

# Department of Justice Consent Decrees as the Foundation for Community-Initiated Collaborative Police Reform

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## Abstract

Acting pursuant to authority granted by the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §1414, the Department of Justice has entered into dozens of agreements generally known as consent decrees. Consent decrees are costly, ad hoc, and necessarily limited responses to a historically rooted and widespread problem, one that has become more prominent, divisive, and volatile as a result of the ubiquitous video-recording of police–civilian interactions and the divergent views concerning appropriate police tactics between police and the communities in which they operate. Collectively, these consent decrees constitute a compendium of best practices for constitutional, effective, community-oriented policing. This article argues that they can empower communities to initiate police reform and to educate communities concerning the elements of effective, constitutional policing, establish agreement with the police concerning the elements of constitutional and effective policing, and serve as the foundation for an agreed-upon roadmap for reform, including measures of progress, accountability, and results.

## Keywords

consent decrees, police reform, constitutional policing

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Defining, explaining, and enforcing constitutional and effective policing is an enduring and dynamic challenge for numerous reasons. Unlike many countries, in the United States policing is not centralized. In the main, policing is a matter of state and local law. In fact, there are more than 18,000 independent law enforcement agencies in the US. In addition, the demands upon police constantly evolve in response to the continual emergence or identification of new criminal activities, public expectations, political directives, laws, and importantly, technology. It would be transparently disingenuous to deny that the trend of police work is characterized by increased danger, variety, complexity, scrutiny, and accountability. Regulating the proper balance between protecting the citizenry's constitutional rights and officers' life and rights requires constant and difficult adjustment. Included in this challenge is the need to define, identify, deter, and punish police misconduct, in part because police are authorized to engage in conduct that civilians are not permitted to do. Police are authorized to threaten and use force up to and including deadly force against another person, hold subjects against their will, invade their privacy, and confiscate their property. That there is virtually universal agreement as to the need for these actions does not make the challenge of regulating them easier. Every individual wants the same thing; protection from the other guy. In any given instance, however, that same individual may be the other guy. In other words, at any given moment, any individual can be either the subject or object of our common desire. The determination of which status applies can be not only of constitutional dimension but also of life and death—for the officer, the civilian, or both.

Police misconduct has been recognized as a widespread problem in the United States since at least the early 20th century. In 1929, President Hoover appointed the National Commission on Law Observance and Enforcement, chaired by then U.S. Attorney General, George Wickersham (see Rushin, 2014, p. 3,189). The Wickersham Commission's report found that police "regularly used physical brutality and cruelty during interrogations to obtain involuntary confessions."<sup>1</sup> Of course, police misconduct has been a long-recognized and endured fact of life for African-Americans, Native-Americans, Asian-Americans, Latinos, and other socially marginalized groups. It is pertinent to observe that despite a string of legislation and judicial decisions beginning with *Brown v. Board* that remedied unconstitutional practices involving education, voting, housing, and employment, the issue of racially disparate application of police practices went largely unaddressed, leading one scholar to describe police brutality as the unfinished business of the Civil Rights Movement (Bellamy, J., 2011; Siff, 2016).

Whatever the state of society's awareness of police misconduct, it changed dramatically in 1991 when a private citizen videotaped what many considered to be the unjustified and brutal beating of Rodney King by Los Angeles Police Department officers. The video and riots that erupted after the four officers charged with using excessive force were acquitted in a state prosecution lead to a national dialog concerning policing in African-American communities. The

dialog was fueled by subsequent incidents of police misconduct, including the unjustified shooting and subsequent cover-up of a 92-year-old woman, Kathryn Johnston by Atlanta police officers and accusations of excessive force used, again, by Los Angeles Police Department officers to quell a violent protest (Simmons, 2008).

## **Federal Authority to Reform Police Practices**

The King beating caused Congress to pass the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141(a) (The Public Health and Welfare Act, 2006a, §14141 or the Act), which provides:

It shall be unlawful for any government authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected<sup>2</sup> by the Constitution or laws of the United States.

