

Saint Louis University Public Law Review

Volume 32

Number 1 *Control of Police Misconduct in a Post-Exclusionary Rule World: Can It Be Done?* (Volume XXXII, No. 1)

Article 5

2012

Stakeholder Participation in the Selection and Recruitment of Police: Democracy in Action

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Recommended Citation

Simmons, Kami Chavis (2012) "Stakeholder Participation in the Selection and Recruitment of Police: Democracy in Action," *Saint Louis University Public Law Review*: Vol. 32 : No. 1 , Article 5.

Available at: <https://scholarship.law.slu.edu/plr/vol32/iss1/5>

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STAKEHOLDER PARTICIPATION IN THE SELECTION AND RECRUITMENT OF POLICE: DEMOCRACY IN ACTION

KAMI CHAVIS SIMMONS*

INTRODUCTION

It is now widely accepted that much police misconduct and corruption stems from the institutional culture of the police organization itself.¹ The impact of this assertion is that remedial measures once thought to address police misconduct and corruption—such as, the exclusionary rule, tort or criminal suits against police officers, the possibility of internal police investigations, and hearings before citizen complaint review boards—while still important, have a declining significance when discussing the long-term, sustainable reforms needed to address the organizational roots of police misconduct.² The institutional nature of police misconduct coupled with the inadequacy of other measures to effectively address police misconduct has encouraged many policymakers to embrace a system of reforms aimed at changing that organizational culture.³ Transparency and accountability should be the hallmarks of police agencies in a democratic society, and those studying this “new paradigm of police accountability” have given great attention to

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1. See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 455 (2004) (asserting that it is a mistake to view misconduct as the result of the flawed judgments of individual officers rather than as induced by an organizational culture); see also Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 24 (2003) (noting that it is the organizational culture of law enforcement agencies and not the conduct of individual officers that breeds police misconduct); see also Kami C. Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 381 (2010) (noting that the basis of police misconduct is the organizational culture of police departments).

2. The exclusionary rule, which supporters heralded as a deterrent to police misconduct, has long been maligned and observers have questioned its efficacy as a tool to address police malfeasance. The Supreme Court recently dealt a severe blow to the exclusionary rule in *Hudson v. Michigan*, when it declared that a violation of the knock and announce rule does not require suppression of the evidence pursuant to the exclusionary rule. *Hudson v. Michigan*, 547 U.S. 586, 599 (2006).

3. Simmons, *supra* note 1, at 392–93.

implementing reforms that pierce the insularity familiar to many local law enforcement agencies in the United States.⁴

This era of organizational or institutional reform of police agencies was born in the midst of another dynamic shift in policing—from centralized command and control policing to community policing.⁵ Community policing, though difficult to define, is commonly characterized as a model of policing that emphasizes problem-solving and partnerships between police and the communities they serve.⁶ Several common features of community policing programs are regular contact between officers and citizens, increased officer accessibility in a decentralized location, and an emphasis on community members identifying problems and cooperating with officers to address these problems.⁷ Community policing, because of its emphasis on the participation of community members in problem-solving, has been deemed “democracy in action.”⁸

4. David A. Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1811 (2005) (explaining that community policing is an attempt to end the segregation of police departments and communities by opening up new avenues of communication); Walker, *supra* note 1, at 6, 26 (calling the movement to increase the accountability of police and to utilize better policing tactics a “new paradigm of police accountability” and noting that it requires increased transparency and accountability to build community trust); *see also* Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185, 242 (2005) (noting that in a democratic society, law enforcement must be guided by the principles of accountability and transparency).

5. *See* David H. Bayley, *Community Policing: A Report From the Devil’s Advocate*, in COMMUNITY POLICING: RHETORIC OR REALITY 225, 236 (Jack R. Greene & Stephen D. Mastrofski eds., 1991) (noting that “[community policing] is the most fundamental change in policing since the rise of police professionalism early in this century.”). By 2000, nearly 87 percent of police agencies had implemented a form of policing consistent with the ideals of community policing. *See* LINDA S. MILLER & KÄREN M. HESS, COMMUNITY POLICING: PARTNERSHIPS FOR PROBLEM SOLVING 20 (4th ed. 2005) (citing THOMAS C. FRAZIER, U.S. DEP’T OF JUSTICE, DIRECTOR’S NOTES: A DEFINITION OF COMMUNITY POLICING 2 (2000)).

6. *See* Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing*, 97 COLUM. L. REV. 551, 575 (1997) (stating that community policing is a general term that applies to police strategies which focus on developing working partnerships between the community and the police); James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 6–8 (2004) (explaining that while community policing can refer to a variety of law enforcement activities, it more broadly refers to the organizational structure of law enforcement that prioritizes and encourages civic engagement); *see also* Tracey L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1598 (2002) (noting that one unifying feature of community policing is police engagement, collaboration and partnership with private citizens).

7. *See* LINDA S. MILLER & KÄREN M. HESS, THE POLICE IN THE COMMUNITY: STRATEGIES FOR THE 21ST CENTURY 18 (3d ed. 2002).

8. BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, UNDERSTANDING COMMUNITY POLICING: A FRAMEWORK FOR ACTION 4 (1994), *available at* www.ncjrs.gov/pdf/files/commpp.pdf.

Absent from many of the discussions involving the institutional reform of police agencies is how the tenets of community policing, which are inherently embedded in democratic theory, can inform organizational changes that reformers hope to implement. These two shifts should not be divorced from each other, but rather should inform one another in order to maximize benefits for the communities. The shift to organizational reform and the continued implementation of community policing require police agencies to pay close attention to the qualities, characteristics, and values their officers need to implement a community-oriented style of policing.⁹ Community policing is premised upon the assumption that members of the community add value and can be integral in improving the public safety of the community, if they cooperate and partner with local police.¹⁰

Modern police culture tolerates or cultivates police misconduct and corruption in many ways.¹¹ Failures to identify, monitor, and discipline “problem” officers; a belief that violence is a necessary part of law enforcement; and the code of silence; are organizational characteristics that need to be addressed in order to remedy organizational failures to hold law enforcement officers accountable.¹² In order to address these cultural characteristics, police departments should carefully select police officers less likely to engage in these behaviors and adhere to these beliefs. Viewed through the lens of stakeholder participation, however, a fundamental shift should occur regarding *how* these new officers are selected. Consistent with the principles of community policing, police departments should develop processes to allow the community to participate in the selection and recruitment process. Although community involvement in the selection of officers has long been a component of many departments’ implementation of community policing, when suggesting or implementing organizational reform, there has been no requirement or even incentives to support the involvement of the community in this way.¹³ Therefore, this Article asserts that true “democratic policing” allows for the participation of the community in all aspects of policing, and that this involvement should begin as early as recruitment and selection of the police officers who will serve the community.

9. Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?*, 34 GA. L. REV. 1253, 1288–89 (2000) (discussing importance that individual officers have characteristics that are “conducive to community policing”).

10. See Michael D. Reising, *Community and Problem-Oriented Policing*, in 39 CRIME AND JUSTICE: A REVIEW OF RESEARCH 1, 19 (Michael Tonry ed., 2010) (arguing that cooperation between police and private citizens is necessary to identify problems and reduce crime in the community).

11. See generally Simmons, *supra* note 1.

12. *Id.* at 381–82.

13. *Id.* at 416–17.

This Article offers a modest proposal for ways in which the federal government could encourage or incentivize the inclusion of the community in the hiring and selection process. Specifically, this Article advocates that the federal government should require police departments within its jurisdiction pursuant to 42 U.S.C. § 14141 to implement such programs. Furthermore, for jurisdictions that have not come within the purview of the United States Department of Justice's ("DOJ") federal pattern or practice authority, the government should encourage and incentivize local community involvement in hiring police officers by making grants to departments that devise successful programs.

Part I discusses the fundamental critiques of modern police agencies and the role that organizational culture plays in police corruption and misconduct. Lax supervision, a belief that violence is a necessary part of the job, and the code of silence are hallmarks of many local police agencies. This Part will explain how scholars and reformers have focused on addressing these cultural characteristics through external reforms aimed at greater transparency and integrity. This Part focuses on the United States government's role in police reform through its pattern or practice authority. It also examines how the failure to include local stakeholders may impede the federal government's ability to ensure long-term reforms in the nation's most troubled police departments.

