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## Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure

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**INSTITUTIONALIZING POLICE ACCOUNTABILITY REFORMS:  
THE PROBLEM OF MAKING POLICE REFORMS ENDURE**

SAMUEL WALKER\*

INTRODUCTION: THE PROBLEM OF SUSTAINING POLICE REFORMS

The history of police reform in America, in the sense of modern day notions of police professionalization, is more than a century old.<sup>1</sup> Over that time period there have been successive waves of reform movements, with a changing set of objectives and programs.<sup>2</sup> Much has been accomplished to improve policing over this long period.<sup>3</sup> Whether the benchmark is one-hundred years, fifty years or only twenty years ago, it is possible to see significant reforms in police management, crime fighting tactics, police personnel standards and training, the diversity of the work force, constitutional standards for policing, and the accountability of officers for their actions in critical situations. The community oriented policing (COP) movement, moreover, represents a fundamental change in thinking about the role of the police in society that rejects the professional model that dominated police thinking for most of the twentieth century about how police organizations should attempt to fulfill that role.<sup>4</sup>

Nonetheless, reformers and police scholars alike have given little attention to the question of ensuring that achieved reforms endure and become a permanent part of an individual department or of policing in general.<sup>5</sup> The police literature contains only a few references to the institutionalization or sustainability of reforms, and the discussions are typically very brief.<sup>6</sup> Part of the problem, Stephen Mastrofski and James Willis importantly note, is that police scholars face enormous difficulties in tracking “changes in police

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1. SAMUEL WALKER, *A CRITICAL HISTORY OF POLICE REFORM* ix (1977).

2. *Id.*

3. *Id.*

4. See Jack R. Greene, *Community Policing in America: Changing the Nature, Structure, and Function of the Police*, in 3 *POLICIES, PROCESSES, AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM* 312 (Julie Horney ed., 2000).

5. See Stephen D. Mastrofski & James J. Willis, *Police Organization Continuity and Change: Into the Twenty-first Century*, in 39 *CRIME AND JUSTICE: A REVIEW OF RESEARCH* 55, 57 (Michael Tonry ed., 2010).

6. See *id.* at 75–76.

organizations over long time periods.”<sup>7</sup> Scholars are naturally averse to examining subjects that pose serious measurement problems. Lawrence Sherman cynically noted more than thirty years ago that in studying the persistence of anti-corruption reforms it is almost impossible to determine if “a department was truly reformed to begin with.”<sup>8</sup>

The lack of interest in institutionalizing reform is all the more remarkable because of the growing literature on police reform itself. David Bayley noted years ago that the late twentieth century has been arguably “the most creative period in policing” since the creation of the modern police in 1829.<sup>9</sup> Several scholars have attempted to survey various reforms, which include community policing, problem-oriented policing, hot-spots policing, anti-terrorist police policies, major innovations in accountability, significant changes in police technology, and dramatic changes in the composition of the police work force.<sup>10</sup> Wesley Skogan systematically listed and discussed the reasons “Why [police] Reforms Fail,” finding eleven separate factors.<sup>11</sup> While extremely valuable, his article did not discuss how those various obstacles might be overcome in order to enhance the sustainability of reform.<sup>12</sup>

Only two publications to date have explored the issue of institutionalizing police reforms in detail.<sup>13</sup> Rachel Boba and John Crank define institutionalization as “establish[ing] as normal or mak[ing] something a customary and accepted part of the organization.”<sup>14</sup> With regard to problem-oriented policing as a reform, they argue that responsibility for the reform must be “distributed across the rank structure . . . integrat[ing] problem solving, analysis, and accountability at all levels” of the organization.<sup>15</sup> Similarly, Trent

7. *Id.* at 127.

8. LAWRENCE W. SHERMAN, SCANDAL AND REFORM: CONTROLLING POLICE CORRUPTION 261–62 (1978).

9. DAVID H. BAYLEY, POLICE FOR THE FUTURE 101 (1994).

10. Mastrofski & Willis, *supra* note 5, at 117; David H. Bayley, *Police Reform: Who Done It?*, 18 POLICING & SOC’Y 7, 8 (2008); Wesley G. Skogan, *Why Reforms Fail*, 18 POLICING & SOC’Y 23, 23 (2008); *see also* INTERNATIONAL POLICE EXECUTIVE SYMPOSIUM, POLICE REFORM FROM THE BOTTOM UP (Monique Marks & David Sklansky eds., 2012).

11. Skogan, *supra* note 10, at 23.

12. *See id.*

13. *See* TRENT IKERD & SAMUEL WALKER, U.S. DEP’T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERV., MAKING POLICE REFORMS ENDURE: THE KEYS FOR SUCCESS 5 (2010), available at [http://www.cops.usdoj.gov/Publications/e04106264\\_policereforms\\_fin.pdf](http://www.cops.usdoj.gov/Publications/e04106264_policereforms_fin.pdf); Rachel Boba & John P. Crank, *Institutionalizing Problem-Oriented Policing: Rethinking Problem-Solving, Analysis, and Accountability*, 9 POLICE PRACT. & RES. 379, 379 (2008).

14. Boba & Crank, *supra* note 13, at 384.

15. *Id.* at 385, 391. In his twenty-year assessment of problem-oriented policing, Scott argues that it will have “succeeded” when it has been “integrated” into a department’s operations “at least as completely as . . . other operational strategies” of patrol, response to incidents, and investigation. MICHAEL S. SCOTT, U.S. DEP’T OF JUSTICE, OFFICE OF CMTY. ORIENTED

Ikerd and this Author define institutionalization as occurring when a particular reform becomes “a way of regularly conducting police business,” and “when certain norms, values, and structures are incorporated into an organization.”<sup>16</sup> As discussed in detail later, this can be achieved when the reform in question is incorporated into regular police practice, in department-wide training, and in personnel practices including regular performance evaluations and promotions.<sup>17</sup>

Reformers undoubtedly have been so engaged in the struggle just to achieve a particular reform that they have not been able to think about the long-term future. Today, the continuity of police reforms is a problem that cannot be ignored. This Article examines the issue of the continuity of accountability-related reforms,<sup>18</sup> but has general applicability and relevance to community oriented policing (COP),<sup>19</sup> problem oriented policing (POP),<sup>20</sup> and essentially all significant police reforms.

Accountability-related reforms are defined in this Article as (1) policies and procedures designed to ensure that police officers obey the law and, also, policies on treating citizens in a lawful, respectful, and unbiased manner; (2) policies and procedures ensuring that incidents of alleged misconduct are properly reported and then investigated thoroughly and fairly; (3) policies and procedures ensuring that proven incidents of misconduct result in appropriate discipline; and (4) policies and procedures ensuring that police departments take proactive steps to prevent officer misconduct in the future. Section I of this Article provides a brief history of notable police reforms that eventually faded away. Section II provides a very brief history of the major reform efforts in policing, with a discussion of why those reforms generally failed to develop mechanisms to ensure their own continuity. Section III discusses the issue of the police officer subculture—and the related issue of police unions—which many, if not most, police experts believe are major obstacles to all police reforms and accountability-related reforms in particular. Section IV covers recent federal pattern or practice investigations and settlements because they represent the most concerted effort at present to change police organizations as a whole—raising important questions about the continuity of the effort itself and the specific reforms that are mandated. Section V develops a framework

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POLICING SERV., PROBLEM-ORIENTED POLICING: REFLECTIONS ON THE FIRST TWENTY YEARS 132 (2000).

16. IKERD & WALKER, *supra* note 13, at 5.

17. *See* discussion *infra* Part V.B.

