who are independent from the LASD. Every effort should be made to ensure that the board will make fair decisions. For instance, board members may undergo an orientation program with the LASD to give them a better understanding of police work.

Finding

4.7 The district attorney's reliance on police cooperation for prosecuting crimes conflicts with its duty to prosecute police misconduct. There is low public confidence in the DA's office as a tool for controlling misconduct by LASD officials. Because of its relationship with the sheriff's department, combined with the small number of police prosecutions, claims by the DA that there is insufficient evidence to prosecute a given case are met with skepticism.

Recommendation:

- An independent prosecutor should be established to investigate and prosecute police misconduct so that the District Attorney's Office may be relieved of those responsibilities.

Finding

4.8 California Penal Code §148.6, which criminalizes false complaints against a police officer, has a discouraging influence on people with legitimate complaints. While officers should be protected from false allegations, a better approach is to ensure that the LASD conducts fair investigations of all complaints. The statute's admonishment becomes more threatening by the fact that the department determines whether or not a complaint is founded. From 1993 through 1996, the LASD determined 38 percent of complaints received by the public to be unfounded. The statute adds yet another obstacle to achieving an open complaint process. The fact that only a fraction of complaints are adjudicated to be founded also suggests that a mere allegation is insufficient to establish officer misconduct.

Recommendation:

- California Penal Code §148.6 should be repealed. A more open complaint system may be maintained without exposing LASD personnel to unfair reprisals by ensuring that the department fully investigates complaints before imposing discipline.

Finding

4.9 Some off-duty LASD deputies have used their service weapons in ways that endanger public safety. Many of those deputies were intoxicated. Gun carrying officers must exercise sound judgment whether they are on or off duty. The LASD's disciplinary guidelines for off duty conduct are vague and do not specifically address the use of a firearm. Thus far, the department has failed to ensure that weapons are used in a responsible manner by off-duty officers.

Recommendations:

- The Los Angeles Sheriff's Department should prohibit deputies from carrying firearms while they are intoxicated or consuming alcohol. The disciplinary guidelines should stipulate appropriate discipline for violating such a policy.
- The LASD's disciplinary policy should specifically address the misuse of firearms by off-duty officers.

Finding

4.10 Serious allegations persist that groups of deputies have formed associations that harass and brutalize minority residents. The LASD contends that personnel may rally around station mascots when socializing or participating in sports competitions but denies that such groups engage in misconduct. The Kolts Report found that "some deputies at the Department's Lynwood Station associate with the 'Viking' symbol, and appear at least in past times to have engaged in behavior that is brutal and intolerable and is typically associated with street gangs." Although the sheriff has transferred some members of at least one group, he insists that this was done to discipline individual misconduct, not group activity. Community representatives assert that deputy gangs exist and continue to recruit new members. In September 1998, the LASD acknowledged the existence of a group of vigilante department employees known as the Posse.

Recommendation:

- In light of past misconduct by members of deputy associations, allegations that they continue to engage in misconduct, and the recent acknowledgment of at least one such group, the LASD should initiate a careful investigation into allegations of other deputy gangs. Deputies innocent of wrongdoing should not be penalized merely for their association with a group. However, the LASD should not ignore recurring allegations of misconduct by association members. The LASD should take steps, including careful investigations by the Internal Criminal Investigations Bureau or by the Internal Affairs Bureau, to disband such groups permanently. The seriousness and recurring nature of the allegations warrant an investigation by the U.S. Department of Justice.

Finding

4.11 Police force diversity is an important element in police-community relations. People of different backgrounds working together as colleagues promotes greater understanding within the police force. A representative agency is also more likely to win the respect of the community. The LASD has made some effort to increase diversity in recent years by encouraging women

and individuals from minority groups to apply for department positions. Although the LASD has made some improvement, progress has been slow.

Recommendation:

- The Los Angeles Sheriff's Department should maintain aggressive recruitment efforts to encourage individuals from under-represented segments of the population to apply for positions with the department.

Finding

4.12 A diverse, representative work force is still wanting unless all members of the department have the same opportunities for advancement. This issue is being addressed in part by the Bouman consent decree. Nevertheless, the department is slow in promoting women and minorities to coveted positions. Vacancies for high profile or coveted positions are not always widely publicized and employees do not feel that the positions are open to all qualified individuals.

Recommendations:

- The Los Angeles Sheriff's Department should ensure that qualified women and minorities have the same advancement opportunities as other employees.
- The LASD should publicize vacancies for coveted positions throughout the department to attract a broad range of applicants.

Finding

4.13 The value of police canines is their ability to locate hiding suspects through their keen sense of smell. Most canine bites are unnecessary. Canine attacks cause severe physical and psychological injuries. Because the degree of injury from a canine attack is unpredictable, the suspect's injuries may be disproportionately severe. Until recently, LASD canines were trained to find and bite the suspect until the handler commanded the dog to release. The LASD is now conditioning its canines to find and bark out the location of the suspect. Even with this new method of training, bite injuries will occur unless handlers closely control their canines. The LASD's tighter management of the canine unit appears to be paying off in terms of lowering the number of bites.