Importantly, however, the Act also authorized the Attorney General to file a civil action to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice” (42 U.S.C. §14141(b); The Public Health and Welfare Act, 2006b). Thus, through the Act, Congress authorized the Attorney General, acting through the Department of Justice (DOJ) Civil Rights Division, to investigate and, if necessary file suit seeking appropriate equitable relief to end a “pattern or practice” of unconstitutional policing.

Prior to passage of §144 the DOJ’s authority to address police misconduct was limited to prosecutions of individual officers for depriving individuals of their constitutional rights under color of state law. As important as those prosecutions are to the punishment and deterrence of unconstitutional policing, they are a limited remedy. They address only past conduct directed at identifiable officers and carry the high burden of proof beyond a reasonable doubt. These prosecutions are also too blunt an instrument to effectively prosecute routine, low-intensity unconstitutional policing, such as “driving while black” or “stop and frisk.”<sup>3</sup> The DOJ simply had no effective tool to enforce structural change to remedy institutionalized unconstitutional police practices. Section 14141 was intended to fill that gap. According to the U.S. Department of Justice, Civil Rights Division (2017):

Section 14141 is a vehicle for the Department of Justice to enforce rights defined and protected by the Constitution and other federal laws, such as the rights to be free from excessive force; unreasonable stops and searches; arrests without warrants or sufficient cause, or in retaliation for exercising free speech rights;

and discrimination based on factors such as race, ethnicity, national origin, religion, disability, and sex—including sexual orientation, gender identify and LGBT status. (p. 3)

Consent decrees are the product of a thorough, usually protracted investigation that includes reviewing documents, such as police reports, data concerning uses of force, stops, searches, and other police activity where such data are available, observing training, reviewing policies and systems for supervision and accountability, interviewing officers, from command staff officers at all levels of rank and authority, and community stakeholders Civil Rights Division (2017, p. 9). The evidence gathered in the investigation is analyzed and evaluated by policing experts, typically current and former police chiefs and deputy chiefs with experience in police departments similar to the one under investigation, as well as criminologists and statisticians. To date, the division has initiated 70 formal investigations and entered into 40 reform agreements, which includes memorandums of understandings and consent decrees.<sup>4</sup>

At the conclusion of its investigation, the DOJ either closes its investigation or issues a public notice of its findings to the municipalities, often called a findings letter or findings report.<sup>5</sup> A findings letter is “both a diagnosis of a law enforcement agency’s problems and the foundation for a plan to treat the root causes of those problems” (U.S. Department of Justice, 2017, p. 16). The issuance of the findings letter is “typically accompanied by a day of meetings with police leadership and command staff, police unions, and community stakeholders to present and explain the findings and discuss next steps” (U.S. Department of Justice, 2017, pp. 15–16). The department can choose to litigate the findings or reach a settlement, in the form of a consent decree or settlement agreement calling for reforms commensurate with the findings. While the municipalities often disagree with some, most or even all of the findings, at least initially, they generally decide to settle and agree to reform rather than litigate. Of the many cases in which the division has found a pattern or practice of police misconduct, all but six have resulted in a reform agreement without the need for civil litigation (U.S. Department of Justice, 2017):

In Colorado City, Arizona, the Division obtained a verdict at trial. In Alamance County, North Carolina, the Division did not prevail at trial, but appealed and entered in a settlement reform agreement while the appeal was pending. In Maricopa County, Arizona, litigation was required to enforce a court order requiring reforms, resulting in an order of contempt. In Meridian, Mississippi, the Division entered into a consent decree shortly after filing suit, after the City initially declined to negotiate. Likewise, in Columbus, Ohio, the Division filed litigation but later reached an agreement resolving its claims. And in Ferguson, Missouri, the City initially rejected a proposed consent decree resolving the Division’s findings but later accepted it shortly after the United States filed suit in federal court.