18. U.S. DEP’T OF JUSTICE, PRINCIPLES FOR PROMOTING POLICE INTEGRITY: EXAMPLES OF PROMISING POLICE PRACTICES AND POLICIES 10–13 (2001) (providing the best short statement of the specific policies and programs designed to achieve accountability); *see also* SAMUEL WALKER, THE NEW WORLD OF POLICE ACCOUNTABILITY 20–21 (2005).

19. Greene, *supra* note 4, at 301.

20. SCOTT, *supra* note 15, at 1–4.

for both institutionalizing accountability-related reforms and also for assessing the extent to which such reforms have been institutionalized.<sup>21</sup>

### I. THE LONG HISTORY OF REFORMS THAT JUST FADE AWAY

There is a long history of major police reforms (that is, reforms that were considered important in their time) that simply faded away.<sup>22</sup> Particularly notable in this regard were the anti-corruption reforms instituted in the New York City Police Department (NYPD) in the early 1970s in the wake of the “Serpico” scandal and the subsequent Knapp Commission investigation.<sup>23</sup> Police Commissioner Patrick V. Murphy introduced anti-corruption reforms that attempted to both decentralize responsibility for identifying and investigating alleged corrupt activities while also strengthening the centralized Internal Affairs Division (IAD) which had overall responsibility for integrity within the NYPD.<sup>24</sup> Murphy’s decentralization strategy is particularly relevant for the discussion in this Article because it was intended to enhance the sense of responsibility for integrity throughout the department and thereby change the culture of the department. Among other things, it was intended to end the traditional “us versus them” view among rank and file officers that internal affairs represented “head hunters” whose mission was to “get” them, and in this respect create a department-wide commitment to accountability.<sup>25</sup>

Yet, three decades later another major corruption scandal erupted in the NYPD, and the resulting Mollen Commission investigation found that the Murphy anti-corruption reforms had simply evaporated.<sup>26</sup> In fact, the Mollen Commission reported that the integrity problem in the NYPD had worsened, with the emergence of a new form of corruption that combined traditional money-related corrupt actions with officer violence against criminal suspects.<sup>27</sup> The Mollen Commission concluded that the earlier reforms had collapsed

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21. IKERD & WALKER, *supra* note 13, at 13–15.

22. WALKER, *supra* note 18, at 161.

23. KNAPP COMM’N, THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION 16–18, 231 (1972). Reforms already underway at the time of the report, and recommendations for long-term reform. *Id.* at 1–34, 231–44. “Serpico” became the popular shorthand name for a scandal that was far broader than the activities of officer Frank Serpico. *Id.* at 196–201.

24. *Id.* at 22–23, 30–34.

25. PATRICK V. MURPHY & THOMAS PLATE, COMMISSIONER: A VIEW FROM THE TOP OF AMERICAN LAW ENFORCEMENT 162–65 (1978); SHERMAN, *supra* note 8, at 128–30; THE N.Y.C. COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE DEP’T, COMMISSION REPORT 15, 74–75 (1994) [hereinafter MOLLEN COMMISSION] (describing the 1970s reforms); see also Aogán Mulcahy, ‘Headhunter’ or ‘Real Cop’?: Identity in the World of Internal Affairs Officers, 24 J. CONTEMP. ETHNOGRAPHY 99, 105–09 (1995).

26. MOLLEN COMMISSION, *supra* note 25, at 76.

27. *Id.* at 17.

because “no institutional mechanism” was created to ensure that they functioned as intended.<sup>28</sup> The lesson of the NYPD experience appears to be that simply introducing new policies and procedures is inadequate without special attention to ensuring both full implementation and continuity over time.

A second notable example of a failed reform is the Team Policing experiment that briefly swept through American policing in the 1970s.<sup>29</sup> A 1978 survey reported that innumerable police departments were engaged in Team Policing.<sup>30</sup> Almost completely forgotten today, Team Policing was a half step in the direction of community policing, embodying some of the principles that would later flourish, but lacking a number of key ingredients.<sup>31</sup> It sought to bring police operations closer to neighborhoods through decentralization—as does COP. But it did not involve a broader rethinking about the police role that characterizes COP, nor did it fully consider how an alternative way of delivering police services would be integrated into the traditional organizational structure and procedures.<sup>32</sup> Beset by unresolved conceptual problems, poor planning, and implementation problems, Team Policing collapsed almost as quickly as it had arisen and was soon forgotten.<sup>33</sup> In a telling comment on how reforms fade away, a former NYPD official stated in the mid-1980s that, “[t]here was no memo announcing the formal end of the [Team Policing] experiment” in the department.<sup>34</sup>

A third example of a major reform (although the ultimate outcome is still uncertain) is community oriented policing (COP) and its first cousin, problem oriented policing (POP), which represent the major police reform efforts of the last thirty years.<sup>35</sup> COP involves a rethinking of the police role, with an emphasis on closer relations with communities and neighborhoods.<sup>36</sup> The key organizational changes involve the decentralization of police services and the development of crime and disorder policies tailored to each neighborhood.<sup>37</sup> POP—which is more of a strategy that incorporates important elements of

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28. *Id.* at 16–17 (the “new” corruption”), 75 (“no institutional mechanisms”), 70–109 (full discussion of the “collapse”). It is important to note that Commissioner Murphy left the NYPD shortly after his anti-corruption reforms were initiated and he avoided the challenge of fully instituting them. MURPHY & PLATE, *supra* note 25, at 16.

29. SHERMAN ET AL., TEAM POLICING: SEVEN CASE STUDIES 107–08 (1973); GAY ET AL., NEIGHBORHOOD TEAM POLICING ix (1977).

30. JOHN F. HEAPHY, POLICE PRACTICES: THE GENERAL ADMINISTRATIVE SURVEY 12 (1978).

31. GARY GORDNER, COMMUNITY POLICING: PRINCIPLES AND ELEMENTS 1 (1996).

32. Greene, *supra* note 4, at 307, 328–29.

33. Samuel Walker, *Does Anyone Remember Team Policing? Lessons of the Team Policing Experience for Community Policing*, 12 AM. J. POLICE 33, 34–35 (1993).

34. *Id.* at 46.

35. SCOTT, *supra* note 15, at 97–99.

36. Greene, *supra* note 4, at 301.

37. *Id.* at 307.

COP—involves disaggregating the categories of crime and disorder and developing carefully targeted responses to particular “problems” (e.g., residential burglaries, graffiti, etc.).<sup>38</sup> The availability of large amounts of federal funding in the 1990s resulted in COP being adopted by innumerable police departments across the country.<sup>39</sup> The initial enthusiasm has long since passed. And while the concept survives as conventional rhetoric, there is no national assessment of the extent to which the key organizational aspects survive as an operational reality in various departments.<sup>40</sup> With regard to POP, a national center provides both a focus for the concept and abundant information about current activities across the country.<sup>41</sup>

The COP experience raises the same issue discussed above with regard to the anti-corruption efforts in the NYPD in the 1970s.<sup>42</sup> It appears there was no recognition of the problem of maintaining an innovation and no attempt to develop mechanisms to ensure the continuity of COP once the initial enthusiasm waned, or the federal grant expired.<sup>43</sup> The situation with respect to POP, however, is more hopeful. The Center on Problem Oriented Policing at the University of Wisconsin maintains a focus on the concept with a broad program of publications, a national competition for a national award, and an annual conference that helps to keep the concept revitalized.<sup>44</sup> As discussed below, at least one department did institute policy and procedural changes designed to institutionalize POP in the department and ensure its continuity.<sup>45</sup>

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38. See, e.g., *Problem Specific Guides*, CTR. FOR PROBLEM-ORIENTED POLICING, <http://www.popcenter.org/problems> (last visited Jan. 10, 2013) (listing some problems which can be addressed by POP).