Recommendations:

- LASD policy should not only define when the use of canines is appropriate but should also strictly define when a canine is allowed to bite.
- The Los Angeles Sheriff's Department should maintain close management of the canine unit to further lower the bite ratio.

Finding

4.14 The LASD is criticized for using canines disproportionately against minorities. Over 80 percent of those bitten by police canines are black or Hispanic. The LASD claims, however, that canines tend to be used in higher crime areas and that the racial demographics of suspects bitten correlate with the racial demographics of suspects arrested for the same crimes. However, this assertion does not eliminate the possibility of institutional bias. Any institutional bias against minorities would result in disproportionate arrests of minorities as well as disproportionate canine deployments and bites of minority suspects. A better indicator would be to compare the convictions rates of different racial groups for each type of crime for which canines are used.

Recommendations:

- The Los Angeles Sheriff's Department should continue collecting detailed data on the suspect's race and alleged crime for which canines are deployed.
- The LASD should also track the suspected crime, the race, and conviction rate of suspects apprehended by canines.

Finding

4.15 Within the Los Angeles County jails, inmates live in an environment controlled by deputies. To maintain order, deputies have the power to punish inmates who violate the rules. Deputies are more likely to abuse their power in the closed environment of a jail where inmates are already incarcerated for some violation and may be isolated from any witnesses. Use of force incidents in the jails are not always reported as required by LASD policy. Excessive force as well as less severe incidents of gratuitous force for minor infractions continue to be a problem in the county jails.

Recommendations:

- The Los Angeles Sheriff's Department should tighten management of the jails and make it clear to employees that excessive force will not be tolerated.
- The LASD should ensure that officers report all uses of force and discipline officers who fail to do so.

Finding

4.16 The LASD's failure to attend to the medical needs of inmates is a serious problem in the Los Angeles County jails. Inmates are sometimes unable to obtain medication for serious illnesses because of administrative miscommunications. In some cases, deputies withhold or delay medical care for inmates who become sick or injured. Grave injuries have resulted from the callous treatment of seriously ill inmates.

Recommendations:

- The Los Angeles Sheriff's Department should ensure that it has an adequate system for delivering medication to inmates.
- The LASD should make it clear to employees that sick or injured inmates must be given prompt medical attention. Those who fail to comply should be disciplined.

Finding

4.17 Racial tensions that exist in the community continue among inmates in the confines of the jails. LASD officials are well aware of this and management asserts that they try to keep the jail modules racially balanced. Nevertheless, there were disturbing reports that deputies used the tension between racial groups to pit one group against another.

Recommendation:

- The Los Angeles Sheriff's Department should emphasize to all employees that racial tensions must be minimized in the jails.

Finding

4.18 The LASD has done little to reduce the amount time a deputy spends in a custody assignment. The joint statement of Sheriff Block and Judge Kolts in 1993 stated the goal of reducing the custody assignment to a range of 18 months to 2 years. Deputies currently spend 4 to 6 years in custody assignments. Although the

jail environment may be a valuable training ground, the length of the assignment outlives its usefulness. Deputies seeking a career in patrol may be frustrated with the long wait. Because minorities are overrepresented in the jails, the extended time in custody may affect a deputy's conduct toward racial minorities once on patrol.

Recommendation:

- In the case of future patrol deputies, the LASD should reduce the time that they spend in a custody assignment.

Finding

4.19 Special Counsel Merrick Bobb has been reporting on the LASD since the Kolts Report was issued. His monitoring activities are essential for informing the public of the LASD's progress as well as areas that need improvement. Public knowledge of the LASD's activities is particularly important because the department is headed by an elected official. Since the Sheriff operates without oversight, this exposure is instrumental in maintaining current gains and pressuring the LASD to make further improvements.

Recommendations:

- Upon the expiration of Special Counsel Merrick Bobb's contract in 1999, the County Board of Supervisors should establish a permanent independent monitor to investigate and report on the policy and practices of the LASD. Periodic reports should be made available to the Board of Supervisors and to the public.
- The duties of a permanent monitor should include ensuring that the PPI contains accurate data and employing testers to investigate the complaint system.

Chapter 5: The Relationship of Local Law Enforcement with Los Angeles Immigrant Communities

Increasing Intolerance of Immigrants Findings

5.1 There is a widespread perception among civil rights and immigrant rights groups and Latino, Asian, and other ethnic minorities that anti-immigrant sentiment in the Los Ange-

les area, among the public generally and in law enforcement, has dramatically increased in recent years and is currently greater than it has ever been. The April 1996 South El Monte beatings of two undocumented immigrants and the support expressed for the two deputies involved by some of the public and some in law enforcement are seen as indicative of this climate.