In a seventh case, in New Orleans the Division was forced to litigate to compel the City of New Orleans' compliance with a consent decree to which it had previously agreed. (p. 18)

The consent decree is the product of the parties' negotiations. While each one is tailored to the findings, they typically contain the following structural elements: (a) They are filed in federal court and enforceable as court orders; (b) an independent monitoring team is appointed to monitor, promote, and report on consent decree compliance; and (c) outcome measures to assess progress and change (U.S. Department of Justice, 2017, p. 27). The reforms are accomplished by requiring changes to the police department's policies, training, supervision, and discipline. The range of reforms mandated by consent decrees varies in response to the nature of the underlying practices under investigation, and the findings can be quite broad. The information in Table 1 compares the reforms called for in the three most-recently negotiated consent decrees, New Orleans, Cleveland, and Baltimore.

As Table 1 shows the Cleveland decree is narrower than either New Orleans or Baltimore, which have similar elements. Closer examination of the elements shows an evolution in the both the substantive requirements, and how they are addressed in the consent decrees. For example, the outcome measure provisions of the Baltimore decree are more detailed than in the New Orleans decree. Similarly, the Baltimore and Cleveland decrees call more explicitly for the police to adopt a community-oriented policing model than does the New Orleans decree.

Consent decrees have a defined term, either a period of years or until the department can demonstrate sustained compliance. They can be extended if the department does not achieve sustained compliance within the original term. In this regard, it is important to appreciate that while the object of pattern and practice investigations is to improve police practices, it is essential that the reforms are viewed by both the police and the municipality's multiple constituencies as effective. Otherwise, support for the reforms will evaporate, and the consent decree will not achieve its overarching objective, sustained institutional reform.

## **Community Involvement**

As the Division gained experience conducting pattern and practice investigations and entering into reform agreements, its approach evolved (U.S. Department of Justice, 2017, p. 4). This has been especially true with respect to the role of the community in the investigative stage and in fashioning remedies. Early consent decrees largely limited the community's role to that of witness; community members and organizations were interviewed as part of the investigative phase. The Division's investigation included "outreach to civil leaders, faith

**Table 1.** Reform Elements in Consent Decrees.

Reform elements	New Orleans	Baltimore	Cleveland
Policies and training	x	x	x
Use of force	x	x	x
Behavioral health and crisis intervention	x	x	x
Stops, searches, and arrests	x	x	x
Custodial interrogations	x		
Photographic line-ups	x		
Bias-free policing	x	x	x
Policing free of gender bias	x	x	
Community engagement	x	x	x
Recruitment	x	x	
Academy and in-service training	x		
Officer assistance and support	x	x	x
Performance evaluations and promotions	x	x	
Supervision	x	x	x
Outside employment	x		
Misconduct, complaint intake, investigation, and adjudication	x	x	x
Transparency and oversight	x		x
Agreement implementation and enforcement	x	x	x
Interactions with youth		x	
Transportation of persons in custody		x	
First amendment protected activities	x	x	
Technology			
Coordination with schools		x	
Community and problem-oriented policing			

leaders neighborhood groups, advocacy organizations, local business owners, and individuals” (U.S. Department of Justice, 2017, p. 13). Interpreters are engaged where necessary. The Division also reaches out to those groups that are especially vulnerable to police misconduct, including young people, people with disabilities, LGBTQ individuals, persons of color, immigrants, and undocumented persons. Included in those the department reaches out to includes, of course, individuals who have experienced or witnessed police misconduct (U.S. Department of Justice, 2017, p. 13).

Neither these groups nor officers nor union officials were given a voice in shaping the remedy or monitoring the department’s reform efforts and the

Department was criticized for that exclusion (Simmons, 2008). The early agreements reflected a traditional litigation model. Consent decrees were viewed as simply a settlement agreement, crafted as a court order. In this framework, limiting the negotiations to the parties—the Division and the municipality made sense.