39. Greene, *supra* note 4, at 301–02.

40. Greene, *supra* note 4, at 327. For COP-related examples see Skogan, *supra* note 10, at 25–26, 27, 29–30, 33.

41. *Mission of the Center for Problem-Oriented Policing*, CTR. FOR PROBLEM-ORIENTED POLICING, <http://www.popcenter.org/about/> (last visited Jan. 10, 2013). The future of the Center is in doubt, as the Justice Department indicated in the fall of 2012 that it would cease its financial support.

42. See MOLLEN COMMISSION, *supra* note 25, at 74.

43. *Id.* at 75. The most ambitious COP effort was the Chicago Police Department’s Chicago Alternative Policing Services (CAPS) program. The extensive evaluations over the course of several years found positive results in a number of dimensions. WESLEY G. SKOGAN & SUSAN T. HARTNETT, *COMMUNITY POLICING CHICAGO STYLE 20* (1997). CAPS is still mentioned on the Chicago Police Department website, along with an extensive program of “beat meetings” that were a core element of CAPS, but anecdotal evidence raises questions about whether the department and the city are still fully committed to the program. See *How CAPS Works*, CHI. POLICE DEP’T, <https://portal.chicagopolice.org/portal/page/portal/ClearPath/Get%20Involved/How%20CAPS%20works> (last visited Jan. 10, 2013).

44. See *POP Conference*, CTR. FOR PROBLEM ORIENTED POLICING, <http://www.popcenter.org/conference> (last visited Jan. 10, 2013) (describing POP conference and the competition).

45. IKERD & WALKER, *supra* note 13, at 11–12; see also *infra* pp. 25–29.

Federal pattern and practice investigations under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 represent a final example of a major police organizational reform effort.<sup>46</sup> It is particularly relevant for this topic as a broad effort to introduce accountability-related reforms in police departments. To date, Justice Department investigations have resulted in over twenty settlements involving consent decrees or memoranda of agreement (MOA) requiring major reforms.<sup>47</sup> The principal reforms—common to all the consent decrees and MOA—involve developing state of the art use of force policies, an early intervention system, and creating an open and accessible citizen complaint process.<sup>48</sup> As that effort is still ongoing, it is still too early to provide a final assessment of its success.<sup>49</sup>

There is some preliminary evidence that the pattern or practice effort has been successful in a number of departments.<sup>50</sup> The reports of the independent court-appointed monitors in several of these cases have reported significant success.<sup>51</sup> In Washington, D.C., after six and a half years of MOA ordered reforms, the monitor reported in 2008 that the department had “substantially transformed itself,” and recommended termination of the MOA.<sup>52</sup> Similarly,

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46. Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEO. MASON U. C.R. L.J. 479, 479 (2008).

47. *Id.*; SPECIAL LITIGATION SECTION OF CIVIL RIGHTS DIVISION, U.S. DEP’T OF JUSTICE, [www.justice.gov/crt/about/spl/](http://www.justice.gov/crt/about/spl/) (last visited Jan. 10, 2013) (describing the work of the Special Litigation Section of the Civil Rights Division of the U.S. Department of Justice).

48. Walker & Macdonald, *supra* note 46, at 487.

49. *Id.* at 481.

50. *Id.* Walker and Macdonald relied primarily on the reports of the court-appointed monitors for their assessment of the impact of the various consent decrees and MOAs. *Id.* at 515. There are concededly some risks in relying heavily on those sources. *Id.* The major exception is Detroit, where the monitoring process has been embroiled in scandal. *Former Detroit Police Monitor Censured – Not Disbarred – For Fling with Kwame Kilpatrick*, MLIVE (Oct. 21, 2011, 11:27 AM), [http://www.mlive.com/news/detroit/index.ssf/2011/10/former\\_detroit\\_police\\_monitor\\_2.html](http://www.mlive.com/news/detroit/index.ssf/2011/10/former_detroit_police_monitor_2.html). The Settlement Agreement regarding the Oakland, California, Police Department was the result of a private law suit, but the Agreement is identical in content to the settlements resulting from Justice Department litigation. Press Release, City of Oakland, Office of the City Attorney, City of Oakland Settles ‘Riders’ Civil Rights Suits (Feb. 19, 2003), <http://www.oaklandcityattorney.org/PDFS/Riders/Riders%20final%20settlement.pdf>. As of summer 2012, the federal judge in the case was extremely frustrated by the failure to implement the Agreement after nine years, and has threatened to place the police department in “receivership.” The exact nature of receivership, which has no known precedent in policing, is unknown. See Matthew Artz, *Attorneys Want Investigation into Oakland Leak of Allegations Against Federal Monitor*, OAKLAND TRIBUNE (Aug. 23, 2012, 6:58:12AM), [http://www.insidebayarea.com/oakland/ci\\_21378091/attorneys-want-investigation-into-oakland-leak](http://www.insidebayarea.com/oakland/ci_21378091/attorneys-want-investigation-into-oakland-leak).

51. Walker & Macdonald, *supra* note 46, at 479–80.

52. MICHAEL BROMWICH, INDEPENDENT POLICE MONITOR: TWENTY-THIRD QUARTERLY REPORT OF THE INDEPENDENT MONITOR FOR THE METROPOLITAN POLICE DEPARTMENT 4 (2008).



the monitor for the New Jersey State Police reported in 2007 that the agency had become “self-monitoring and self-correcting.”<sup>53</sup>

Recent news reports, however, have raised questions about whether the reforms in some of the departments where consent decrees or MOA were successfully terminated remain viable.<sup>54</sup> In September 2011, for example, it was reported that twenty-three officers had been arrested on criminal charges so far that year in Washington, D.C.<sup>55</sup> A September 2012 news story, meanwhile, reported that over ninety officers had been arrested on criminal charges in the previous three and a half years.<sup>56</sup> Arrest on any charge for a police officer is concerning, but the number of arrests in this department—with some of the arrests involving sex with a minor, burglary, and shooting of transgendered people—raises very serious questions about whether the accountability procedures instituted by the MOA are functioning at all.<sup>57</sup> Meanwhile, in Pittsburgh, Pennsylvania, a police officer remained on duty in 2012 despite three separate allegations of attempts to extort sexual favors from women in cases between 2008 and 2012.<sup>58</sup> Additionally, in 2011 it was revealed that an officer was on duty despite thirty-three citizen complaints and that another officer had two-dozen complaints.<sup>59</sup> All of the cases cited here involve the kind of pattern of officer misconduct that the consent decree mandate reforms, and the early intervention systems (discussed *infra* in Part V.B), are designed to track.<sup>60</sup>

There has been no systematic inquiry into the current state of police departments where consent decrees or MOAs have been terminated to

53. PUBLIC MGMT. RES. & LITE, DEPALMA, GREENBERG & RIVAS, MONITORS' SIXTEENTH REPORT 4 (2007), available at <http://www.nj.gov/oag/monitors-report-16.pdf>.

54. Scott McCabe, *23 D.C. Cops Charged with Crimes in 2011*, WASH. EXAMINER (Mar. 19, 2012, 2:42PM), [http://washingtonexaminer.com/23-d.c.-cops-charged-with-crimes-in-2011/article/118035#.UEODfWgm\\_FJ](http://washingtonexaminer.com/23-d.c.-cops-charged-with-crimes-in-2011/article/118035#.UEODfWgm_FJ).

55. *Id.*; see also *16 D.C. Police Officers Arrested So Far This Year*, WUSA9, (June 16, 2011, 10:20PM), <http://wusa9.com/news/article/155215/158/16-DC-Police-Officers-Arrested-So-Far-This-Year..>

56. Aubrey Whelan, *90-plus Arrests of D.C. Cops in Under 4 Years*, WASH. EXAMINER (Sept. 9, 2012, 8:00PM), <http://washingtonexaminer.com/90-plus-arrests-of-d.c.-cops-in-under-4-years/article/2507386#.UIgLk2l25ak>.