5.2 Civil rights and immigrant rights groups and Latino, Asian, and other ethnic minorities see the developing anti-immigrant climate in Los Angeles as an open invitation to officers to discriminate on the basis of skin color, language, or accent as a proxy for potential “illegal” status. There has been an increase in abusive and discriminatory treatment of Latinos—many of them U.S. citizens or legal residents—by law enforcement officers, including insulting racial or ethnic slurs, unreasonable searches, and demands for immigration papers without cause. A number of recent cases of alleged police misconduct involving Korean Americans have similarly damaged law enforcement relations with the Korean and Asian American communities in Los Angeles. The Chong case in particular, which involved the failure of the LAPD to either seek a Korean-speaking police officer or utilize an interpreter service under contract with the city to communicate with an 81-year-old monolingual Korean immigrant taken into police custody, has damaged police relations with the Asian American and immigrant communities of Los Angeles in general.

5.3 Increasing intolerance for ethnic or racial minority immigrants is a significant contributing factor to excessive force incidents like the South El Monte beatings and to the abuses noted above. Some in law enforcement appear to have dehumanized immigrants, particularly if they are people of color, believing that they are not entitled to basic human rights. All people, regardless of immigration status are entitled to human rights. There is great danger to our society in the tendency among some to equate being human with being a U.S. citizen or legal permanent resident. This is an issue quite apart from that of an immigrant’s right to legally remain in the United States.

5.4 As a majority minority city and county with a significant immigrant population, increasing intolerance for ethnic and minority im-

migrants among the general populace and in law enforcement in Los Angeles has significantly exacerbated racial and ethnic tension and negatively affected police-immigrant community relations in the Los Angeles area.

Recommendations:

- Public education is needed to address perceptions about immigrants that may be based on erroneous assumptions or incomplete facts. Local government and community groups should collaborate on campaigns to provide the public with facts regarding immigration and immigrants upon which to base informed judgments. In addition, the mayor and City Council of Los Angeles and the Board of Supervisors of the County of Los Angeles should consider sponsoring or soliciting sponsorship for public service announcements regarding universal human rights and the value of cultural diversity, including the economic benefits to the Los Angeles area.
- The LAPD and the LASD must place greater command emphasis on the inappropriate nature of excessive force or abusive and discriminatory treatment toward immigrants, such as insulting racial or ethnic slurs, unreasonable searches, and demands for immigration papers without cause. There must also be greater accountability of station commanders for appropriate discipline of officers who, having been afforded due process, have been found to have committed such offenses.

Gang Reporting, Evaluation, and Tracking System Findings

5.5 The Gang Reporting, Evaluation and Tracking (GREAT) System is a computer database maintained by the LASD, containing information about street gangs and about individuals identified as gang members by law enforcement departments throughout California and the Nation. It has existed since 1985 and is currently the automated gang file for most counties and law enforcement agencies in the State of California. A statewide system known as CAL/Gang, expected to be operational sometime in 1998, will integrate all GREAT local agency databases and utilize essentially the same operating stan-

dards. Law enforcement characterizes it as "an investigative tool" for investigators attempting to solve allegedly gang-related crimes, and not a "rap sheet." GREAT files are accessible by any law enforcement agency that agrees to meet the minimum standards for entry of data. In order to identify an individual as a member of a gang, two of six criteria discussed in this report must be met. An investigator is authorized to remove a name if he or she determines an entry was made in error, but there is no notice to individuals that they have been entered into the system. The GREAT system automatically purges records if they have not been modified or updated within 5 years. However, each time a record is changed, the 5-year countdown begins anew.

5.6 Among the areas of concern expressed by civil rights groups and the immigrant and minority communities are the criteria for entry into the system, the lack of notice to individuals entered, the large percentage of minority individuals entered into the system, and renewal of the 5-year countdown to purging by the entry of any new information. These issues are a source of racial and ethnic tension in Los Angeles and of tension between the minority and immigrant communities and law enforcement, the LASD in particular.

Recommendation:

- The State of California or the county of Los Angeles should authorize the formation of a Gang Reporting, Evaluation and Tracking Task Force under the supervision of an appropriate nonlaw enforcement agency to investigate the issues of concern to civil rights groups and the immigrant and minority communities. The task force should include members of groups and communities that have expressed concern, as well as law enforcement personnel.

Community Policing

Findings

5.7 The Christopher Commission noted that the "community policing model places service to the public and prevention of crime as the primary role of police in society and emphasizes problem-solving, with active citizen involvement in defining those matters that are important to the community, rather than arrest statistics. Officers at the patrol level are required to spend

less time in their cars communicating with other officers and more time on the street communicating with citizens. Community policing is a philosophy of law enforcement that builds up from a base of partnerships created and nurtured at the station level by the deputies, sergeants and lieutenants with community organizations and individuals...." The Kolts Commission similarly observed that the "essence of community policing is that every person dealing with the police is to be treated with dignity and respect, even in difficult circumstances when the person is abusive, aggressive, resistant and provocative. It connotes a breakdown of the 'us vs. them' attitude and the substitution of a thoroughly professional approach. . . . It measures its success not so much by the numbers—number of arrests, response time—but rather in terms of citizen involvement, improvement in the quality of life, proactive crime prevention, coordination with social agencies and the consequential reduction of lawsuits and complaints of brutality, excessive force, and rude or demeaning behavior or language."