Over time, the Division came to recognize the value of broader community participation and the community's role expanded beyond merely providing relevant evidence to participating in the process of shaping and monitoring the reforms. Currently, the DOJ

almost always conducts a series of community or town hall meetings in different locations designed to create a form for members of the community to speak to their experiences and insights. These face-to-face meetings also help build relationships between community members and the lawyers, investigators, and community outreach specialists conducting the investigation. (Simmons, 2008, p. 519)

This evolution reflected the recognition that community involvement and support for consent decrees is a crucial factor in whether they succeed. With respect to the efficacy of prescribed remedies, perception is as important as reality. Distrust of government and skepticism that the department's efforts will lead to meaningful change can also prove obstacles to participation that the department must work to overcome (U.S. Department of Justice, 2017, p. 13). In addition, community leaders and activists understandably feel frustrated when their calls for reform are answered but they are excluded from the discussion of remedies.

The range of input the Division's solicits in conducting a pattern and practice investigation distinguishes these investigations from the typical litigation, criminal, or civil, in which as a general rule only parties, subjects, victims, and witnesses, are interviewed. The experiences and opinions of community members would generally not be relevant to a typical investigation (outside of certain narrow evidentiary purposes such as reputation, habit, etc.). The inclusion of community views and experiences distinguishes pattern and practice investigations, the purpose of which is not to establish culpability of individuals but to remedy institutional and persistent misfeasance and nonfeasance (U.S. Department of Justice, 2017, p. 18).

The evolution of the Division's approach to pattern and practice cases reveals a move away from the traditional adversarial, litigation model to a restorative justice model, which emphasizes restoring harm caused by criminal behavior (Braithwaite, 2002; Centre for Justice & Reconciliation, 2017). It exists in contrast to the traditional retributive justice model that emphasizes punishing the perpetrator. Restorative justice can be performed at the macro level, the most famous example undoubtedly being the South African Truth and Reconciliation Commission formed to bring South Africa as together following the end of the

Apartheid era, but it can also occur at the individual level, such as programs that allow officers and citizens to mediate minor complaints, such as discourtesy. Pattern and practice investigations and the resulting consent decrees fall somewhere in between. They attempt to remediate, rather than punish, by bringing together the offenders and their victims to exchange perspectives with the goal of establishing an agreed-upon remedy that will be perceived by all stakeholders as legitimate and thus worth preserving.

## **Consent Decrees and Community Policing**

Consent decrees remedy unconstitutional policing by providing specific, detailed guidance to the subject police department on how to remedy its past unlawful practices and provide for accountability. They accomplish that objective by imposing reforms tailored to specific constitutional breakdowns, such as failures to protect specific groups or the systematic violation of a group's constitutional rights, such as a pattern of unconstitutional stops and searches, and establishing systems to allow the community to hold the police department (and the parties) accountable for implementing the remedies. Beyond this, however, they are explicitly crafted to improve the relationship between the police and the communities they serve. For example, the New Orleans consent decree requires the NOPD to undertake measures to increase its engagement with the community. It also provides for quarterly reports and public meetings concerning the NOPD's progress toward compliance (Consent Decree Regarding the New Orleans Police Department, 2012, pp. 60–115).

To the extent consent decrees set standards that reflect the input and consensus of the community, the police department, and independent police experts they reflect a community policing model.

Community policing is a philosophy that promotes organization strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder and fear of crime. (International Association of Chiefs of Police, 2015, p. 4)

Simmons (2008, pp. 528–531) has analogized the collaborative reform model to administrative rulemaking to advocate that the §14141 reform process should formally adopt a rulemaking model, in which all stakeholders are given a formal role in negotiating the terms of the consent decree. She observes that while litigation can mandate reform, the more difficult task of fashioning the remedy involves many reasonable options as well as inherently political questions.

Simmons' critique suggests that a regulatory negotiation framework, which is akin to the rulemaking process but one in which the stakeholders negotiate and

craft the remedy, may provide a process for affording all stakeholders input in selecting among the options (Simmons, 2008, p. 533). The elements of the model would be as follows: (a) a finding of unconstitutional behavior, (b) selecting a *convenor* who “would have primary responsibility for determining whether the issues are amenable to a negotiated solution,” (c) identifying and selecting appropriate stakeholders and their representatives, and (d) conducting the negotiations (Simmons, 2008, pp. 533–537).