57. McCabe, *supra* note 54.

58. Margaret Harding, *Pittsburgh Police Defend Handling of Suspected Officer*, PITTSBURGH TRIBUNE-REVIEW (Feb. 21, 2012), [http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/print\\_782627.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/print_782627.html).

59. *Id.*; Lauren Daley, *Pittsburgh Police Officer Subject of Multiple Allegations*, PITTSBURGH CITY PAPER (Mar. 30, 2011), <http://www.pghcitypaper.com/pittsburgh/pittsburgh-police-officer-subject-of-multiple-allegations/Content?oid=1381169>; ROBERT C. DAVIS ET AL., TURNING NECESSITY INTO VIRTUE: PITTSBURGH'S EXPERIENCE WITH A FEDERAL CONSENT DECREE 5 (2002), available at [http://www.cops.usdoj.gov/Publications/pittsburgh\\_9-02.pdf](http://www.cops.usdoj.gov/Publications/pittsburgh_9-02.pdf).

60. DAVIS ET AL., *supra* note 59, at 7–8.

determine whether the achieved reforms are still viable several years after the fact.<sup>61</sup> The incidents cited above, while concededly anecdotal, raise serious questions about the reforms that were achieved in those departments. A systematic study of several post-consent decree departments would yield valuable evidence on the continuity of reforms and the factors associated with success or failure in that regard.

## II. PAST APPROACHES TO POLICE REFORM

A discussion of making police reforms endure requires an examination of past police reform strategies to highlight their shortcomings with regard to the continuity of reforms that were attempted and in many instances, at least in part, achieved.

Police reform between the 1920s and the 1960s relied primarily on a strong police chief executive who would effect change in a top-down strategy.<sup>62</sup> The most famous examples were August Vollmer,<sup>63</sup> O.W. Wilson,<sup>64</sup> Clarence Kelley,<sup>65</sup> and Patrick V. Murphy.<sup>66</sup> These individuals achieved commendable and overdue reforms in the departments they led, particularly with regard to raising personnel standards and introducing concepts of modern organizational management.<sup>67</sup> Additionally, these individuals served as important role models for chiefs and future chiefs in other jurisdictions, and in many instances trained subordinates who went on to become chiefs elsewhere.<sup>68</sup> The obvious problem with the strong chief approach to reform is that chiefs all eventually leave their

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

62. Craig D. Uchida, *The Development of the American Police: An Historical Overview*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 18–21 (Geoffrey P. Alpert & Roger G. Dunham eds., 4th ed. 2001).

63. See AUGUST VOLLMER, *THE POLICE AND MODERN SOCIETY* 3–4, 8 (1936) (there is no biography of Vollmer).

64. See WILLIAM J. BOPP, “O.W”: O.W. WILSON AND THE SEARCH FOR A POLICE PROFESSION 102–07 (1977).

65. See e.g., GEORGE KELLING ET AL., *THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT* 5 (1974) (explaining Clarence Kelley’s key role in sponsoring the historic preventive patrol study in Kansas City while he was chief of the department), available at <http://www.policefoundation.org/pdf/kcpe.pdf>.

66. See MURPHY & PLATE, *supra* note 25, at 130–37.

67. See VOLLMER, *supra* note 63; see also BOPP, *supra* note 64; see also KELLING ET AL., *supra* note 65; see also MURPHY & PLATE, *supra* note 25.

68. Craig Fisher, *PERF Report Offers Police Leaders’ Perspectives On Immigration Enforcement*, SUBJECT TO DEBATE (Police Executive Research Forum, D.C.), Jan./Feb. 2012, at 2–3, available at [http://www.policeforum.org/library/subject-to-debate/2012/Debate\\_Jan-Feb\\_2012\\_web1.pdf](http://www.policeforum.org/library/subject-to-debate/2012/Debate_Jan-Feb_2012_web1.pdf).

departments.<sup>69</sup> In all of the cases cited in this Article, while certain reforms remained in place, they did not establish institutional mechanisms that would ensure the continuity of many of their reforms.<sup>70</sup> The case of Patrick V. Murphy's anti-corruption reforms in New York City cited *supra* illustrates the problem.<sup>71</sup> As a result, thinking about police reform began to advance beyond the focus on a strong leader and started considering institutional reforms that would last beyond the tenure of any chief executive.

Beginning in the 1970s and continuing until today, the principal focus of police reform has been administrative rulemaking to control officer behavior on the street.<sup>72</sup> Administrative rulemaking involves developing formal written policies to guide officer discretion in critical incidents such as the use of deadly force,<sup>73</sup> other forms of less-than-lethal force, handling domestic violence incidents,<sup>74</sup> and high speed vehicle pursuits.<sup>75</sup> The evidence indicates that several of these reforms achieved significant results in reducing the inappropriate and harmful police conduct as intended—particularly with the use of deadly force and high-speed vehicle pursuits.<sup>76</sup>

The major limitation of the administrative rulemaking approach to reform relates directly to the issue of the organizational culture of a police department, which is at the heart of the problem of making reforms endure.<sup>77</sup> A written policy (e.g., on less-than-lethal force), no matter how well crafted, is nothing

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69. Skogan, *supra* note 10, at 32–33 (arguing that “[r]eform may not survive leadership transition” as a major reason why police reforms fail, and citing a number of very telling examples illustrating the point).

70. *See, e.g., id.* (discussing how police chiefs leave their departments and new police chiefs enter, changing the former chief's reforms).

71. *See* MURPHY & PLATE, *supra* note 25, at 162–65 (detailing how Commissioner Murphy left soon after putting in place anti-corruption reforms in the New York City Police Department in the 1970s).

72. SAMUEL WALKER, *TAMING THE SYSTEM: THE CONTROL OF DISCRETION IN CRIMINAL JUSTICE 1950-1990*, at 32 (1993); KENNETH CULP DAVIS, *POLICE DISCRETION* 99–101 (1975).

73. Lorie A. Fridell, *Deadly Force Policy and Practice: The Forces of Change*, in *HOLDING POLICE ACCOUNTABLE* 32–34 (Candace McCoy ed., 2010); William A. Geller, *Deadly Force: What We Know*, 10 *J. OF POLICE SCI. & ADMIN.* 151, 169 (1982) (discussing written policies regarding police policy).

74. LAWRENCE W. SHERMAN ET AL., *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* 253–55 (1992).

75. GEOFFREY P. ALPERT & LORIE A. FRIDELL, *POLICE VEHICLES AND FIREARMS: INSTRUMENTS OF DEADLY FORCE* 117 (1992).

76. JODI M. BROWN & PATRICK A. LANGAN, *BUREAU OF JUSTICE STATISTICS, POLICING AND HOMICIDE, 1976-98: JUSTIFIABLE HOMICIDE BY POLICE, POLICE OFFICERS MURDERED BY FELONS* 1–3 (2001), available at [bjs.ojp.usdoj.gov/content/pub/pdf/ph98.pdf](http://bjs.ojp.usdoj.gov/content/pub/pdf/ph98.pdf). Walker, *supra* note 33, at 48.