5.8 Both the LAPD and the LASD have made substantial progress toward the implementation of the similar models of community policing recommended by the Christopher Commission and the Kolts Commission, respectively. The existence of well-developed Community Police Advisory Board (CPAB) and Community Police Academy programs at each of the 18 geographic divisions of the LAPD are the foundation for the progress of the LAPD in community policing. Similarly, the existence of a Community Advisory Committees (CAC) at all 21 sheriff's stations and of Citizens' Academies at most sheriff's stations is the foundation for the LASD's developing commitment to community policing.

5.9 Community Police Advisory Boards and Community Advisory Committees should be composed of local residents who reflect the demographics and socioeconomic strata of each service area as well as the spectrum of views in the community concerning law enforcement and how to contend with crime in their respective communities. CPABs and CACs should be more than a vehicle for one-way communication from the station to the community or police booster clubs or vehicles to generate a positive image of the police. Rather, they should provide a forum

for captains to hear from their outspoken critics as well as their outspoken supporters. These committees are intended to be part of an early warning system: Captains need to know directly from the community where trouble is brewing, in terms of growing crime problems, underserved parts of the community, priorities, and dissatisfaction with how the police are comporting themselves.

5.10 Community organizations consider the LAPD's Community Police Advisory Boards and the LASD's Community Advisory Committees to be a step in the right direction toward community policing. However, station captains' exercise to date of their substantial discretion in selecting individuals from the community to serve on the LAPD's Community Police Advisory Boards and the LASD's Community Advisory Committees is a source of concern. There is a widespread perception among civil rights, immigrant rights and community groups that most station captains in both the LAPD and the LASD tend to exclude from CPABs and CACs, respectively, community activists and outspoken critics of police conduct. There is also a perception among civil rights and community groups that most captains also tend to pick business people, which in addition to ignoring the views of community activists, can tend to result in a board or committee that does not reflect the demographic makeup of the community. These perceptions are a source of racial and ethnic tension and of tension between local law enforcement and the communities they serve. Communities United for Police Reform (CUPR), a coalition of more than two dozen civil rights, immigrant rights and community groups, has published a proposal regarding the selection of participants in these community advisory groups, which has yet to be seriously considered by either department.

5.11 The LAPD's Community Police Academies and the LASD's Citizens Academies introduce interested members of the public to LAPD and sheriff's department functions and procedures, respectively, as well as acquaint them with other community policing services and activities that may be offered at the station in their community. Civil rights, immigrant rights and community groups appreciate this opportunity for community residents to learn what police agencies do and how their work is performed. There is, however, a widespread perception

among these groups that the LAPD and the LASD personnel at each station would benefit from nonconfrontational community orientation or instruction regarding the demographic, cultural, and linguistic nature of the community and its major institutions and cultural, business, professional, social and service resources. CUPR has published a proposal for "Community Academies" designed to achieve these objectives. Neither the LAPD nor the LASD has been receptive to the suggestion that orientation should flow from the community to the department as well as from the department to the community. This resistance has been a source of racial and ethnic tension and of tension between local law enforcement and the communities they serve.

5.12 The participation of monolingual non-English speaking residents—many of whom are immigrants—in Community Police Advisory Boards, Community Advisory Committees, Community Police Academies, and Citizen Advisory Committees has been much lower than that of other groups of residents in the communities served by the LAPD and the LASD. This is due primarily to the lack of bilingual personnel, translators, or other means of ensuring participation, such as headphone sets that provide translations, rather than any intentional actions of the LAPD and the LASD. While budgetary concerns must always be taken into account, the minimal participation of non-English speakers in these community policing bodies deprives the departments of the eyes, ears, and perspective of a significant part of the communities they serve.

Recommendations:

- The Los Angeles Board of Police Commissioners and the Los Angeles County Board of Supervisors should each form a task force to consider the issues raised by the Communities United For Police Reform in *The Community Academy/Community Police Advisory Board Pilot Project Concept* (1996). The task force should include, among others, at least one police commissioner or county supervisor, CUPR members, and members of the LAPD or LASD.
- The LAPD and the LASD should adopt guidelines for the selection of participants on CPABs and CACs, respectively, that will result in a membership that better reflects the demographics and socioeconomic strata of

each service area, as well as the spectrum of views in the community concerning law enforcement and how to contend with crime in their communities. As long as an individual demonstrates a commitment to dialogue and civility, the fact that he or she is a member of an advocacy organization or is an outspoken critic of law enforcement must not be disqualifying factors. The Los Angeles Board of Police Commissioners and LAPD leadership and the Los Angeles County Board of Supervisors and LASD leadership should give serious consideration to the proposals set forth by Communities United for Police Reform. At a minimum, the captain's discretion concerning the participants on these community policing bodies should be narrowed, with the allowance of an appeal by any party seeking to serve on a CPAB or Community Advisory Committee to the chief of police or sheriff. The chief or sheriff, or a designee, should decide appeals based on the above criteria and those discussed in findings 5.9 and 5.10.