Obviously, there would be disadvantages to this approach. It would be cumbersome and time consuming. A legacy of distrust between (and in some instances among) stakeholders may make productive negotiations futile. The approach would at minimum, however, give the affected constituencies a voice and an audience. It also offers the possibility of overcoming distrust and forming the bonds between these groups that are essential to achieving reform that last beyond the term of the consent decree.

## **Toward a Community-forward Reform Model**

While the rulemaking model certainly addresses some of the challenges in fashioning effective consent decrees, it cannot overcome certain limitations that are inherent in the consent decree reform model. First is limited resources. The demand for police reform far exceeds the DOJ’s capacity to respond. Second, consent decrees are a remedy for a finding of unconstitutional policing, which requires a lengthy, resource intensive, and expensive investigation. As described earlier, they require a team of DOJ attorneys and policing experts, extensive review and analysis of police practice, and hundreds of interviews. This process increases the length of time from the underlying harms to the redress, which exacerbates the community’s frustration and impatience. Importantly, those who call for police reform likely feel they do not need a lengthy investigation to confirm what they have long known. The purpose of the investigation is to establish to the municipality, the police department, and a court the legitimacy of the community’s complaints. This is hardly a recipe for earning the community’s trust. Third, however, despite DOJ’s emphasis on cooperative reform, consent decrees are inherently coercive. In addition, because the DOJ, the independent monitor and the court are the arbiters of the police department’s compliance, they unavoidably erect a barrier between the police and the community, which is an impediment to establishing a true community-policing model. There is thus an irreconcilable tension between consent decrees and community policing.

Additionally, information asymmetry is an endemic challenge for police reform that consent decrees do not overcome. Policing requires specialized knowledge and training. Police set and monitor their standards of conduct. In this regard, policing bears many of the characteristics of a profession (see Larson, 1977). The public experiences the effects of professional practices, for

example, lawyering medical care, accounting or teaching but knows little about the knowledge, techniques or skill a professional employs to perform his or her task. This is also true for policing. The current public agitation for police reform reflects and is limited by the public's lack of knowledge concerning the elements of constitutional and effective policing. Because the public does not know what good policing looks like, they can do little more than petition the police themselves or governmental institutions, local or federal, to end bad policing. Thus, an early stage of any reform process, including the regulatory reform model, necessarily must be to educate the community so that it can participate meaningfully in developing, implementing, and evaluating specific reforms.

### **A Community-Forward Collaborative Police Reform Model**

The challenge then is to develop a model that addresses and moves beyond the limitations inherent in the consent decree reform model. I suggest that consent decrees, which reflect the input of policing experts and have the agreement of police departments, establish the best-practices model for constitutional and effective policing. Even though each consent decree is crafted to remedy the specific harms revealed by the underlying investigation, as the data in Table 1 demonstrate, there are certain core requirements common to most consent decrees, which are generally applied consistently across consent decrees. Thus, a model consent decree could serve as a vehicle to educate communities as to what they should demand from and their police, empower them to initiate demands for reform without calling upon or waiting for the DOJ to investigate. It would empower communities to demand more than just an end to bad police practices but to advocate for a specific, discrete set of best-practices measures their police department should adopt. It would in effect serve as a policing manual for civilians. A model consent decree could also serve as a work plan to allow communities and the police to agree upon a schedule for implementing reform that responds to the community's demands while recognizing that municipalities operate under budgetary constraints and police departments have limited resources and multiple responsibilities. In addition, the two decades of experience reforming police departments through §14141 investigations, litigation, and settlements has generated a cadre of experts in constitutional policing and implementing institutional reform who can serve as a resource to provide the education, guidance, and oversight necessary to any reform effort.