77. *See* discussion *infra* Part I.

more than a piece of paper<sup>78</sup> and will have no meaningful impact on police conduct if it is not properly enforced through a reporting requirement, thorough investigations, and the imposition of appropriate discipline where it is warranted. The problem is illustrated by the 2000 Justice Department consent decree settlement with the Los Angeles Police Department (LAPD).<sup>79</sup> That settlement was far longer and more detailed than, for example, the 1997 consent decree involving the Pittsburgh Police Department. A major part of the explanation is that the LAPD, unlike the Pittsburgh Police Department, had in place policies on the use of force that were at least close to emerging national standards.<sup>80</sup> The problem in the LAPD lay with the administration of those policies, and the LAPD consent decree contains elaborate requirements designed to improve that enforcement.<sup>81</sup> The problem of enforcing internally developed policies is a variant on the well-recognized problem of enforcing Supreme Court decisions that constrain police actions. Just as the Supreme Court has no enforcement mechanism,<sup>82</sup> the enforcement of department-generated policies depends entirely on the will of the police chief executive.<sup>83</sup> In turn, the will of the police chief depends on the commitment of that person, his or her administrative skills, and the power of countervailing forces such as political influence, a police union, and the police officer subculture.<sup>84</sup>

### III. THE PROBLEM OF THE POLICE OFFICER SUBCULTURE

#### A. *The Problematic Concept of a Police Officer Subculture*

Police reformers and scholars commonly refer to the organizational culture of policing, but this is an extremely complex phenomenon—including the formal organizational structure of a department, its official policies and procedures, and the generally deeply ingrained day-to-day practices. It also includes what is called the police officer subculture.<sup>85</sup> The officer subculture is

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78. Constitutional law scholars may prefer to call them “parchment barriers.” James Madison, *Federalist Paper No. 48: The Same Subject Continued with a View to the Means of Giving Efficacy in Practice to that Maxim*, in *THE FEDERALIST PAPERS* 309 (Isaac Kramnick ed., 1987).

79. Consent Decree, 288 F.3d 391 (9th Cir. 2002), available at [http://www.lapdonline.org/assets/pdf/final\\_consent\\_decree.pdf](http://www.lapdonline.org/assets/pdf/final_consent_decree.pdf).

80. *Id.* at 24–26.

81. *United States v. Los Angeles*, 288 F.3d 391, 401 (9th Cir. 2002).

82. See Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 772–76, 816 (2012).

83. See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 518, 521–22 (2004).

84. See *id.* at 512; see also discussion *infra* pp. 1–4.

85. See generally Armacost, *supra* note 83, at 513–14.

defined here as the set “attitudes and values that shape officers’ behavior.”<sup>86</sup> It is extremely relevant to this Article because of its influence over both official departmental policies and informal departmental practices and procedures. While this phenomenon is widely discussed, it has been little studied.<sup>87</sup> An increasing number of scholars, however, have questioned whether the traditional elements of the concept are valid.<sup>88</sup> The police subculture commands our attention because it is generally seen as a major obstacle to reform and, thus, a powerful force working to erode any reforms that are in fact achieved.<sup>89</sup> In a review of recent police reforms, David Bayley comments that, “[p]olice rank-and-file have not been the source of significant reform ideas.”<sup>90</sup> The Mollen Commission, meanwhile, concluded that in order to reduce or eliminate corruption in the NYPD, “the [d]epartment must transform [the] police culture.”<sup>91</sup> If the traditional concept of the police officer subculture is not valid—as suggested in the discussion that follows—then potential for both implementing reforms and institutionalizing them may be greater than most observers of the police generally believe.<sup>92</sup>

The concept of a police officer subculture is enveloped in myths and stereotypes, many of which fly in the face of a constantly changing reality.<sup>93</sup> The concept originated with the first important scholarly work on the police.<sup>94</sup>

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86. MOLLEN COMMISSION, *supra* note 25, at 51.

87. David A. Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1211–12, 1229 (2006).

88. See Steve Herbert, *Police Subculture Reconsidered*, 36 CRIMINOLOGY 343, 343 (1998); Sklansky, *supra* note 87, at 1209–11; Samuel Walker, *Racial Minority and Female Employment in Policing: The Implications of “Glacial Change,”* 31 CRIME & DELINQ. 555, 555–56, 563–66 (1985). See *infra* text accompanying note 91.

89. See Herbert, *supra* note 88, at 363.

90. BAYLEY, *supra* note 9, at 7. See also Skogan, *supra* note 10, at 26–28 (noting also the threat of police unions to reform).

91. MOLLEN COMMISSION, *supra* note 25, at 69. The reforms proposed by the Commission, however, involved a familiar list of professionalization reforms: improved recruitment, hiring and training, especially integrity training, better management procedures, some changes in union procedures, expanded drug testing, residency requirement. While admirable in and of themselves, they do not appear to address the concerns raised in this article. *Id.* at 112–28.

92. See STEPHEN D. MASTROFSKI & DENNIS ROSENBAUM, NAT’L POLICE RES. PLATFORM, RECEPTIVITY TO POLICE INNOVATION: A TALE OF TWO CITIES 1, 6–10 (2011), available at <https://www.hsd.org/?view&did=715700> (“[P]olice are often conceived as traditional and resistant to the changes that innovation requires”). The National Police Research Platform, which is still in process, is yielding a number of studies very relevant to many of the questions raised in this article. NATIONAL POLICE RESEARCH PLATFORM, <http://www.nationalpoliceresearch.org/> (last visited Jan. 10, 2013).

93. See Sklansky, *supra* note 87, at 1213, 1231–32, 1242–43.

94. E.g., BAYLEY, *supra* note 9, at 11.

The seminal work of William Westley<sup>95</sup> and Jerome Skolnick<sup>96</sup> established a now stereotyped image of the police officer subculture that continues to exert a powerful influence on both popular and scholarly thinking about the police, although in the face of considerable evidence that it is no longer valid.<sup>97</sup> The original concept posits a homogenous work group, dominated by white males, with limited education, conservative political values, and a deep cynicism about people, the criminal justice system, and their own departments.<sup>98</sup> Officers are said to have an insular and defensive attitude about allegations of police misconduct,<sup>99</sup> and are resistant to change, particularly with reforms that impinge directly on their on-the-street conduct.<sup>100</sup> In the 1960s, police unions arose in part as expressions of fierce rank and file opposition to programs designed to improve police–community relations and reduce racial tensions.<sup>101</sup> The rank and file and their unions continue to be the principal opponents of affirmative action in police hiring and the creation of independent citizen oversight mechanisms.<sup>102</sup>

The demographics of the American police work force have changed dramatically over the course of the last few decades, however, calling into question the traditional concept of the police officer subculture.<sup>103</sup> People of color, women, homosexuals, and college-educated officers are now a significant presence in most medium-sized to large police departments.<sup>104</sup> Law professor David Sklansky quite properly characterizes police forces today as “Not Your Father’s Police Department.”<sup>105</sup> African-American officers, Hispanic officers, or a combination of the two, constitute a majority of the officers in a growing number of departments.<sup>106</sup> Women are also a significant

95. See generally WILLIAM A. WESTLEY, *VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY* (1970).

96. See generally JEROME H. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY* (4th ed. 2011).

97. Walker, *supra* note 88, at 556, 563, 565.

98. See, e.g., Sklansky, *supra* note 87, at 1210, 1213, 1224, 1233–34, 1241–42.

99. See *id.* at 1213.

100. SKOLNICK, *supra* note 96, at 241–42. The Mollen Commission report gave special emphasis to the officer subculture and the need to change it if the anti-corruption effort is to succeed. MOLLEN COMMISSION, *supra* note 25, at 51–69.

101. SAMUEL WALKER, *POPULAR JUSTICE: A HISTORY OF AMERICAN CRIMINAL JUSTICE* 199 (2d ed. 1998).

102. *Id.* at 199–200.

103. See Sklansky, *supra* note 87, at 1213–23.

104. See *id.* (discussing people of color, women, and homosexuals); O. Elmer Polk & David A. Armstrong, *Higher Education and Law Enforcement Career Paths: Is the Road to Success Paved by Degree?*, 12 J. CRIM. JUST. EDUC. 77, 79 (2001) (discussing college-educated officers).