Part II explains that while the federal government has played an important role in articulating principles of police reform, and has also played an important role in encouraging, through federal grant money, community policing, it has missed an opportunity to fully integrate the two paradigms. Drawing upon democratic principles of stakeholder participation, Part II suggests that with proper oversight and accountability, involving various constituencies in the reforms of local police departments may result in more cooperation from officers and the community—resulting in more sustainable reforms.

Part III offers a specific example of how police departments could infuse democratic principles of community policing into the selection and recruitment of police officers. This Part argues that the federal government might successfully encourage this form of community involvement by routinely including it as an element of agreements it enters with police departments pursuant to its pattern or practice authority. The federal government can achieve this by making the receipt of federal funds for community-oriented policing conditional on implementing a community recruitment program. In the past, emphasis has been placed on *who* the police hire and how the characteristics of police officers might improve the police culture.¹⁴ However,

14. Waldeck, *supra* note 9, at 1288–89 (increasing educational attainment and diversity).

less emphasis has been given regarding *how* these officers are selected.¹⁵ This Part explains the need for community involvement in the hiring and selection of police officers. This Part further explores how such involvement is consistent with community policing and represents a great model of stakeholder participation in police reform. Furthermore, it discusses specific examples of community participation, including Sacramento, California and Hillsborough, Florida, where members of the community participated in focus groups to determine selection criteria of new police hires, participated in recruiting officers from the community, and sponsored candidates in the academy.

Part IV concludes with posing some of the challenges or counterarguments to the proposal, as well as identifying questions for future study. Little data has been collected or analyzed about the efficacy of the community recruiter programs. Future empirical work should focus on whether community perception has changed, whether citizen complaints against police decreased in these areas, and whether there was a positive impact on police-community partnerships.

I. CRITIQUES OF MODERN U.S. POLICE CULTURE AND THE FEDERAL RESPONSE

A. *The Need for Institutional Reform of Police Agencies*

1. Examples of Institutional Police Misconduct

In order to understand the importance of addressing police misconduct through changing the institutional culture of a law-enforcement agency, it is important to understand the fundamental critiques of modern police organizations. Many scholars and independent commissions examining the causes of police misconduct have concluded that the roots of police misconduct are organizational in nature.¹⁶ No longer is the malfeasance of a

15. See, e.g., *id.* at 1288–96 (addressing various officer characteristics conducive to community policing, but failing to provide any discussion regarding officer hiring and selection).

16. See, e.g., THE CHRISTOPHER COMM’N, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT (1991) [hereinafter CHRISTOPHER COMMISSION], available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&ved=0CDEQFjAB&url=http%3A%2F%2Fwww.parc.info%2Fclient_files%2FSpecial%2520Reports%2F1%2520-%2520Christopher%2520Commission.pdf&ei=aEBWUNCsC-aayQGnzYCoAg&usq=AFQjCNEWmdeKoK5vb4nUgBmHFcVI2q1kJA (discussing the LAPD’s management culture and its relation to police misconduct); HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 1, 33, 45 (1998), available at <http://www.hrw.org/legacy/reports/reports98/police/index.htm> (reporting that many of the problems identified in police departments across the nation had an organizational component); Armacost, *supra* note 1, at 493–94 (detailing the organizational roots of police brutality); see also THE N.Y.C. COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE DEP’T, COMMISSION REPORT 51 (1994) [hereinafter MOLLEN

police officer attributed to that particular officer's characteristics, rather instances of police misconduct are typically viewed in the larger context of the police agency.¹⁷ There is a widespread recognition of a "powerful organizational culture that significantly influences and constrains [police officers'] judgments and conduct."¹⁸ Several important characteristics of police culture include "(1) the phenomenon known as 'the blue wall of silence;' (2) a lack of effective identification and discipline of problem officers; and (3) the widespread belief among various levels and ranks of police officers that some violence or brutality is a necessary part of effective policing."¹⁹ Not only do these organizational characteristics promote an organizational structure within law-enforcement institutions that tolerates and encourages a culture of police misconduct, but they also contribute to an "us versus them" mentality between the officers and the communities they serve.²⁰

Several famous examples of police misconduct are helpful to illustrate this theory of the institutional nature of police misconduct. For example, in 1991, the videotaping of the infamous beating of motorist Rodney King shocked the nation.²¹ Viewers from all over the world saw several Los Angeles police officers brutally kick and beat Rodney King.²² Perhaps what was equally disturbing was the number of officers who, while they did not actively participate in the beating, simply stood by and watched without intervening.²³ Several years later, in what became known as the Los Angeles Rampart Scandal, numerous officers were involved in planting false evidence, securing coerced confessions, and perjury.²⁴ As a result of this widespread corruption, one hundred convictions were overturned and four officers were convicted in

COMMISSION], available at [http://www.parc.info/client_files/Special%20Reports/4%20-%20Mol len%20Commission%20-%20NYPD.pdf](http://www.parc.info/client_files/Special%20Reports/4%20-%20Mol%20len%20Commission%20-%20NYPD.pdf) ("[P]olice culture—the attitudes and values that shape officers' behavior—is a critical component of the problem of police corruption today").

17. Armacost, *supra* note 1, at 476.

18. *Id.*

19. Simmons, *supra* note 1, at 381–82.

20. See generally Armacost, *supra* note 1, at 501 (noting that the bond developed between police officers breeds an intense loyalty that pits police officers against citizens); see also David Crump, *The Social Psychology of Evil: Can the Law Prevent Groups From Making Good People Go Bad?*, BYU L. REV. 1441, 1442 (2008) (citing testimony of former LAPD officer Rafael Perez at his sentencing hearing: "The 'us against them' ethos of the overzealous cop began to consume me.").

21. Paul Hoffman, *The Feds, Lies, and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 S. CAL. L. REV. 1455, 1455–56 (1993).

22. *Id.*

23. *Id.* at 1461 (noting that over a dozen officers watched the beating of Rodney King without assisting him or intervening).

24. Steven P. Ragland, *Using the Master's Tools: Fighting Persistent Police Misconduct with Civil RICO*, 51 AM. U. L. REV. 139, 142 (2001).

connection with the scandal.²⁵ The recent conviction of five New Orleans police officers for their crimes related to the Danziger Bridge shooting is also illustrative of an institutional culture of police misconduct and corruption. In the wake of Hurricane Katrina, officers fired upon several unarmed citizens crossing Danziger Bridge, killing two victims, one of whom was shot in the back of the head, and wounding four others.²⁶ An investigation revealed that numerous officers actively participated in the shooting, but several other officers, some of them supervisors, participated in an elaborate effort to conceal the wrongdoing of those involved in the shooting.²⁷

Recently, allegations of systemic police misconduct regarding allegations of racial profiling have surfaced in Maricopa County, Arizona and East Eden, Connecticut. Based upon an investigation that began in 2008, the DOJ found that the Maricopa County Sheriff's Office ("MCSO") engaged in a pattern or practice of unconstitutional racial profiling.²⁸ The federal government recently filed suit against the MCSO accusing it of "discriminatory and otherwise unconstitutional law-enforcement actions against Latinos."²⁹ After

25. *Id.* at 143–44 (explaining the results of the post-Rampart criminal trials); *see also* Erwin Chemerinsky, *The Role of Prosecutors in Dealing with Police Abuse: The Lessons of Los Angeles*, 8 VA. J. SOC. POL'Y & L. 305, 308 (2001) (noting that over one hundred convictions had been overturned because of prosecutors use of tainted or falsified evidence); *see also* Laurie Levenson, *Police Corruption and New Models for Reform*, 35 SUFFOLK U. L. REV. 1, 22 (2001) (explaining that very few of the seventy-seven officers originally identified as part of the Los Angeles Rampart Scandal were ever found guilty of criminal misconduct).

26. *Ex-Cop Pleads Guilty in Katrina Bridge Shooting Cover-Up*, CNN JUSTICE (Feb. 24, 2010, 10:58 PM), http://articles.cnn.com/2010-02-24/justice/katrina.cop.charges_1_danziger-bridge-police-officers-new-orleans-police?_s=PM:CRIME.