- The LAPD and the LASD should consider adoption of some form of Community Academy for the orientation of new and existing station personnel by members of the community in the demographic, cultural, and linguistic nature of the community and its major institutions and cultural, business, professional, social, and service resources.
- The LAPD and the LASD must find ways to increase the participation of monolingual non-English speaking residents in CPABs, Community Advisory Committees, Community Police Academies, and Citizen Advisory Committees.

Cultural Awareness Training Findings

5.13 Cultural awareness training goes to the heart of the Christopher and Kolts Commissions' concern with the issues of excessive force and sensitivity to the racially, ethnically, and linguistically diverse communities served by the LAPD and the LASD. Los Angeles is one of the most diverse metropolitan areas in the United States. Despite admirable training programs in both departments, there is evidence of increasing intolerance of ethnic and minority immi-

grants among some members of both the LAPD and the LASD.

5.14 The LAPD requires 24 hours of training in cultural awareness for recruits consisting of an 8-hour, 1-day course (referred to as the POST curriculum) provided by the LAPD Training Division, Human Relations Unit, supplemented by 16 hours of guest speakers from the African American, Asian, Latino, and gay and lesbian communities. Department employees (sworn and civilian) receive 8 hours of in-service training consisting of the POST curriculum. The department offers Spanish language instruction, but the number of hours of instruction has been reduced in recent years.

5.15 The LAPD's South Bureau, in cooperation with the Mexican Cultural Institute, conducted in 1995 a unique pilot program of instruction in the Spanish language and in Mexican culture for 19 senior lead officers. It included 6 months' instruction at the institute, followed by 10 days in Guadalajara, Mexico, in December 1995 with local families. The officers praised the program and returned with an enriched understanding of the cultural forces at work in their service area. Nonsalaried expenses were sponsored by several companies, including MGM and the Automobile Club of Southern California.

5.16 The LASD's Cultural Awareness Training Program has become a model for departments in the State of California and around the country. Recruits receive 24 hours of training in cultural awareness, consisting of a 16-hour course and a full day at the Simon Wiesenthal Museum of Tolerance. In-service training consists of 16 to 24 hours training, depending upon rank and assignment, consisting of 8 or 16 hours of instruction from the department's course and 1 day at the Simon Wiesenthal Museum of Tolerance. This day of training appears to be particularly effective in helping cadets and deputies understand the everyday impact of bigotry and inhumanity on racial and ethnic minorities. Aspects of cultural awareness training are also woven throughout other types of training such as force training. The department offers a limited number of hours in basic Spanish at the sheriff's department academy, but it is restricted to learning certain essential phrases a deputy might have to use.

5.17 There is evidence that a significant number of rank-and-file LASD deputies have

been resistant to cultural awareness instruction, despite the top caliber of the training provided.

Recommendations:

- The LAPD and the LASD should incorporate more information about universal human rights, immigrants, immigration, and the benefits of cultural diversity into their cultural awareness training, both in-service and for recruits.
- Both the LAPD and the LASD should increase the hours of instruction in Spanish for recruits and field officers and institute instruction in how to communicate essential phrases, questions and commands in a reasonable number of other prominent non-English languages spoken in the Los Angeles area, as determined by the 1990 census. Both departments should also consider producing a laminated fold-out card with these phrases in a larger array of languages for field officer use.
- The city of Los Angeles should assist LAPD officials in seeking grants or corporate donations to continue and expand to other bureaus the program with the Mexican Cultural Institute of instruction in the Spanish language and in Mexican culture for senior lead officers.
- The LAPD should consider adding an 8-hour component to its cultural awareness training for both recruits and in-service officers consisting of a day at the Simon Wiesenthal Museum of Tolerance.
- LASD top management must provide the strong leadership necessary for deputies to overcome the cynicism displayed during training, as reported by Special Counsel Merrick Bobb. Executive-level reinforcement of the department's commitment to cultural awareness training and the civil rights of racial, ethnic, and linguistic minorities should be provided during training and at every other appropriate opportunity.

Language Issues

Findings

5.18 The Los Angeles Police Department and the Los Angeles County Sheriff's Department face a significant challenge in communicating with a large portion of city and county residents

who are relative newcomers to the United States and do not speak English well, if at all.

5.19 Neither the LAPD nor the LASD has a written departmental policy for dealing with the non-English speaking public. Therefore no conditions are specified under which officers and deputies are required to attempt to find an officer who speaks the language of an arrestee, victim, or witness and they are not subject to discipline for failure to do so.

5.20 The LAPD and the LASD both allow the level of bilingual officer staffing at each station to be determined by the area or unit commander. The area or unit commander's request for bilingual positions is subject to the approval of the chief of police or the sheriff, respectively. Neither department uses a uniform, departmentwide methodology for determining either the overall level of bilingual officer staffing or the level of such staffing at each station. Neither department has conducted a competent language needs assessment of the areas they serve to determine whether they deploy enough bilingual officers, either in the aggregate or to the appropriate stations.