105. Sklansky, *supra* note 87, at 1209.

106. *Id.* at 1214. In 2003, African-American and Hispanic officers constituted about 11 percent and 9 percent, respectively, of all sworn officers in local police departments. MATTHEW J.

presence, although there appears to be a ceiling in the range of twenty percent of all officers.<sup>107</sup> Finally, gay and lesbian officers are open about their sexual orientation in a number of departments.<sup>108</sup> The demographic fragmentation of police departments is indicated by the existence of private associations for African-American,<sup>109</sup> Latino,<sup>110</sup> female,<sup>111</sup> and lesbian and gay officers.<sup>112</sup> Education levels have also risen significantly since the years when the subculture stereotype first emerged.<sup>113</sup>

Research and anecdotal evidence indicates significant variations in attitudes among police officers of different backgrounds. A Police Foundation survey of officer attitudes toward the use of force found striking differences based on race. African-American officers were much more willing to concede that officers in their department did use excessive force, and that officers were more likely to use excessive force against people of color.<sup>114</sup> There are examples of African-American officers, through their race-based professional associations, speaking out on police misconduct in ways that are very different from the views of the police union representing a majority of the department.<sup>115</sup> Susan Martin, meanwhile, examined the impact on the officer subculture in her study of the early years of female officers being assigned to routine patrol duty.<sup>116</sup> The introduction of women on an equal basis with men

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HICKMAN & BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, LOCAL POLICE DEPARTMENTS, 2003, at 7 (2006).

107. Sklansky, *supra* note 87, at 1219–22.

108. The Gay Officers Action League (GOAL) has chapters in different cities and regions. See *Goal-Links*, GAY OFFICERS ACTION LEAGUE, <http://www.goalny.org/> (last visited Jan. 10, 2013).

109. NATIONAL BLACK POLICE ASSOCIATION, <http://www.blackpolice.org> (last visited Jan. 10, 2013).

110. NATIONAL LATINO PEACE OFFICERS ASSOCIATION, <http://www.nlpoa.com> (last visited Jan. 10, 2013).

111. INTERNATIONAL ASSOCIATION OF WOMEN POLICE, <http://www.iawp.org> (last visited Jan. 10, 2013).

112. GAY OFFICERS ACTION LEAGUE, *supra* note 108.

113. Polk & Armstrong, *supra* note 104, at 79.

114. See DAVID WEISBURD & ROSANN GREENSPAN, U.S. DEP'T OF JUSTICE, POLICE ATTITUDES TOWARD ABUSE OF AUTHORITY: FINDINGS FROM A NATIONAL STUDY 8–9 (2000).

115. Sklansky, *supra* note 87, at 1230–31. The National Black Police Association maintains an official position that “[p]olice brutality must be confronted, controlled, and outlawed by all police departments throughout the United States.” *Positions of the National Black Police Association*, NATIONAL BLACK POLICE ASSOCIATION, <http://blackpolice.org/nbpapositions.html> (last visited Jan. 10, 2013). The National Organization of Black Law Enforcement Executives (NOBLE) advertises itself as “[t]he Conscience of Law Enforcement.” *About Us*, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, <http://www.noblenatl.org/about-us.html> (last visited Jan. 10, 2013).

116. SUSAN EHRLICH MARTIN, *BREAKING AND ENTERING: POLICEWOMEN ON PATROL* 90–108 (1980).

challenged the traditional police ethos of masculinity, exposed divisions among male officers with regard to women in policing, and added complex new issues regarding social relations and sexual harassment among officers.<sup>117</sup>

The increased demographic diversity of the American police work force is relevant to the subject of this Article because if the officer subculture is not as monolithic as traditionally portrayed, there are potential sources of support for innovation and accountability-related reform within police departments. Both the National Police Research Platform and the Chicago CAPS program provide empirical support for this proposition.<sup>118</sup> While this evidence provides some basis for optimism, Skogan reminds us of the difficulty of getting the rank and file to support innovation—accountability-related reforms in particular.<sup>119</sup> Innovations require officers to “do many of their old jobs in new ways,” and some of these tasks often “lie outside the traditional roles for which they were selected and trained” and in which they have much experience.<sup>120</sup> This is particularly true of early intervention systems (EIS), which involve not just a new accountability tool but new demands on supervisors’ time,<sup>121</sup> and—more seriously—an entirely new approach to personnel performance evaluation.<sup>122</sup>

#### B. *Police Unions and Their Impact*

Police unions are arguably the most important, neglected aspect of American policing.<sup>123</sup> Listening to everyday rhetoric, it seems that virtually everyone with an interest in policing—citizens, civic leaders, reform activists, and scholars—believes that police unions are extremely powerful, have a major influence on police practices, and are a principal obstacle to change.<sup>124</sup> While the police officer subculture and police unions overlap in many important respects, it is necessary to distinguish between certain attitudes and behaviors as inherent in the law enforcement occupation and police unions as an institution. Unions with formal collective bargaining agreements exist in

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117. *See id.* at 156.

118. MEGAN ALDERDEN ET AL., NAT’L POLICE RESEARCH PLATFORM, THE DIVERSIFICATION OF POLICE DEPARTMENTS 2 (2011), available at [http://uicclj.squarespace.com/storage/updated-papers/The%20Diversification%20of%20Police%20Departments%20FINAL 2.pdf](http://uicclj.squarespace.com/storage/updated-papers/The%20Diversification%20of%20Police%20Departments%20FINAL%202.pdf); SKOGAN & HARTNETT, *supra* note 43, at 105–07.

119. Skogan, *supra* note 10, at 26.

120. *Id.*

121. DAVIS ET AL., *supra* note 59, at 49–50.

122. SAMUEL WALKER, U.S. DEP’T OF JUSTICE, EARLY INTERVENTION SYSTEMS FOR LAW ENFORCEMENT AGENCIES: A PLANNING AND MANAGEMENT GUIDE 8 (2003); *see infra* Part IV.B.

123. Samuel Walker, *The Neglect of Police Unions: Exploring One of the Most Important Areas of Policing*, 9 POL. PRACT. & RES. 95, 95–111 (2008).

124. *But see* Skogan, *supra* note 10, at 28 (finding that in Chicago the police union agreed early on to support the CAPS community policing experiment).



about half of all local law enforcement agencies, representing 71 percent of all sworn officers.<sup>125</sup> Thus, to the extent that there are certain attitudes and behaviors associated with police officers, they are also found in those police departments where there is no union and collective bargaining agreement.<sup>126</sup>

As already noted, the relevance of police unions for purposes of this Article is the extent to which they are or can be an obstacle to change.<sup>127</sup> Collective bargaining agreements, for example, contain provisions related to the investigation of alleged officer misconduct (whether on the basis of a citizen complaint or an internally generated complaint) that impede a timely and thorough investigation.<sup>128</sup> Officer appeals of discipline, meanwhile, may involve procedures that tend to increase the likelihood of disciplinary sanctions being mitigated or overturned.<sup>129</sup> Finally, unions—as institutions with financial resources and political influence—can effectively resist accountability-related reforms in those departments where they exist.<sup>130</sup> The most obvious example of the negative impact of this political influence on police reform would be unions helping to elect mayors who are sympathetic to their perspective and who may appoint a police chief who is not committed to high standards of accountability.

### C. *Variations Among Police Departments*

The traditional concept of the police officer subculture suggests that all police are the same in all departments.<sup>131</sup> Growing evidence, however, suggests this is not true and that there are meaningful differences between departments.<sup>132</sup> Additionally, individual departments change sometimes slowly and sometimes dramatically as a result of new leadership.<sup>133</sup> Anecdotal evidence has always suggested that some departments have reputations for being more professional than others, while some departments have ingrained patterns of corruption and officer violence against citizens.<sup>134</sup> Unfortunately,

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125. HICKMAN & REAVES, *supra* note 106, at 12. Unionism is weakest in the southeast region of the U.S. and in all small agencies. *Id.*

126. WALKER, *supra* note 101, at 150; MARGARET LEVI, *BUREAUCRATIC INSURGENCY: THE CASE OF POLICE UNIONS* 131–32 (1977).