27. Richard Fausset, *Five Police Convicted in Post-Katrina Shootings*, L.A. TIMES, Aug. 6, 2011, at A7 (reporting that Sergeants Kenneth Bowen, Robert Gisevius, Archie Kaufman and Officers Anthony Villavaso and Robert Faulcon were found guilty). Five other officers of the New Orleans Police Department pled guilty to numerous charges linked to the cover-up: Lieutenant Michael Lohman, Detective Jeffrey Lehrman, and Officers Michael Hunter, Robert Barrios, and Ignatius Hill. *5 Officers convicted in post-Katrina shootings*, CBSNEWS.COM (Aug. 5, 2011, 1:07 PM), http://www.cbsnews.com/2100-201_162-20088708.html. Sergeant Gerard Dugue faces trial in September for his role. *Id.* For a summary of the various charges and the officers' roles, *see Third Officer Pleads Guilty in Shooting*, N.Y. TIMES (Apr. 7, 2010), <http://www.nytimes.com/2010/04/08/us/08shooting.html>; *Ex-Police Officer Admits Role in Cover-Up of Louisiana Bridge Shooting*, CNN JUSTICE (Mar. 11, 2010, 1:48 PM), <http://www.cnn.com/2010/CRIME/03/11/nopd.shooting/index.html?iref=allsearch> ("Lehrmann also admitted he helped compile a false report on the incidents, and was with others when they planted a gun as part of the cover-up, according to court documents.").

28. *See* Letter from Thomas E. Perez, Assistant Attorney Gen., U.S. Dep't of Justice, to Bill Montgomery, Cnty. Attorney, Maricopa Cnty. 2 (Dec. 15, 2011) [hereinafter Letter from U.S. Dep't of Justice], *available at* <http://www.justice.gov/crt/about/spl/mcso.php>.

29. Jerry Seper, *Justice Dept. accuses Ariz. Sheriff Arpaio of racial profiling*, THE WASH. TIMES (May 10, 2012), <http://www.washingtontimes.com/news/2012/may/10/justice-department-plans-sue-ariz-sheriff-arpaio/print/>.

interviewing over four hundred people and reviewing thousands of pages of documents, DOJ found that “through the actions of its deputies, supervisory staff, and command staff,” the MCSO engaged in a pattern of discriminatory conduct.³⁰

None of the aforementioned instances of police misconduct or corruption could have occurred without complex cooperation between wrongdoers at various levels. Although widely publicized, these instances serve as a barometer of police culture throughout the nation, and several reports have noted that police misconduct is a problem in many major police departments.³¹ Each of these instances demonstrates that the problems are institutional in nature, and not simply the work of a few bad apples.³² Institutional problems necessitate institutional remedies, and policymakers have focused on identifying characteristics of modern police culture in order to develop and implement suitable remedies.³³

There are numerous factors, such as the police code of silence, lax supervision, and a pervasive belief that violence is a necessary part of police work that contribute to an organizational culture of police misconduct.³⁴ Similarly, the lack of clear policies and the failure to implement effective accountability measures further exacerbate the problems that can arise and contribute to what DOJ described as a “chronic culture of disregard for basic legal and constitutional obligations” in the case of Maricopa County.³⁵ The following section describes some of the common cultural characteristics of police institutions that contribute to the culture DOJ describes.

2. Factors Contributing to Patterns of Police Misconduct

It is well established that a “code of silence” exists among many police officers working in the same department.³⁶ This code of silence, also known as

30. Letter from U.S. Dep’t of Justice, *supra* note 28, at 2.

31. See HUMAN RIGHTS WATCH, *supra* note 16, at 1, 27, 323.

32. See *id.* at 1, 37, 45 (reporting that many of the problems identified in police departments across the nation had an organizational component); see also Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 63–65 (2000) (noting that the “code of silence” protects officers who “violate civil rights through violence or other misconduct”); see also Armacost, *supra* note 1, at 501–02 (explaining that lax supervision of officers “fuel[s] a police culture that . . . fosters and protects corruption and brutality” and that the tolerance of force, such as “excessive fists to the face and . . . knees to the groin were the realities of policing”) (quoting MOLLEN COMMISSION, *supra* note 16, at 49).

33. MOLLEN COMMISSION, *supra* note 16, at 4.

34. Simmons, *supra* note 1, at 381–82 (noting that the “blue wall of silence,” inadequate supervision, and the widespread of belief of the necessity of violence were the primary factors in fostering an organizational culture of police misconduct).

35. Letter from U.S. Dep’t of Justice, *supra* note 28, at 2.

36. *Ricciuti v. N.Y.C. Transit Auth.*, 70 F. Supp. 2d 300, 333–34 (S.D.N.Y. 1999) (noting that the “blue wall of silence” prevents officers from notifying supervisors of police misconduct

the “blue wall of silence,” discourages officers who witness the misconduct of other officers to report that wrongdoing.³⁷ Officers who violate this unwritten rule find themselves in precarious situations, having breached this duty of loyalty to their fellow officers.³⁸ The code of silence is closely linked to police perjury, a practice that many actors in the judicial system see as widespread.³⁹ The Mollen Commission found that police perjury, which includes a range of activity such as supplying false testimony in court or planting evidence on victims, was “probably the most common form of police corruption facing the criminal justice system.”⁴⁰

In addition to the code of silence, several commissions examining the issue have found that aggressive policing styles are common in many local police departments. The Mollen Commission, for example, reported that even though many officers disapproved of physical violence against suspects, many officers tolerated brutality.⁴¹ In addition to the code of silence and aggressive policing styles, ineffective supervision and inadequate discipline contribute to an organizational police culture that facilitates police misconduct.⁴² When examining the Los Angeles Police Department (“LAPD”), the Christopher Commission reported that there was a large number of officers within the

that occurs within their unit or precinct); *McLin v. City of Chi.*, 742 F. Supp. 994, 1002 (N.D. Ill. 1990) (finding a cause of action based on allegations that the “code of silence” hindered police investigations into officer misconduct); *see also* Jennifer E. Koepke, *The Failure to Breach the Blue Wall of Silence: The Circling of the Wagons to Protect Police Perjury*, 39 WASHBURN L.J. 211, 213–14 (2000) (explaining that the “blue wall of silence” is pervasive among police departments and is source of pressure on police officers).

37. Andrew J. McClurg, *Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying*, 32 U.C. DAVIS L. REV. 389, 410 (1999) (explaining that the “blue wall of silence” prevents officers from reporting misconduct); *see also* John Powers, Jr., *Eroding the Blue Wall of Silence: The Need for an Internal Affairs Privilege of Confidentiality*, 5 SUFFOLK J. TRIAL & APP. ADVOC. 19, 27 (2000) (describing the widespread nature of the “blue wall of silence” and how it hinders investigations into police misconduct by preventing officers from reporting cases of misconduct).

38. Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 240 (1998) (noting that the repercussions that officers who break the code of silence face could jeopardize their careers and even their lives); Koepke, *supra* note 36, at 233 (explaining that officers who report misconduct in violation of the “blue wall of silence” face repercussions from other officers in the form of threats, isolation, and persecution); *see also* Domenech v. City of N.Y.C., 919 F. Supp. 702, 705 (S.D.N.Y. 1996) (noting that Plaintiff was informed that she would not receive any assistance if she was ever in trouble on the street if she broke the code of silence).

39. Chin & Wells, *supra* note 38, at 240.

40. MOLLEN COMMISSION, *supra* note 16, at 36.

41. *See id.* at 49.

42. Simmons, *supra* note 1, at 388; *see also* Armacost, *supra* note 1, at 527; *see also* Levenson, *supra* note 25, at 15–16 (noting that problems in the supervision of officers has been a contributing factor in police misconduct scandals).