5.21 In both the LAPD and the LASD, sworn personnel who currently receive bilingual compensation cannot transfer to another division or station without losing their compensation, unless the new assignment location has a bilingual vacancy for the non-English language in which the officer is fluent. This is because bilingual positions are designated for the division or station.

5.22 Bilingual skills are not viewed as a relevant asset by the LAPD when making promotion decisions.

5.23 There are a significant number of authorized bilingual positions unfilled in the LAPD. As of March 6, 1996, there were 1,388 authorized bilingual positions, of which 232 or 16.7 percent were unfilled. These vacancies were particularly concentrated in the Spanish and Korean languages (200 and 16, respectively), despite substantial population pools from which to draw law enforcement officers. The 1990 census reported that there were approximately 2,555,000 people who spoke Spanish at home in Los Angeles County, and about 124,000 who spoke Korean. The facts that sworn personnel who currently receive bilingual compensation cannot transfer to another division without los-

ing their compensation and that bilingual skills are not viewed as a relevant asset by the LAPD when making promotion decisions impede LAPD officers who may qualify for authorized bilingual positions from applying.

5.24 The AT&T interpreter service made available to LAPD officers readily offers interpreters for 144 languages and can locate speakers of many less common languages, given some extra time. Laminated cards listing the languages for which interpreters are available are issued to officers and a videotape is periodically played at rollcall to remind officers of the service. The LAPD does not maintain a list of volunteer interpreters drawn from the populace who can be called to render interpreter services.

5.25 The LAPD has failed to consistently maintain at its 18 division stations citizen complaint forms in all four languages mandated by the department (English, Spanish, Chinese, and Korean).

5.26 The LASD relies heavily upon its Volunteer Interpreter Program in dealing with the non-English speaking public. As of August 1996, 170 volunteers were enrolled in the program. Deputies are required to carry an "Interpreter Guide" card, which lists 39 available languages, including sign language. An individual who speaks a language with which available deputies are unfamiliar is asked to locate that language on the card. The department may also call upon some of the 750 or more sworn and civilian employees listed on a roster of bilingual employees to render translator services.

5.27 The LASD maintains citizen complaint forms in Spanish, Chinese, and Vietnamese, as well as English. Forms are also available in other languages, depending on the makeup of the community. The LASD has recently eliminated the blocks on the standard complaint form that indicated the race and age of the complainant. This impedes the department's ability to assess the demographics of its civilian complaints.

Recommendations:

- The Los Angeles Police Department and the Los Angeles Sheriff's Department should establish written departmental policy regarding the use of department language resources in communicating with a victim,

witness, or suspect in custody who appears to speak little English.

- The LAPD and the LASD should undertake a competent language needs assessment of the areas they serve, and then develop a plan for meeting the language needs of the areas served by each station utilizing all departmental language resources. At a minimum, this assessment should take into account the number of residents who speak little or no English in the area served by each station. The LAPD and the LASD should consider taking into account the number of persons arrested and the number of victims and witnesses in each area who speak little or no English. Both departments should make a good faith effort to fill any vacant bilingual positions determined under this language needs assessment.
- LAPD and LASD sworn personnel who receive bilingual compensation should be able to transfer to another division or station and retain their bilingual compensation, as long as they use their bilingual skills for the benefit of the department.
- The LAPD should incorporate a section on bilingual ability in its personnel evaluation form, which duly allows credit for the bilingual abilities of its employees. The LAPD should also incorporate a section on bilingual ability in all of its application forms, and should use this information in filling all positions where bilingual ability is determined to be either necessary or advantageous.
- The LAPD should hold division captains accountable for maintaining citizen complaint forms in all four languages mandated by the department (English, Spanish, Chinese, and Korean).
- The Los Angeles County Board of Supervisors should consider providing the LASD with the AT&T interpreter service as it provides interpreters for well over 100 more languages than the department's volunteer interpreter program.
- The LASD should restore the blocks on the standard complaint form that indicated the race and age of the complainant.

Police-Immigrant Community Relations Findings

5.28 LAPD Special Order 40 and the LASD's similar policy, as outlined in the sheriff's March 1, 1996, announcement, are critical to public safety and the cooperation of all persons in programs designed to enhance police-community relations.

5.29 Abrogation of LAPD Special Order 40 and the LASD's similar policy, as outlined in the sheriff's March 1, 1996, announcement, would damage police-community relations and increase racial and ethnic tension in Los Angeles, because significant numbers of racial and ethnic minority immigrants will be fearful of working with the police to report and prevent crime.

5.30 Abrogation of LAPD Special Order 40 and the LASD's similar policy, as outlined in the sheriff's March 1, 1996, announcement, will require that LAPD officers and LASD deputies receive significant training in Federal immigration law.

Recommendation:

- Congress should repeal section 434 of the Personal Responsibility and Work Opportunity Act of 1996 and section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to ensure the full participation of the undocumented immigrant community in local police activities.

High Speed Pursuits Findings

5.31 The high speed pursuit syndrome increases the likelihood that law enforcement officers will use excessive force against their quarry at the end of a vehicle pursuit, and is particularly dangerous in pursuits of racial and ethnic minority suspects.