127. Skogan, *supra* note 10, at 28–29.

128. Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Bills of Rights*, 14 B.U. PUB. INT. L.J. 185, 212–13, 236–37 (2005).

129. *Id.* at 233.

130. Walker, *supra* note 123, at 100–01.

131. Eugene A. Paoline III, *Shedding Light on Police Culture: An Examination of Officers' Occupational Attitudes*, 7 POLICE Q. 205, 205–06 (2004).

132. *Id.* at 206.

133. Skogan, *supra* note 10, at 32–33 (offering compelling examples of dramatic change, including the demise of promising reforms in some police departments due to leadership change).

134. Walker & Macdonald, *supra* note 46, at 485.

no systematic research has investigated these various reputations to confirm or refute their validity.<sup>135</sup> Recent research from the National Police Research Platform (NPRP), however, provides evidence of significant differences among police departments, particularly with regard to receptivity to innovation.<sup>136</sup>

The idea that the organizational environment of police departments might vary in important respects should not be that surprising. The literature on criminal courts, for example, has identified significant differences in the work environment of different court systems and how those differences impact the processing of cases.<sup>137</sup> The variations among police departments, if validated and amplified by further research, offer some hope for changing the subculture of individual departments and, by extension, hope for institutionalizing reforms. Variations are believed to be the result of certain management practices—suggesting that officer behavior is malleable and responsive to the rules, rewards, and punishments within an organization.<sup>138</sup> If this is true, it suggests that a concerted reform effort—with a special focus on taking steps necessary to sustain organizational changes—could in fact change the police subculture, substantially diminishing resistance to new accountability reforms.

New evidence from the National Police Research Platform (NPRP) provides important evidence-based reasons for optimism about the possibilities for changing the officer subculture within police departments.<sup>139</sup> The NPRP is an ambitious long-term study of police organizations and their officers involving twenty-nine police departments across the country.<sup>140</sup> Several research reports generated by the NPRP to date are relevant for this Article. The NPRP report, *The Longitudinal Study of First Line Supervisors*, involved 169 newly appointed first line supervisors who participated in 16 training classes in 3 departments.<sup>141</sup> The new supervisors were presented with a scenario involving a problem for supervisors and then surveyed before and after their training.<sup>142</sup> The percentage of the supervisors agreeing or strongly

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135. *Id.*

136. MASTROFSKI & ROSENBAUM, *supra* note 92, at 5.

137. *See generally* JEFFREY T. ULMER, SOCIAL WORLDS OF SENTENCING: COURT COMMUNITIES UNDER SENTENCING GUIDELINES (1997) (using plural words in the title indicates the varieties of court cultures that exist).

138. *Measuring Police Organizations and their 'Life Course,'* NAT'L POLICE RESEARCH PLATFORM, <http://www.nationalpoliceresearch.org/measuring-police-organizations/> (last visited Jan. 10, 2013).

139. NAT'L POLICE RESEARCH PLATFORM, *supra* note 92.

140. *Id.*

141. LORIE FRIDELL ET AL., NAT'L POLICE RESEARCH PLATFORM, THE LONGITUDINAL STUDY OF FIRST LINE SUPERVISORS 2 (2011), available at [uicclj.squarespace.com/storage/updated-papers/Longitudinal%20Supervisor%20Study.pdf](http://uicclj.squarespace.com/storage/updated-papers/Longitudinal%20Supervisor%20Study.pdf).

142. *Id.* at 2–4.

agreeing with the statement “[s]ome officers are productive, others are not; nothing you can do” dropped from 18 percent before training to 10 percent after training.<sup>143</sup> In short, training on the point in question substantially reduced supervisor fatalism about the capacity to change rank and file officer behavior through effective supervision.<sup>144</sup> Training over specific techniques of supervision also produced impressive results. New supervisors were less likely to “wait and see” in response to an incident (from 17 to 8 percent), and more likely to “meet right away” (from 86 to 95 percent), “warn of consequences” (from 65 to 72 percent), and take “time to explain” (from 78 to 91 percent).<sup>145</sup>

The NPRP report on *Receptivity to Police Innovation: A Tale of Two Cities*, meanwhile, undermines the traditional myth that the police subculture is resistant to change and to accountability-related changes in particular.<sup>146</sup> First, the study found that officers in Department B had a far more favorable view of their agency’s receptivity to innovation than officers in Department A,<sup>147</sup> confirming the view that police departments vary on this dimension. The two departments also varied consistently with regard to specific innovations, with Department B being far more receptive than Department A.<sup>148</sup> A troubling finding, given the focus of this Article, was that in both departments, EIS were less popular compared with respectful policing, “hot spots” policing, and crime analysis units.<sup>149</sup> As discussed, *infra*, EIS is a vital accountability-related reform. Positively, Department B was more favorable than Department A on all of the twelve innovations, adding further support to the view that departments vary in terms of organizational culture.<sup>150</sup>

#### IV. DEPARTMENT OF JUSTICE PATTERN OR PRACTICE LITIGATION

##### A. *The Goals, Achievements, and Limitations of Pattern or Practice Litigation*

The most significant initiative regarding organizational change in policing involves U.S. Department of Justice “pattern or practice” investigations of police departments under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. Unlike criminal prosecutions and tort actions, the explicit purpose of this statute is not to punish individual officers or seek

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143. *Id.* at 4.

144. *Id.*

145. *Id.* at 7; see also ROSENBAUM ET AL., *The Life Course of New Supervisors*, in THE NATIONAL POLICE RESEARCH PLATFORM DRAFT FINAL REPORT 6-1, 6-9. *But see* Skogan, *supra* note 10, at 25–26 (discussing front-line supervisors as a force in opposing reform).

146. MASTROFSKI & ROSENBAUM, *supra* note 92.

147. *Id.* at 3.

148. *Id.* at 3.

149. *Id.* at 5.

150. *Id.* at 6.

redress for particular incidents of misconduct, but to achieve organizational reform.<sup>151</sup> Settlements of investigations by the Special Litigation Section have resulted in consent decrees, MOAs, and investigative findings letters in over twenty agencies.<sup>152</sup> As noted above, some evidence indicates that several of the consent decrees and MOAs were successful in achieving significant organizational change.<sup>153</sup> The important and as-of-yet unexamined question is whether the achieved reforms endure following the lifting of the consent decree or MOA, and become an institutionalized part of the organizational culture of the police departments in question.

The various consent decrees and MOAs negotiated by the Justice Department contain three principal accountability-related reforms: state of the art use of force policies (broadly defined to include different forms of use of force and also procedures for the investigation of force incidents), an early intervention system (EIS), and an open and accessible citizen complaint process.<sup>154</sup> Use of force policies are designed to provide proper guidance for officers. The citizen complaint process is designed to provide citizens with an effective avenue of redress in situations where they believe a police officer's conduct was improper or unsatisfactory. And the EIS is a computerized database on officer performance that allows police managers to monitor that performance and take appropriate remedial action toward officers who exhibit a pattern of questionable behavior.<sup>155</sup>

The experience of more than twenty settlements has indicated that the three reforms cited above involve far more than simply adding discrete elements to the management of a police department (e.g., the use of force policy). In practice, they involve a wholesale transformation of the organization related to accountability.<sup>156</sup> The development of state of the art use of force policies, for example, requires a systematic policy development *process* within a department, often where one did not previously exist.<sup>157</sup> New use of force policies further require both effective training of officers in a department where in-service training has been haphazard, inadequate, or even possibly non-existent, and meaningful supervision of officers. Meaningful supervision includes, among other things, utilization of an EIS by sergeants to closely

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151. See *Conduct of Law Enforcement Agencies*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/crt/about/spl/police.php> (last visited Jan. 10, 2013) (describing the mission of the Special Litigation Section of the Civil Rights Division of the Department of Justice); Walker & Macdonald, *supra* note 46, at 479.