LAPD who repeatedly used excessive force against the public.⁴³ The Christopher Commission's report noted that department management condoned this behavior through "a pattern of lax supervision and inadequate investigation of complaints."⁴⁴ Many of the officers who had received complaints had been promoted or received positive performance evaluations.⁴⁵ The Commission found that the LAPD "apparently had no overall system or plan for keeping track of more generalized data involving officer uses of force, excessive or otherwise."⁴⁶ Among other things, the LAPD lacked: (1) important features such as an auditing procedure for use of force reports; (2) a mechanism to monitor force-related civil damages suits and settlements for training and discipline; and (3) a method to systematically review officers who had multiple complaints alleging excessive uses of force.⁴⁷

Historically, there have been numerous methods to address police misconduct. Reformers have advocated the exclusionary rule, civil and criminal suits against police officers, internal police investigations, and the utilization of citizen complaint review boards to hold police officers accountable for misconduct.⁴⁸ These measures play a critical role in the effort to deter police misconduct, but none of these remedial measures, which are all adjudicatory in nature, have shown promise in preventing future patterns of misconduct.⁴⁹ Thus, these traditional remedies to address police misconduct

43. Armacost, *supra* note 1, at 527. *See generally* CHRISTOPHER COMMISSION, *supra* note 16, at iii–iv (stating "[t]he failure to control these officers is a management issue that is at the heart of the problem. The documents and data that we have analyzed have all been available to the department; indeed, most of this information came from that source. The LAPD's failure to analyze and act upon these revealing data evidences a significant breakdown in the management and leadership of the Department. The Police Commission, lacking investigators or other resources, failed in its duty to monitor the Department in this sensitive use of force area.").

44. *See* Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. (SPECIAL ISSUE) 815, 816 (1999) (discussing the Omnibus Crime Control Act of 1991 and the Police Accountability Act).

45. CHRISTOPHER COMMISSION, *supra* note 16, at 40–47 (noting that the performance reports of police officers tended to document every type of compliment and commendation while failing to record even sustained complaint or give any details about any complaints received).

46. Armacost, *supra* note 1, at 497.

47. Simmons, *supra* note 1, at 389; *see also id.* at 498–99 (noting that the LAPD's organizational culture had a promotion system that rewarded illegal force and a management policy that failed to supervise officer's use of force).

48. *See* Levenson, *supra* note 25, at 18–24.

49. *See* Simmons, *supra* note 1, at 378, 389 (discussing the shortcomings of various methods to address police misconduct); *see also* Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1399–1401 (2000); *see also* Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 771–72 (1993) (noting that traditional methods to address police misconduct fail because the cost borne by individual actors is minimal).

have proved inadequate to address the systemic change that many police departments desperately need.⁵⁰

B. The Federal Government's Role in Systemic Police Reform

1. The Genesis of DOJ's Pattern or Practice Authority: 42 U.S.C. § 14141

Recognizing the institutional nature of police misconduct and the limits of the traditional remedies, in 1994, Congress enacted 42 U.S.C. § 14141.⁵¹ This legislation granted DOJ the authority to seek widespread institutional reforms within local police departments that have displayed a pattern or practice of constitutional violations.⁵² Section 14141's emphasis on structural reform differentiates it from the other methods because the primary focus is to implement reforms that will alleviate a pattern of constitutional violations.⁵³ Pursuant to Section 14141, DOJ can initiate an investigation into a police department based on citizen complaints, private lawsuits, or other information that might indicate a pattern of abuse.⁵⁴ If DOJ finds a "pattern or practice" of constitutional violations after its investigation, it has the authority to sue the police department for injunctive relief.⁵⁵ Although DOJ has the authority to initiate lawsuits, none of the investigations have resulted in litigation, and most have been solved through consent decrees, memoranda of agreement, or technical assistance letters.⁵⁶ The consent decrees and memoranda of agreement generally require departments to implement systemic reforms with the goal of improving a wide range of policies and practices across the broader police institution.⁵⁷ Common requirements or recommendations for reforms

50. Levenson, *supra* note 25, at 25.

51. Simmons, *supra* note 1, at 392–93; *see also* Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 13 (2009).

52. *See* Harmon, *supra* note 51, at 13–14 (noting that the Special Litigation Section in the Department of Justice's Civil Rights Division has the power to bring suit against law enforcement agencies, which demonstrate patterns or practices of civil rights violations); *see also* 42 U.S.C. § 14141(a)–(b) (2006).

53. Harmon, *supra* note 51, at 13.

54. *Id.* at 14 (noting the Special Litigation Section is the specific entity within DOJ that conducts these investigations and suggests reforms).

55. *Id.* at 16.

56. *Id.* at 15.

57. *Id.* at 17–21, 50–54 (noting that although the legislation grants the U.S. government the ability to sue, under the Clinton Administration, the several investigations culminated in either negotiated consent decrees or memoranda of agreement; during former President's Bush's tenure, DOJ did not file any lawsuits, but merely issued "technical assistance" letters to the offending jurisdictions, technical assistance letters generally set forth similar recommendations but are not court-enforceable; however, the Obama Administration has been slightly more aggressive in opening investigations).

pursuant to Section 14141 have included implementing an early warning tracking system to identify problem officers, developing or improving use of force policies, developing or implementing structures for citizen complaints, and improving training programs.⁵⁸ The goal of each of these substantive recommendations is to achieve greater transparency and accountability in order to address the problematic cultural aspects discussed above.

2. Critiques of Section 14141

Despite the promise of DOJ's efforts to systemically reform police agencies through its pattern or practice authority, there are numerous critiques of the legislation. First, despite the grant of authority to sue offending police departments, DOJ is necessarily limited in its enforcement of Section 14141.⁵⁹ Scarce resources ensure that only a limited number of police departments will be held accountable for their patterns of unconstitutional violations pursuant to Section 14141.⁶⁰ The Special Litigation Section employs only a certain number of attorneys and funding for investigations is not unlimited.⁶¹ It is therefore impractical to initiate an investigation in every local police department that might necessitate reform.⁶² Second, concerns about the federal government seeking to change the practices of local police departments implicate important federalism concerns.⁶³ A particular administration may find it politically unfeasible to aggressively enforce the pattern or practice. Finally, the lack of community involvement, in addition to exacerbating the federalism concerns, threatens both the legitimacy of the reform process and the ability to ensure

58. Consent Decree at ¶ 12, *United States v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. Aug. 29, 2002), available at <http://www.justice.gov/crt/about/spl/documents/pittssa.php> (ordering the city to implement an "early warning system" to monitor complaint prone officers and appointing the Office of Municipal Investigations ("OMI") to investigate and permanently store all citizen complaints); Memorandum of Agreement Between the U.S. Dep't of Justice and D.C., ¶¶ 38, 40, 41 (June 13, 2001), available at http://www.justice.gov/crt/about/spl/documents/dcm_oa.php#_1_5 (mandating that Metropolitan police implement force policy reforms, such as defining and identifying the types of force and the situations in which they can be used, including when a weapon may be drawn, and maintaining a uniform database to record all weapon discharges); Consent Decree at 54–55, 56, *United States v. City of L.A.*, No. 00-11769 GAF (C.D. Cal. June 15, 2001), available at http://www.lapdonline.org/assets/pdf/final_consent_decree.pdf (requiring LAPD include in its training subjects such as: misconduct and retaliation, cultural diversity, Fourth Amendment, and other constitutional issues, as well as to provide supervisory training).

59. Harmon, *supra* note 51, at 3–4.

60. *Id.* at 3.

61. *Id.* at 21.

62. *Id.* at 21–22.

63. Kami C. Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351, 376–80 (2011).

long-term sustainable reform.⁶⁴ As currently implemented, the federal government's response to institutional police misconduct via Section 14141 does not adequately reflect the ideals of community policing, a model of policing built upon the premise that local residents and police officers should collaborate to problem solve and set criminal justice priorities for the community.⁶⁵

Thus, including a provision in the agreements that would allow citizens to be involved in the recruitment and hiring process is one step toward providing more local participation in these agreements. This Article argues that one of the most important ways in which the community can become involved is in the selection and hiring of the officers that serve their communities.⁶⁶ Such a role for community members may be beneficial in any community, but participating in this context is particularly important where the police department has been identified as exhibiting a pattern of police misconduct.⁶⁷ Since the federal government has embraced the philosophy of community policing,⁶⁸ it is inconsistent that the provisions in the consent decrees and agreements do not reflect a commitment to actively engage community members.⁶⁹ A proposal to incorporate provisions involving citizens in the hiring and recruitment process directly addresses the concern that there is a lack of stakeholder participation in DOJ's reform process.

II. COMMUNITY POLICING/COPS AND ITS RELATIONSHIP TO STAKEHOLDER PARTICIPATION

A. *Principles of Community Policing*

Perhaps the greatest example of organizational reform in the policing context has been the shift from the "reform-era" policing model to the community-policing model.⁷⁰ In contrast to reform-era police, who were

64. Simmons, *supra* note 1, at 416.

65. *Id.* (noting that federal use of Section 14141 is a departure from the traditional pattern of local reform and takes a top down approach that lacks any way for civilians in the community to influence the reform).