5.32 Neither the California Commission Peace Officer Standards and Training (POST), the LAPD nor the LASD has training materials or guidelines that focus on control of the post-pursuit situation.

5.33 LAPD pursuit policy does not bar pursuits based on a traffic violation: it provides only that pursuits "should be initiated only when law violators clearly exhibit an intention to avoid arrest by using a vehicle to flee."

5.34 The LAPD conducts by far the largest number of pursuits, and its pursuits result in disproportionately more deaths and injuries to officers, suspects, and others than any other department in the region. LAPD pursuits that result in fatal collision injuries to suspects or others are most often initiated as a result of alleged vehicle code violations, such as speeding, failure to stop at a stop sign or red light, and railroad crossing violations. More than 83 percent of officer injuries in LAPD pursuit incidents occur after the pursuit has concluded.

5.35 Nearly 71 percent of LASD officer injuries occur after the pursuit has concluded.

5.36 LASD watch commanders are failing in high numbers to submit required paperwork on pursuits, leading to a possible undercount of the number of pursuits that are taking place. Watch commanders and deputies are failing to cancel substantial numbers of out of policy pursuits after they have been initiated.

5.37 The U.S. Immigration and Naturalization Service conducts a number of programs and joint initiatives with the LAPD, the LASD, and other local county and State law enforcement authorities that focus on increasing the number of deportable aliens removed from the United States, with particular emphasis on the removal of criminal aliens. California leads the Nation with more than 10,000 criminal alien removals in the first 10 months of the 1996 fiscal year, a 6 percent increase over the previous year's record pace.

Recommendations:

- The State of California should direct the California Commission Peace Officer Standards and Training (POST) to develop training materials and guidelines that focus on methodologies to help departments and officers avoid post-pursuit injuries and/or fatalities to suspects, officers, and others.
- The LAPD and the LASD should modify their pursuit policies and training to comply with the guidelines and materials developed by POST.
- The LAPD should consider modifying its pursuit policy to prohibit initiation of vehicle pursuits based only on the commission of a traffic violation.
- The LASD must provide greater command emphasis on canceling out of policy pursuits.

The department must also provide greater command emphasis on the submission of required paperwork on pursuits, in order to ensure the accuracy of the department's pursuit statistics.

Chapter Six: The Federal Role: Pattern or Practice Authority

Implementation of Pattern or Practice Authority

Findings

6.1 In September 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994. Included within the act, 42 U.S.C. § 14141(a) prohibits any governmental authorities from engaging in a pattern or practice of conduct by law enforcement which deprives persons of their constitutional rights. Within the Department of Justice's Civil Rights Division, the Special Litigation Section and the Coordination and Review Section are handling implementation of the new pattern and practice authority. Several attorneys also have been detailed to the effort. Depending on interest and available resources, the local United States attorney's offices also will work with the Civil Rights Division in its investigation and litigation of certain police departments. Investigations into police misconduct are complex and labor intensive. There is concern that taking DOJ attorneys away from other important objectives will result in harm.

6.2 Witnesses at the Commission's June 1993 hearing in Los Angeles maintained that the Federal Government had failed to use the criminal remedy in addressing police misconduct in the LAPD throughout the previous decade. The Department of Justice was unable to monitor sufficiently the activities of the LAPD and other departments in part because it did not systematically evaluate complaints and did not identify trends in police practices and tactics. Following the enactment of 42 U.S.C. § 14141(a), the Department of Justice has initiated investigations into the Los Angeles Police Department with particular attention being paid to the pace of reforms there. The LAPD reportedly is cooperating with the DOJ investigation.

Recommendation:

- The Congress should approve the allocation of specific resources to fund investigations into systemic police misconduct under 42 U.S.C. § 14141(a). Specifically, the Congress should approve the hiring of additional personnel for the Special Litigation Section and the Coordination and Review Section to investigate and litigate cases of systemic police misconduct. The Congress should also ensure adequate staffing for enforcement of 42 U.S.C. § 14141(a) in the U.S. attorneys' offices.

Findings

6.3 Prior to passage of the crime bill, the Federal Government only had the authority to investigate and prosecute alleged criminal civil rights violations by individual officers. The criminal law is a limited means to prevent or deter police misconduct. The most common statutes employed in these actions are 18 U.S.C. §§ 241 and 242, which prohibit conspiracies to violate civil rights, and official, willful violations of civil rights. Both statutes require proof of specific intent in order to prevail. This evidentiary burden is difficult to prove and to explain to juries making the prosecution of such cases a formidable task.

6.4 Although citizens can bring civil actions to recover damages, these suits had proven ineffective in preventing future misconduct. As demonstrated by the Christopher Commission and Kolts Commission reports, even though the city and county of Los Angeles were paying millions of dollars each year in verdicts against their respective departments, there was no change in the departments' conduct. Individual damage actions also do little to prevent abuses that do not result in significant injury, but create substantial tension between the department and the local community. Moreover, the United States Supreme Court has foreclosed the possibility of private citizens' seeking equitable or injunctive relief against the practice of police brutality by local departments.