This community-forward reform approach is distinguished from the consent decree model in another important respect. The consent decree model and almost all other established reform models approach police reform as a police matter. In other words, the police department is the subject of the reform effort and the community it serves is the object. This community-forward model reverses the roles. It makes the community—the consumer of police services—the

subject of the reform and the police the object. It is a demand-side solution that empowers the consumer of police services that want change to drive it. And it is clear there is high demand-side pressure for police reform. For example, Funders for Justice, a project of the Neighborhood Funders Group,<sup>6</sup> lists 162 organizations dedicated, exclusively or partially, to advocating police reform. One such advocacy effort, the Black Lives Matters' Campaign Zero<sup>7</sup> exhibits elements of a community-forward reform model. It calls for 10 specified reforms: (a) End Broken Windows Policing, (b) Community Oversight, (c) Limit Use of Force, (d) Independently Investigate and Prosecute, (e) Community Representation, (f) Body Cams or Film the Police, (g) Training, (h) End For-Profit Policing, (i) Demilitarization, and (j) Fair Police Union Contracts. Several of the reforms provide examples taken from police departments considered to have model policies and other authoritative sources. Clearly communities are learning the lessons from prior reform efforts and, in so doing, are increasing their awareness of the elements of good policing, as more than just the absence of bad policing.

Because the community-forward reform model does not depend upon legal or otherwise formal findings, the path from problem to solution is shorter and less expensive. It also dispenses with one side effect of pattern and practice investigations; prolonged focus on the subject department's deficiencies. Regardless of how warranted the investigation and justified the findings, the extended focus on the department's failures undermines officer morale and fosters resentment, which increases resistance to reform. It may also reinforce the community's perception that the police are resistant to reform and that the problems are intractable. While it would be naïve to suggest the community-forward model would eliminate resentment or resistance by the subject department, it nevertheless shifts attention from what the department has done wrong to what it can do better, without regard to its past performance. In other words, it is a more carrot-less stick approach.

Of course, change requires a change agent. In consent decrees, it is the DOJ investigation. In the absence of an investigation, how would a community set the reform process in motion? As in the regulatory negotiation approach, there would need to be a convener or neutral individual or organization that can set the process in motion, provide the community the education it needs to play a meaningful role in the reform process, engage the other stakeholders who are indispensable to the reform process, oversee negotiating the reforms and documenting the agreement, and if requested by the parties monitor the reform process. The process would also have to engage experts to educate the community and the subject police department concerning best practices policing and how to implement them.

The convener would need to possess the credibility necessary to be perceived as an honest broker and have the financial resources necessary to educate the community and retain experts. The DOJ Community Oriented Policing Services (COPS) program could be a suitable convener. In fact, COPS offer a guide for establishing a community policing program. Although it is addressed to police

departments not civilians, it could form the foundation for a community focussed guide (Nicholl, 1999). Of course, it shares some of the limitations of the DOJ, including resource limitations, skepticism as to whether it can serve as an honest broker, and a focus on assisting police departments rather than communities, although the latter can be changed relatively easily. Nevertheless, it offers constructive guidance. There are numerous other possibilities as well, however, that potentially offer advantages over existing organizations. The convenor's functions are ideally suited to a for-profit or not-for profit NGO. Such an organization could develop a program to educate communities concerning best police practices, compile best-practices standards, as reflected in consent decrees, model policies, and other authoritative sources, assemble a roster of neutrals and experts to inform and guide the reform process, and so on. An NGO would largely mirror the kinds of educational services that organizations such as Community Oriented Policing Services or the International Association of Chiefs of Police provide to police departments, but it would tailor its offerings to meet the needs of civilian communities.

Unlike a pattern and practice investigation, the community-forward model requires the agreement and active engagement of the municipality, the police department, and community leaders. This is not necessarily a limiting condition, however. Elected officials and responsible police chiefs, like the communities they serve, are searching for ways to improve their organizations' performance, their community relationships and avoid the potentially ruinous consequences of protests and civil unrest that are becoming a common response to controversial police action. Civic leaders and police executives recognize and fear they are one bad shooting away from being the next Ferguson or Baltimore. The community-forward model allows them to initiate a change process without admitting wrongdoing or enduring the pain and expense of a prolonged investigation. The community-forward model can be a classic win-win solution. As such, it is likely to attract both public and private funding. An organization that brings communities and police departments together to promote effective policing, which strengthens community police ties, enhances law enforcement and protects officers, will likely attract financial and other support, from businesses that sell products and services to police departments as well as business that operate in the communities that are demanding change.