66. *See infra* notes 102–51 and accompanying text.

67. Kami C. Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 496–97 (noting that due to the institutional nature of police violence, traditional reform methods are inadequate).

68. *See infra* note 94 and accompanying text.

69. Simmons, *supra* note 67, at 519–20.

70. There are three generally recognized eras in policing. The "Political Era" was marked by a close relationship between police and political machines that controlled communities. During this era, police officers operated in decentralized units and the rampant corruption prevalent during this era has been attributed to the close ties between police and community leaders. For a description of the various eras of policing in the United States, *see* ROY ROBERG ET AL., POLICE

characterized as being reactive to incidents and detached from the community, community-oriented police officers are expected to regularly engage with the community and collaborate on initiatives to improve public safety.⁷¹ The concept of community policing is generally defined as “a philosophy that promotes organizational strategies which support the systemic use of partnerships and problem solving techniques, to proactively address the immediate conditions that give rise to public safety issues.”⁷² Community policing requires cooperation from various sectors of the community including, “civic and business leaders, public and private agencies, residents, churches, schools, and hospitals.”⁷³ Community policing developed from the concept of “problem-oriented policing” advanced by Herman Goldstein, who argued that in order to resolve issues of crime in a community, officers would need to identify the underlying causes of the problems that lead to repeated incidents.⁷⁴

The underlying rationale for the community-policing model is consistent with democratic theories that advocate stakeholder participation. Scholars have long argued “citizens should participate in the design and implementation of the policies that affect them.”⁷⁵ In the context of policing, the historical inability to participate and the marginalization of some sectors of society had a detrimental impact on vulnerable groups, particularly members of racial minority groups.⁷⁶ Racial profiling and disproportionate stops and arrests in marginalized neighborhoods are holdovers from this bygone era.⁷⁷ Community

AND SOCIETY 39 (4th ed. 2009) (describing the various eras of policing in the United States); *see also* GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 70 (1997). Efforts to reform these corrupt police departments, hence the moniker “reform-era” policing, emphasized a sharp division between police and the public. *Id.*

71. *See* BUREAU OF JUSTICE ASSISTANCE, *supra* note 8, at vii (explaining that community policing is predicated on police-citizen interaction and collaboration).

72. OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, LAW ENFORCEMENT RECRUITMENT TOOLKIT: COPS LEADERSHIP PROJECT vi (2009) [hereinafter COPS LEADERSHIP PROJECT], *available at* <http://www.cops.usdoj.gov/Publications/e080921223-RecruitmentToolkit.pdf>.

73. *See* BUREAU OF JUSTICE ASSISTANCE, *supra* note 8, at 4.

74. *See* Herman Goldstein, *Improving Policing: A Problem-Oriented Approach*, 25 *CRIME & DELINQ.* 236, 241–43 (1979).

75. William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 *WM. & MARY L. REV.* 127, 175 (2004).

76. Simmons, *supra* note 1, at 409.

77. Keith O. Lawrence, *Changing the Public Common Sense About Crime & Punishment*, in *RACE, CRIME, & PUNISHMENT: BREAKING THE CONNECTION IN AMERICA* 189 (Keith O. Lawrence ed. 2011).

policing, in many ways, represents the “counter-reaction” to the power imbalances that previously existed.⁷⁸

B. Federal Support for Community Policing

An overwhelming majority of major police departments now engage in community policing, and the federal government has played a critical role in financing, developing, and implementing community-policing programs in local police departments.⁷⁹ The Community Oriented Policing Services (“COPS”) was a critical component of the Violent Crime Control and Law Enforcement Act of 1994.⁸⁰ This program fulfilled then-President Bill Clinton’s promise to put one-hundred thousand additional police officers on America’s streets.⁸¹ Section 3796dd(a) grants the United States Attorney General the power to “make[] grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia.”⁸² In addition to establishing community-oriented policing programs, the grants may be used for numerous purposes related to law enforcement. This includes, among other things, rehiring law enforcement officers who have been laid off; hiring and training new officers for deployment in community-oriented policing; purchasing equipment, technology, and support systems to assist in community-oriented policing; training police to enhance their service to communities; and purchasing service weapons.⁸³

In October 1994, Attorney General Janet Reno announced the opening of the Department of Justice’s Office of Community Oriented Policing Services.⁸⁴ This entity would administer the grants to hire additional police officers and oversee the expansion of community-policing programs.⁸⁵ The initial mandate of COPS was to achieve four goals: (1) to increase the number of community-

78. See Michael Dorf, *Drug Treatment Courts & Emergent Experimentalist Governments*, 53 VAND. L. REV. 831, 855 (noting that community policing is a counter-reaction of historical power imbalances).

79. See Meares, *supra* note 6, at 1597 (noting that by 1999 64 percent of local police departments serving 85 percent of all residents engaged in community policing).

80. JERRY H. RATCLIFFE, CMTY. ORIENTED POLICING SERVS., INTEGRATED INTELLIGENCE & CRIME ANALYSIS: ENHANCED INFORMATION MANAGEMENT FOR LAW ENFORCEMENT LEADERS ii (2007).

81. 42 U.S.C. § 3796dd (2006). See also 140 CONG. REC. S43-03, S-47 (daily ed. Jan. 25, 1994), available at <http://www.gpo.gov/fdsys/pkg/CREC-1994-01-25/html/CREC-1994-01-25-pt1-PgS31.htm> (statement of President Clinton).

82. 42 U.S.C. § 3796dd(a).

83. See *id.* § 3796dd(b)(1)–(17) for a full listing of the purposes for which entities may use COPS grants.

84. Meares, *supra* note 6, at 1596.

85. *Id.* (noting that the Department of Justice would open an office to handle police-hiring grants and issues related to community policing).

policing officers by one-hundred thousand; (2) to promote community policing in the United States; (3) to help local police agencies develop management infrastructure that could support and sustain community policing after federal funding ended; and (4) to demonstrate that community-policing techniques could significantly reduce violence, crime, and disorder in communities.⁸⁶ Each year, COPS provides millions of dollars to local and state agencies for law enforcement initiatives.⁸⁷ Since 1994, COPS has distributed over \$12 billion of federal money to states.⁸⁸ Although the Bush Administration drastically reduced funding for COPS,⁸⁹ in March 2009, Attorney General Eric Holder announced an infusion of \$1 billion of funds to revitalize the program.⁹⁰ For the FY 2010, President Obama requested \$761 million, while Congress approved \$791.6 million.⁹¹ In FY 2011, President Obama requested \$690 million, but Congress only approved \$603.2 million.⁹²

As discussed above, the federal government's efforts to reform some police departments pursuant to Section 14141 have not explicitly included an adequate mechanism for community involvement in the reform of police practices. Inserting a role for community members would be consistent with the tenets of community policing, and fully integrating the structural reform model with stakeholder participation might have vast implications for changing a law enforcement agency's organizational culture. Policymakers, from both the federal and local levels, should examine various ways in which the goals of organizational police reform could be infused with community participation, and explore the implications of such a relationship. An integral part of COPS has been an emphasis on hiring and training officers to implement community

86. *Id.* at 1596–97 (citing OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, COPS OFFICE REPORT: 100,000 OFFICERS AND COMMUNITY POLICING ACROSS THE NATION 3 (1997)).

87. COPS is the “principal federal program that supports police manning at the state and local levels.” P.J. Crowley, *Homeland Security and the Upcoming Transition: What the Next Administration Should Do to Make Us Safe at Home*, 2 HARV. L. & POL'Y REV. 289, 302 (2008).

88. See COPS: CMTY. ORIENTED POLICING SERVS., <http://www.cops.usdoj.gov> (last visited Jan. 10, 2013).

89. Crowley, *supra* note 87, at 302. For example, in FY 2005, the Bush Administration requested \$97 million for the COPS program, which represented a 41 percent reduction from its previous request and was 91 percent below the amount that Congress appropriated in FY 2003. *Id.* at 302 n.57.

90. See Press Release, White House, U.S. Department of Justice Makes Available \$1 Billion in Recovery Act Funds for COPS Program (Mar. 16, 2009), *available at* 2009 WLNR 5062463 (explaining that the COPS Program would make available \$1 billion in grants for local governments to hire or retain law enforcement officers).