Recommendations:

- Although criminal prosecution has serious drawbacks in stemming systemic police misconduct, local prosecutors should be vigilant in identifying and prosecuting cases of police

misconduct. The Congress should ensure adequate staffing in the U.S. attorneys' offices for criminal prosecution of civil rights violations by the police.

- Local governments should track and monitor civil actions brought against their law enforcement agencies and any resulting damage awards. Local governments should respond to any patterns of misconduct uncovered through litigation by implementing appropriate measures and reforms.

Data Collection

Finding

6.5 There has been criticism about the lack of national statistics on use of excessive force by police. The Violent Crime Control and Law Enforcement Act includes a provision requiring the Attorney General to collect and publish data about the use of excessive force by law enforcement officers. There has been concern expressed

that information on use of force is not maintained consistently among law enforcement agencies.

Recommendation:

- The Congress should allocate resources to adequately fund the Department of Justice's mandate to collect and publish statistics and information regarding excessive force by law enforcement officers. The Department of Justice should obtain information on excessive use of force incidents from the law enforcement agencies themselves. To ensure consistency among law enforcement agencies, they should be trained by the Department of Justice to keep accurate internal records. The Department of Justice should establish standard classifications and terminology among the reporting law enforcement agencies.

Additional Statement of Chairperson Mary Frances Berry and Vice Chairperson Cruz Reynoso

The emphasis in this report is consistent with this Commission's long history of concern with issues of police-community relations. Such monumental reports as *Who Is Guarding the Guardians* (1981) and *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Vol. III: The Chicago Report* (1995) have supported the crucial

work of police in suppressing crime. They have also pointed out, as does this report, that the police can more effectively exercise their responsibilities if the community knows that they will not violate civil rights. The right of freedom from crime is a primary right, so is the right to insist that the police are law-abiding.

Dissenting Statement of

Commissioners Carl A. Anderson, Robert P. George, and Russell G. Redenbaugh

The report by the U.S. Commission on Civil Rights of the 1996 hearing in Los Angeles does not meet the Commission's high standards for factfinding and advising the Congress and the American people on critical civil rights developments in this country.

The purpose of the September 1996 hearing was to focus on police-community relations, updating the findings from an earlier hearing, held in June 1993. (The 1993 hearing dealt with the broader issues of poverty, inequality, and discrimination in addition to those involving police-community relations.) Unfortunately, there is no clear "update" that emerges from the present report. Densely written and chronologically confusing, the report tends to bury the results of both the 1996 and 1993 hearings in a series of lengthy analyses of "other developments" which, in turn, are relayed primarily through secondary, media sources. In fact, for those of us who were present during the Commission's hearings in Los Angeles, it is difficult even to recognize the report as a product of those hearings.

In addition to its confusing presentation of both the progress and problems within the Los Angeles Police Department and the Los Angeles Sheriff's Department, the report raises several concerns with respect to its findings and recommendations. Particularly troubling are the recommendations in chapter 2 for removing certain procedural protections for police officers whose record contains "unfounded" and "exonerated" complaints and, also, for decriminalizing the filing of false complaints against police officers (through the repeal of California Penal Code section 148.6). These recommendations as well as those calling for a civilian review board and an independent prosecutor are an overreaction which, in the long run, would actually thwart the kinds of results the Commission wants to see. They would create an increasingly bureaucratized and adversarial climate in which police are automatically viewed as suspects.

We should not lose sight of the fact that freedom from crime is one of the most fundamental civil rights. The right to live safely and peacea-

bly, the right to own and operate a business, the right to allow a child to walk to school or play in a public park—these are all civil rights. And the individuals in law enforcement who are charged with protecting people and their property are an essential part of our civil rights system. They are the ones who help to make possible the enjoyment of our rights, and they must always be held accountable in that regard. Police misconduct must never be tolerated. Some of the recommendations in the report could make a positive contribution to improving the relationship between law enforcement officers and the communities they serve. These include certain measures pertaining to community policing, education and training, and the recruitment and retention of law enforcement officers who reflect the diversity of the population.

In the aftermath of the Watts riots of 1965, the Kerner Commission reported that the country was becoming "two societies, one black and one white—separate and unequal." That fault line continues to run through South-Central Los Angeles. It is now more complicated by the immigration of additional racial and ethnic groups and the formation of new communities within the area. The new demographics have created a different set of ethnic and racial tensions. What is apparent in the 30-year history since the issuance of the Kerner report in 1968 is that economic and social progress cannot adequately be achieved in a social context in which high crime rates coexist with high levels of police-community tension. Police officers must be held to the highest standards in respecting the civil rights of all citizens. At the same time, businesses and local communities cannot develop and flourish without serious efforts to reduce crime and ensure the protection of both person and property. An attack upon our person or property is an attack upon our civil rights. The more we are able to encourage police officers to see themselves as the Nation's chief civil rights officers, the more we can move away from a culture of suspicion and prosecution toward a culture of progress and reform.

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Washington, DC 20425

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