## **Conclusion**

DOJ pattern and practice investigations and resulting consent decrees have proven to be a significant advance in the evolution of police reform efforts. Regardless of the success or failure of any individual investigation or consent decree, collectively they serve as an ongoing social experiment in institutional police reform that has demonstrated that under the right conditions institutional reform is feasible. Regardless of the efficacy, however, they are a limited, expensive, and inefficient

instrument to reform police departments at the scale required. The Civil Rights Division is too small and DOJ policy too fluid to argue that §14141 should be relied upon as society's primary police reform vehicle. Empowering communities to demand and drive police reform offers many advantages of DOJ enforcement actions. Yet, despite community desires for reform, they currently face significant, overwhelming obstacles to achieving it, including ignorance concerning the elements of effective, constitutional policing, and the absence of a change agent to organize, focus, and guide their efforts.

The core reforms common to consent decrees can serve as a valuable foundation to adopt a community-forward collaborative police reform model. Consent decrees can serve as a textbook to educate community stakeholders about the elements of effective, constitutional policing, and the policies, training, supervision, and discipline practices necessary to achieve them. In addition, the nearly two decades of experience reforming police departments through consent decrees has created a pool of individuals with expertise in working with both police departments and civilian stakeholders to implement reforms. An organization that can (a) educate communities about effective, constitutional policing, through consent decrees and other authoritative material, (b) develop a roster of policing experts to inform the reform process, and (c) serve as the necessary convenor to coordinate the change process would be an invaluable resource to the many organizations and communities that are clamoring for police reform, yet lack the tools to direct it. An organization whose mission is to educate communities and police departments concerning the elements of police practices that are both constitutional and effective in the eyes of the police and the communities they serve offers the potential to move institutional police reform from a law-enforcement centered model to a truly community-oriented policing model. The community-forward approach offers the potential empower the consumers of police services to tailor the delivery of police services to meet their demand for constitutional, effective policing which is in the best interests of the police, and the communities they serve.

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### **Notes**

1. Leo (2008, p. 70). See also Rushin (2014, p. 3,185), fn 31 noting that the Wickersham report contribution to the Supreme Court's decision in *Powell v. Alabama*, 287 U.S. 45

- (1932; reversing a criminal conviction based on procedural violation) and was cited by the court in *Miranda v. Arizona*, 384 U.S. 436 (1966; an individual in police custody must be informed of his constitutional right against self-incrimination).
2. 18 U.S.C. §242 (Deprivation of Rights Under Color of Law, 2012) and 18 U.S.C. §241 (Conspiracy deprive Rights under Color of law, 2012).
  3. Although cloaked in constitutional terms, in reality the practice consists of nothing more than stopping individuals, primarily young, African-American males and frisking them for weapons. The policy justification was to confiscate guns, which contributing to a deadly increase in violent crime. Yet, because the stops are not based on objectively reasonable and articulable suspicion that the individual stopped might be engaged in criminal activity, they violated the Fourth Amendment proscription on unconstitutional policing. From a policy perspective, however, they also foster resentment at and distrust of police, which undermines effective law enforcement.
  4. A memorandum of understanding is simply an agreement under which a police department agrees to implement specified reforms. A consent decree is a judicially enforceable agreement requiring the subject department to implement specified reforms under the oversight of a court-appointed compliance monitor.
  5. Of the 69 pattern and practice investigations the DOJ has conducted, 26 were closed, without issuance of formal findings.
  6. Foundersforjustice.org
  7. Joincampaignzero.org/solutions

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## Author Biography

**David L. Douglass** is an attorney in private practice, who currently serves as deputy federal monitor for the New Orleans Police Department consent decree. He is a former Department of Justice Trial Attorney, Civil Rights Division, Criminal Section, and a former Assistant United States Attorney. A former volunteer community organizer he, and other members of the neighborhood, formed the Four Corners Development Corporation and sponsored the construction of Langham Court, a 90-unit mixed income housing development, which won awards for architectural design. He received his J.D., *cum laude* from Harvard Law School and his BA, Political Science, from Yale College.