91. NATHAN JAMES, CONG. RESEARCH SERV., COMMUNITY ORIENTED POLICING SERVICES (COPS): BACKGROUND AND FUNDING 6 tbl.A-1 (2011).

92. *Id.*

policing.⁹³ Engaging the community in this aspect of organizational change for police departments would be a significant step to allowing a role for the community. The following section suggests that DOJ's pattern or practice cases may represent one vehicle for marrying these principles underlying community policing and organizational police reform.

III. BENEFITS OF ENCOURAGING COMMUNITY INVOLVEMENT THROUGH SECTION 14141 AND COPS

The federal government has strongly supported the community-policing model through its funding of initiatives and the grants awarded via COPS.⁹⁴ Embracing this philosophy over traditional policing models that kept the public and the police separate represented a seismic shift in the way many local law enforcement agencies deliver their services.⁹⁵ During this shift to community policing, the federal government simultaneously supported organizational change of police departments through its pattern or practice authority pursuant to Section 14141.⁹⁶ As a result of this pattern or practice authority, several of the nation's most troubled police departments entered into agreements or consent decrees to change their practices to allow for greater transparency and accountability.⁹⁷ However, there has not been a comprehensive effort to fuse the two strategies by allowing community representatives a greater role in fashioning the organizational changes that can occur pursuant to Section 14141.⁹⁸ There are many ways in which the community could become involved in the process of organizational reform. One proposal to bridge the two ideals embodied by community policing and organizational police reform would be to have any agreements between DOJ and the affected police department ensure a role for community representatives in the recruitment and selection of police officers.

A. *Community Policing Necessitates Community Involvement at All Levels*

The shift toward the model of community policing has significant implications for the selection and recruitment of police officers. Unlike the reform-era policemen, modern police officers are no longer expected to simply react to reports of crime and effectuate arrests.⁹⁹ Today's police officers, particularly those operating in departments purportedly supporting the

93. *Id.* at 1.

94. *Id.* at 6 tbl.A-1.

95. Dorf, *supra* note 78, at 855.

96. 42 U.S.C § 14141 (2006).

97. Simmons, *supra* note 63, at 371–72.

98. *Id.* at 373.

99. CHARLES B. SAUNDERS, JR., UPGRADING THE AMERICAN POLICE: EDUCATION AND TRAINING FOR BETTER LAW ENFORCEMENT 19–21 (1970).

community-policing model, have greater ongoing contact with the community.¹⁰⁰ To carry out the goal of problem-solving and help establish priorities for the community's public safety, "community-oriented" police officers are expected to have a greater understanding of the underlying causes of human behavior, be equipped to make good value judgments, demonstrate leadership, communicate effectively, and be more prone to engage in problem solving rather than violence.¹⁰¹ Thus, changing the model of policing should also include changing the methods of selection and hiring for police officers. The importance of recruiting and selecting quality personnel is an important part of an effective police department, and policymakers should encourage police departments to develop innovations in police hiring.¹⁰² In this context, the collaboration between citizens and police, and the possibilities for organizational change begin at the earliest possible moment—the recruitment and hiring of police officers.

1. Community Engagement May Result in Increased Legitimacy and Collaboration

Allowing community members to become actively involved in the recruitment and selection of the officers policing their community embodies the spirit of community policing. The federal government has supported innovative methods to involve community members in hiring officers for local police departments.¹⁰³ There are myriad benefits of including community members in the recruitment and hiring of police officers, many of which are consistent with the benefits of stakeholder participation discussed above.¹⁰⁴ For example, in addition to increasing public visibility and avoiding the duplication of individual efforts, one report issued by the COPS office noted that "[c]ollaboration will enhance the power of advocacy and resource development."¹⁰⁵ The report also noted collaboration will create the possibility for future collaboration between citizens and police.¹⁰⁶ Additionally, this report

100. *Id.* at 18.

101. *Id.* at 82–83.

102. COPS LEADERSHIP PROJECT, *supra* note 72, at 75.

(noting that recruitment and selection is "one of the most critical elements in determining success [of a police department]").

103. Definitions of "community" can be difficult to articulate and there are several different schools of thought on which members should be considered the "community," but the COPS office has identified several categories of stakeholders including business owners, clergy, elected officials, homeowner associations, media, military, minority advocacy groups, neighborhood watch leaders, schools, volunteers, social service organizations, and youth organizations. *Id.* at 76–78.

104. *Id.* at 75–76.

105. *Id.* at 75.

106. *Id.*

stressed the unique attributes that community members can bring to the selection process, noting “[c]ommunity representatives can provide a better understanding of cultural impediments to successful participation in the selection process.”¹⁰⁷ Notably, the COPS office also emphasized that the community’s role in this context should not be limited to recruiting police officers, but that “[c]itizens should also have a voice at the selection step.”¹⁰⁸

B. Community Engagement in Hiring May Assist in Efforts to Racially Diversify Police Departments

Another concern when recruiting police officers is the challenge of maintaining a diverse police force. Thus, in addition to the benefits of collaboration, allowing the community an active role in recruitment may help recruit more minority applicants.¹⁰⁹ Many police departments struggle to recruit a workforce that reflects the racial and ethnic diversity of the community.¹¹⁰ The need to racially diversify police departments has been a priority for many police departments, and increasing racial diversity may help achieve legitimacy among the minority communities.¹¹¹ For example, a Bureau of Justice Statistics report found that 70 percent of white respondents had a “great deal” of confidence in the police as compared to only 41 percent of black respondents.¹¹² When asked whether the police treated blacks as fairly as they treat whites, 34 percent of whites disagreed, but an overwhelming majority, 76 percent of blacks, disagreed.¹¹³ So it is fair to say that whatever is actually happening, many racial minorities have a negative perception of police.¹¹⁴ When surveyed, even police officers themselves agree that racial bias

107. *Id.* at 8.

108. COPS LEADERSHIP PROJECT, *supra* note 72, at 8.

109. *Id.* at 7–8.

110. See JEREMY M. WILSON & CLIFFORD A. GRAMMICH, U.S. DEP’T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERVS., POLICE RECRUITMENT AND RETENTION IN THE CONTEMPORARY URBAN ENVIRONMENT 2 (2009); see also COPS LEADERSHIP PROJECT, *supra* note 72, at 5.

111. *Detroit Police Officers’ Ass’n v. Young*, 608 F.2d 671, 696 (6th Cir. 1979) (noting that a racially diverse police department may enhance effective law enforcement by fostering public support and confidence among minority communities).

112. BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 2003, at 113 (Ann L. Pastore & Kathleen Maguire eds., 2005).

113. *Racial Discrimination: Obama, Gates and the Police*, ABC NEWS (July 23, 2009, 9:35 AM), <http://abcnews.go.com/blogs/politics/2009/07/racial-discrimination-obama-gates-and-the-police> (citing an ABC/Post poll which also found that 74 percent of African-Americans believed that they were unfairly treated by police, compared to only 30 percent of whites).

114. See Keith D. Parker et al., *African Americans’ Attitudes Towards the Local Police: A Multivariate Analysis*, 25 J. BLACK STUD. 396, 405 (1995) (noting that historically, numerous studies have demonstrated that blacks are more critical of the police than whites); see also Meera Adya et al., *Cultural Differences in Perceptions of the Government and the Legal System:*

on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community.¹¹⁵

Historically, police departments in the United States have been homogenous institutions. The majority of police officers were traditionally predominately white, male, and from working-class backgrounds.¹¹⁶ Many of the tensions that exist between law-enforcement agents and racial and ethnic minorities can be attributed to this lack of racial diversity and the detachment of officers from the communities they serve.¹¹⁷ Racial diversity in American police departments, however, has significantly increased over the last few decades.¹¹⁸ As David Sklansky notes, “[i]n 1970, blacks made up somewhere around six percent of sworn officers in the three hundred or so largest American police departments; today, that figure is around eighteen percent.”¹¹⁹

Hurricane Katrina Highlights What has Been There All Along, 8 J. L. & SOC. CHALLENGES 27, 35 (2006) (describing a 1998 Gallup Poll which found that African-Americans perceive racial disparities in policing and believe that they are targets of police); see also Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1157 (2000) (noting that many minorities harbor grave distrust of police officers and that there is a widespread belief in African-American communities that police are unfair and prejudiced against minorities).

115. Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 390 (1998), citing CHRISTOPHER COMMISSION, *supra* note 16, at 69 (finding that approximately 25 percent of the officers surveyed believed that police officers have a racial bias).

116. See David A. Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1210 (2006) (reporting that historically, police departments were mostly all-white and all-male); see also Frank R. Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 692 (noting that most policeman come from working-class backgrounds); see also Liyah Kaprice Brown, *Officer or Overseer?: Why Police Desegregation Fails as an Adequate Solution to Racist, Oppressive and Violent Policing in Black Communities*, 29 N.Y.U. REV. L. & SOC. CHANGE 757, 777–80 (2005) (reporting that police departments lack diversity as black officers have only been employed in token numbers).

117. See Cynthia Lee, “*But I Thought He Had a Gun*,” *Race and Police Use of Deadly Force*, 2 HASTINGS RACE & POVERTY L.J. 1, 23 (2004) (noting that the 2001 riots in Cincinnati were incited by citizen indignation of perceived brutality against African-American males after six years of police shootings killed fifteen African-American males); see also L. Darnell Weeden, *Johnnie Cochran Challenged America’s New Age Officially Unintentional Black Code; A Constitutionally Permissible Racial Profiling Policy*, 33 T. MARSHALL L. REV. 135, 148 (2007) (noting that the Watts Riots started after eye witnessed reported that white police officers used excessive force in arresting two African-American suspects); see also Bryan W. Leach, *Race as Mission Critical: The Occupational Need Rationale in Military Affirmative Action and Beyond*, 113 YALE L.J. 1093, 1127 (2004) (noting that predominately white police forces face tension, hostility and unrest in black neighborhoods).

118. Sklansky, *supra* note 116, at 1211, 1213.

119. *Id.* at 1213 (citing Justin McCrary, *The Effect of Court-Ordered Hiring Quotas on the Composition and Quality of Police* 44 (Nov. 30, 2003) (unpublished manuscript), available at <http://www.nber.org/papers/w12368>; see also Samuel Walker & Tara O. Shelley, *Affirmative Action, Diversity, and Law Enforcement*, in POLICE AND POLICING: CONTEMPORARY ISSUES 187, 187 (Dennis J. Kenney and Robert P. McNamara eds., 2d ed., 1999) (noting that by 1988,

Despite the importance of a racially diverse police force, out of the 668,000 police and sheriff's patrol officers, African-Americans only constitute 11.5 percent of the officers.¹²⁰ Increasing the number of minority police officers may help ameliorate some of the tension that historically existed between police and racial minorities.¹²¹ Similarly, as David Sklansky argues, the demographic changes in America's police departments have had a positive impact on many of the organizational shortcomings of police departments.¹²² He notes that, "[p]olice effectiveness does not appear to have suffered, a range of police pathologies have been ameliorated, and police reform has grown easier and less perilous."¹²³ In particular, Sklansky notes that the resulting decline in the solidarity and cohesiveness of officers actually "makes the internal cultures of police departments less stifling, and it opens up space for dissent and disagreement."¹²⁴

Increased legitimacy and the possibility of increasing racial diversity are not only important factors for changing the organizational and institutional culture of the police department, but they are also consistent with the goals of community policing.¹²⁵ Recognizing the numerous benefits of community inclusion, the federal government has funded, through the COPS office, several initiatives to fund and develop models for community engagement in the hiring process.¹²⁶ However, these ideals have not been reflected in federal efforts to

African-American officers composed 12.3 percent of police positions, up from 6.5 percent in 1975).

120. BUREAU OF LABOR STATISTICS, LABOR FORCE STATISTICS FROM CURRENT POPULATION SURVEY, Averages 2011 (2012); BUREAU OF LABOR STATISTICS, EMPLOYMENT STATUS OF THE CIVILIAN NONINSTITUTIONAL POPULATION BY DETAILED AGE, SEX, AND RACE, Averages 2011 (2012).

121. Allan MacLean, *The "Critical Mass" and Law Enforcement*, 14 B.U. PUB. INT. L.J. 297, 301–02 (2005) (explaining that increasing the number of minority police officers would increase communication with and respect by the community); see also K. Michelle Scott, *Looking Through a Glass Darkly: Applying the Lens of Social Cubism to the Police-Minority Group Conflict in America*, 8 ILSA J. INT'L & COMP. L. 857, 874 (2002) (citing John R. Lott, Jr., *Does a Helping Hand Put Others at Risk? Affirmative Action, Police Departments and Crime*, 38 ECON. INQUIRY 239, 240 (2000)) (noting that an increase in minority police officers could reduce the amount of violence directed towards minorities and increase the level of trust between the police and the community).

122. See Sklansky, *supra* note 116, at 1229–34 (noting that an increase in minority, female, and gay and lesbian officers helps to remake the organizational culture of police departments by weakening institutional defects such as the code of silence).

123. See *id.* at 1212.

124. See *id.* at 1232.

125. See COPS LEADERSHIP PROJECT, *supra* note 72, at 32.

126. See U.S. DEP'T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERVS., FACT SHEET: 2012 COPS HIRING PROGRAM (2009), available at <http://www.cops.usdoj.gov/pdf/2012AwardDocs/CHP/2012-CHP-Post-Award-Fact-Sheet.pdf> (stating that "CHP is one of several hiring programs developed by the COPS Office since its inception to support law enforcement.").

change the institutional culture of police departments.¹²⁷ Greater incentives are needed to unite the goals of organizational reform of local police departments and stakeholder participation in selecting the officers. The following section discusses specific examples of how several police departments have partnered with community members and engaged them in the task of police recruiting. These initiatives could serve as models to other police departments nationwide.

C. *Specific Examples of Community Engagement in Hiring and Recruiting Police Officers*

The federal government has funded several efforts to assist local police departments in developing innovative officer recruitment programs that emphasize community involvement. For example, part of the federal money provided through the COPS program is directed to hiring police officers.¹²⁸ The COPS office reported that \$111 million would be available through the COPS Hiring Program, a program that provides funding to hire and train police officers.¹²⁹

The federal government has also funded specific programs that have involved engaging community members in the hiring process.¹³⁰ For example, Hiring in the Spirit of Service (“HSS”) was a federally funded project in which several police departments actively encouraged members of the community to participate in recruiting and hiring service-oriented police officers.¹³¹ The goal of the project was to assist the participating agencies in recruiting and hiring service-oriented law enforcement officers, and the project “placed a heavy premium on increasing community involvement in all facets of [police recruitment].”¹³² Underlying the rationale for the project was the recognition that “[w]hen organizational philosophy shifts, . . . it calls into question whether the traditional models that have been used to recruit and hire are sufficient to support the requirements of the new community policing model.”¹³³

The participating agencies in the HSS project included Burlington, Vermont; Sacramento, California; Detroit, Michigan; Hillsborough County,

127. See ELLEN SCRIVNER, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, INNOVATIONS IN POLICE RECRUITMENT AND HIRING: HIRING IN THE SPIRIT OF SERVICE 15 (2006), available at <http://www.cops.usdoj.gov/Publications/innovationpolicerecruitmenthiring.pdf> (noting that despite progressive changes there is still little focus on hiring community service oriented candidates).

128. See *COPS History (1994 – The Present)*, U.S. DEP’T OF JUSTICE, CMTY. ORIENTED POLICING SERVS., <http://www.cops.usdoj.gov/Default.asp?Item=44> (last visited Jan. 10, 2013).

129. See *FY 2012 COPS Hiring Program (CHP)*, U.S. DEP’T OF JUSTICE, CMTY. ORIENTED POLICING SERVS., <http://www.cops.usdoj.gov/Default.asp?Item=2367> (last visited Jan. 10, 2013).

130. See SCRIVNER, *supra* note 127, at 6.

131. See generally *id.*

132. *Id.* at 7.

133. *Id.*

Florida; and King County, Washington.¹³⁴ Each of these departments attempted to meaningfully involve citizens in the recruitment and selection process, and a stated objective was to “bring community policing values and expectations directly into the recruitment and selection process.”¹³⁵ The HSS project found that there are several core competencies modern police officers need to effectively fulfill their duties.¹³⁶ The core competencies include the ability to use good judgment and to problem solve, the capacity for empathy and compassion, the capacity to engage in teamwork and the ability to collaborate, the capacity to multi-task, and the possession and demonstration of integrity.¹³⁷ One common feature of the sites that participated in the program was that, in various ways and to various degrees, they actively engaged members of the community in the recruitment and selection process.¹³⁸ In 2005, Sacramento pioneered a program to include the community in the recruitment process in order to attract a more diverse police force.¹³⁹ In Sacramento, Captain Kevin Johnson, who is credited with helping to develop the program, sought to enlist the help of community leaders in the recruitment process.¹⁴⁰ The police department trained community leaders during a one-day course, told them what type of recruit the department sought, gave them a recruiter handbook, and a checklist of attributes of a strong candidate.¹⁴¹ The hope was that these trained community leaders would help find officers in their racial and ethnic circles.¹⁴² Community involvement did not stop at the recruitment stage in this program.¹⁴³ Community recruiters sponsored candidates through the police academy, and met regularly with the recruit and his or her family to offer support.¹⁴⁴ On graduation day, the community recruiter pinned the badge onto the recruit, which signified the recruit’s entry into the police force.¹⁴⁵ Finally, the officer was not assigned to any community,

134. *Id.* at 11. The Community Policing Consortium provided technical assistance to the site to help them achieve their goals. SCRIVNER, *supra* note 127, at 1.

135. *Id.* at 12.

136. *Id.* at 109 (noting that the Sacramento Police Department, through the use of focus groups, created a list of important skill sets for officers who engage in community policing).

137. *Id.*

138. *Id.* at 60.

139. *Id.* at 29.

140. SCRIVNER, *supra* note 127, at 23 (noting that the Sacramento police reached out to community representatives to form part of the steering committee).

141. Kevin Johnson, *The Community Recruiter*, LXXII THE POLICE CHIEF 16, 17–18 (2005).

142. *Id.* at 17.

143. *Id.* at 18, 20.

144. *Id.* at 18 (stating that a community recruiter’s responsibilities included finding qualified recruits in their community and sponsoring them once the recruit entered the academy).

145. *Id.* (stating that a community recruiter was expected to attend the recruit’s badge pinning ceremony).

but rather, his own community.¹⁴⁶ The results from the Sacramento experiment were mixed. The Sacramento Police Department had trouble increasing diversity, and the majority of recruits were still white males.¹⁴⁷ There is little other information publicly available about the outcomes of these programs and whether they were successful. Undoubtedly, more study is needed to articulate measures for a successful program.

The HSS project also had an impact in Detroit. Through the project, the Detroit Police Department expanded its already existing Recruiting Ambassadors Program, and offered incentives for police and community representatives whose recruits completed the recruitment process.¹⁴⁸ The Detroit Police Department had previously involved the community in recruiting efforts.¹⁴⁹ For example, the department allowed community members to participate in interview panels, but the community members did not have the same opportunity, as the sworn officers on the panel, to rate the candidates.¹⁵⁰ After implementation of the HSS project, the scores of the community members were averaged with the three scores from the sworn panel members; thus, the community members truly had an ability to impact a candidate's score.¹⁵¹ Several of the other sites allowed community members to participate in the candidates' oral interviews.¹⁵² By the end of the HSS project, several of the sites were in the process of developing interview process guides to ensure appropriate questions, as well as to develop standardized questions that would strengthen reliability of independent interview ratings.¹⁵³ To bring legitimacy to the police reform process, these models could be replicated and implemented in jurisdictions that the government has identified as exhibiting a pattern or practice of constitutional violations. If citizens have a stake in selecting new officers, they may have more support for the reforms. And there is a chance that the new recruits, chosen through this process, will be more willing to engage community members and less likely to replicate patterns of insularity common among local law-enforcement agencies.

IV. MAKING IT WORK: QUESTIONS FOR FUTURE STUDY

The recruitment and selection of new police officers represents one way to begin changing the institutional culture of law-enforcement agencies. Police

146. *Id.*

147. SCRIVNER, *supra* note 127, at 29 (noting that although the Sacramento Police Department conducted an extensive community outreach campaign, it was still unable to substantially increase the number of minority officers in the department).

148. *Id.* at 47.

149. *Id.* at 43 (discussing the history of community involvement in Detroit).

150. *Id.* at 45.

151. *Id.*

152. *Id.* at 61.

153. SCRIVNER, *supra* note 127, at 61.

departments are increasingly concerned with transparency and accountability, as well as an ability to ensure public safety without the threat of violence in order to legitimize their efforts to promote partnerships between citizens and police.¹⁵⁴ There are many characteristics that might be important to consider when choosing a police officer suitable to implement the ideals of community policing. However, the process of how these officers are selected may be equally important. Involving community members in the selection and recruitment of police officers represents one way to infuse the principle of community policing and the “new paradigm” of policing.

Although there are many possible benefits, there are also several valid concerns about such a proposal. First, even though the pattern or practice cases represent a mechanism by which to encourage community involvement, it is certainly not the only way. Recall that one of the major criticisms of the pattern or practice suits is DOJ’s limited capacity to reach all of the departments that are in need of change.¹⁵⁵ Although DOJ’s inclusion of a recommendation to include the community in recruiting and hiring would reach only a few police departments, many other police departments may begin to look to this as a model or best practice. Furthermore, DOJ’s agreements pursuant to 42 U.S.C. § 14141 have always included the provision of an independent monitor that oversees the implementation of the agreement.¹⁵⁶ If this practice continues, the monitors’ reports could provide valuable information about the challenges of implementation, as well as tenets of a successful program.

Another likely criticism of a proposal to involve the community in hiring is that creating closer community ties by involving the community in the selection process could actually lead to more corruption. It is, after all, the close relationship between the community and resulting patronage that was responsible for corruption in the “political era,” and the resulting backlash that ushered in the “reform-era.”¹⁵⁷ Corruption is a serious concern, but the possibility should not foreclose the involvement of community representatives in selecting the individuals who will be charged with enforcing the laws in those communities. There are several practical ways to avoid this corruption. First, those implementing these programs will have to think carefully about the criteria they use to select the community representatives, and ensure that these representatives are clear about their role and expectations after the police officer is hired. Similarly, new recruits will need to be made clear of their role, and that they must uphold the law in all situations. Finally, other mechanisms that are typically in place, such as psychological and other forms of testing, will remain an important part of the selection process. This will help ensure

154. *Id.* at 127–28.

155. *See supra* note 60 and accompanying text.

156. *See* Harmon, *supra* note 51, at 16–17.

157. *See supra* note 70 and accompanying text.

that the department hires individuals with the integrity and demeanor to effectively serve their community.

Another concern is that the community representatives chosen or most likely to participate are not necessarily members of groups most likely to be victimized by crime or targeted by police as suspects. If all constituencies are not represented, then the benefits could fall to one group, further marginalizing an already vulnerable or politically disenfranchised group.¹⁵⁸ Such a result would be antithetical to the goals of community policing, and those implementing these programs would need to be careful to avoid this scenario. Policymakers have had some success with best practices in selecting among various stakeholders in the context of negotiated rulemaking, and perhaps those principles could be applied in this context.¹⁵⁹

Finally, scholars should make efforts to empirically test many of the assumptions underlying programs that involve community stakeholders in the selection and recruitment of officers. After a program allowing for community involvement in the selection and hiring of police officers has been implemented, it would be important to know whether community perception about the police and the police department has changed. It might be important to determine whether complaints against the police decreased after the implementation of the program. Finally, another important question would be whether or not citizen-police partnerships had been positively impacted. This might be measured in terms of new initiatives created or the number of citizens involved in these partnerships.

Allowing community members a role in determining who is hired and what qualities these officers will possess is consistent with allowing the community to set goals and priorities for their specific communities. A hiring process that involves stakeholders and *how* police officers are chosen could have important implications for the organizational culture of police departments.

158. See Richard T. Ford, *Police Don't Fight Wars*, BOSTON REV., Dec. 2004–Jan. 2005, at 19 (Arguing that while local police are more likely to be more accountable to local constituencies than federal agents, “local police also tend to be most responsive to the local communities that are least likely to be victims of police abuse and most likely to fear the effects of violent crime.”).

159. See Simmons, *supra* note 67, at 489 (explaining how the process of stakeholder selection could be applied to the police reform process).