152. Walker & Macdonald, *supra* note 46, at 486.

153. *Id.* at 479–80.

154. *Id.* at 504; see also U.S. DEP'T OF JUSTICE, *supra* note 151 (examining any of the consent decrees confirms their basic similarity in terms of the required reforms).

155. Walker & Macdonald, *supra* note 46, at 505, 507, 508–09.

156. *Id.* at 481.

157. *Id.* at 493, 505.

monitor the performance of officers under their command.<sup>158</sup> An EIS, meanwhile, requires not just training over the formal mechanics of the system (reviewing officer performance data, identifying officers in need of intervention), but an entirely new way of conducting police supervision: the systematic review of data, identification of performance patterns, and undertaking non-disciplinary forms of intervention to correct officers' behavior. These steps all involve changes in the traditional work habits of police sergeants—in short, a significant change in the organizational culture of the department.<sup>159</sup> Managing the implementation of the many reforms simultaneously under the deadline imposed by the consent decree or MOA proved to be a challenge itself in some departments.<sup>160</sup> Even in those cases where the independent monitors eventually concluded that particular departments had been successfully transformed for the better, most departments failed to achieve full compliance within the required five-year time frame.<sup>161</sup>

Justice Department pattern and practice litigation since 1994 has been a major new reform effort with regard to police accountability.<sup>162</sup> While there is some evidence of success in several departments,<sup>163</sup> many questions remain unanswered. Missing from the mandated reforms, however, has been any mechanism designed to enhance the likelihood that the reforms achieved will be sustained over the long term.<sup>164</sup> This issue, and a proposed remedy, is discussed *infra* in Part V.

#### B. *Early Intervention Systems as an Organizational Reform Tool*

An EIS (often referred to as an “early warning system”) is a major component of all the DOJ-negotiated consent decrees and MOAs.<sup>165</sup> This Section argues that an EIS is a potentially vital tool for transforming the culture of a police department and a key to ensuring the continuity of accountability-related reforms. The EIS has emerged in recent decades as a powerful police accountability tool—providing a data driven process for

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158. *See id.* at 510.

159. *Id.* at 508, 529.

160. *See* RACHEL BURGESS ET AL., SEVENTH STATUS REPORT OF THE INDEPENDENT MONITORING TEAM (2005), available at <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/dowd005029.pdf>.

161. Pittsburgh did achieve compliance on time, but as of this writing (spring 2012) the Oakland, California, Police Department was facing the prospect of being placed in Receivership by the federal judge because of its failure to achieve compliance. Shoshana Walter, *Oakland Police Caught Between Reform and Crime Surge*, N.Y. TIMES, April 19, 2012, at A19.

162. Walker & Macdonald, *supra* note 46, at 481.

163. *Id.* at 519.

164. *Id.* at 532–35.

165. *Id.* at 504.

identifying officers with performance problems and for making informed decisions about interventions needed to correct officer performance problems.<sup>166</sup>

An EIS is a computerized database of officer performance with anywhere from five to twenty-five or more performance indicators (citizen complaints, uses of force, arrests, traffic stops, etc.).<sup>167</sup> Research and anecdotal evidence has confirmed the long-standing belief that in any police department a small group of officers are responsible for a majority of problem incidents (excessive force, citizen complaints).<sup>168</sup> The EIS database establishes a foundation for making meaningful performance evaluations of officers.<sup>169</sup> In this regard, it should be noted that assessments of police personnel evaluation systems—published twenty years apart—were both highly critical of those systems.<sup>170</sup> An EIS represents a great leap forward over traditional performance assessment systems for the simple reason that it includes data on officer performance rather than subjective assessments.<sup>171</sup> Officers identified by the EIS (according to the parameters established for the system) are then referred for intervention to correct the performance problems.<sup>172</sup> Intervention may involve informal or formal counseling by supervisors, referral to professional counseling (e.g., family or substance abuse counseling), retraining, or other options.<sup>173</sup> The special power of an EIS is that it has the capacity to identify an officer's specific performance problem (e.g., use of force, rudeness, special problem with dealing with young men or people of color), and its sources (personal family problems, substance abuse), and select an intervention related to the identified problem.<sup>174</sup> This problem-oriented response is presumptively more effective than traditional group-based interventions (e.g., race and ethnic awareness class) that may be irrelevant for most of the officers in the group.<sup>175</sup>

If used to its fullest capacity,<sup>176</sup> an EIS has the potential for transforming the organizational culture of a police department and sustaining reform in

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166. *Id.* at 508.

167. *Id.* at 509.

168. *See* WALKER, *supra* note 72, at 21.

169. Walker & Macdonald, *supra* note 46, at 508.

170. The lack of progress over the intervening twenty years is both very depressing and telling about some deeper problem in police management. FRANK J. LANDY, PERFORMANCE APPRAISAL IN POLICE DEPARTMENTS 1 (1977); TIMOTHY N. OETTMEIER & MARY ANN WYCOFF, PERSONNEL PERFORMANCE EVALUATION IN THE COMMUNITY POLICING CONTEXT 5 (1997).

171. Walker & Macdonald, *supra* note 46, at 509.

172. *Id.* The proper parameters or thresholds for EIS are a matter of considerable debate. *Id.*

173. *Id.*

174. *See* WALKER, *supra* note 122, at 5, 19.

175. *Id.* at 36.

176. *Id.* at 55. This qualification is necessary because there is substantial anecdotal evidence of EIS that are planned but not implemented, implemented inadequately, or implemented and then

several respects.<sup>177</sup> First, an EIS is itself a significant institutional change.<sup>178</sup> Second, as an institutionalized part of a department it has direct ramifications for other accountability mechanisms.<sup>179</sup> Use of force reports and citizen complaints are major indicators in an EIS.<sup>180</sup> Third, the data provided by the EIS has (potentially) an important empowering effect for supervisors, enabling them to document the performance problems of officers who are identified.<sup>181</sup> Thus, assessments of performance are no longer a matter of subjective opinions about good or bad police performance. As discussed above, however, fully utilizing the capacity of an EIS requires a significant change in the work routine of sergeants who are the front-line supervisors. This includes what sergeants do (analysis of data, etc.), how they spend their time (more time at their desks than on the street), and how they deal with officers under their command (more non-disciplinary forms of intervention rather than conventional disciplinary actions).

#### V. A FRAMEWORK FOR INSTITUTIONALIZING ACCOUNTABILITY-RELATED REFORM

##### A. *Charlotte, North Carolina, as a Case Study*

The challenge of institutionalizing police reform, including accountability-related reforms, as noted at the beginning of this Article, has been neglected by police scholars.<sup>182</sup> The most relevant study involves the institutionalization of problem-oriented policing in the Charlotte, North Carolina Police Department.<sup>183</sup> While it is not directly related to accountability procedures, the Charlotte Police Department study and the policies and procedures adopted by that department provide a framework for a process to institutionalize police reforms.

The Charlotte Police Department sought to institutionalize problem orientated policing (POP) through formal training, building POP into regular personnel evaluations and promotional procedures, and revising various departmental policies accordingly.<sup>184</sup> In addition to several retreats, that in effect constituted in-service training, a federal grant funded special training—

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not used to their fullest extent, or allowed to deteriorate. There has been no systematic research to assess the extent to which police departments utilize their EIS and whether the police department's implementation involves the system's minimum or its full capabilities.

177. *Id.* at 15.

178. *Id.* at 55.

179. *Id.* at 60.

180. *See* WALKER, *supra* note 122, at 6.

181. *Id.* at 77–78.

182. IKERD & WALKER, *supra* note 13, at 5.

183. *Id.* at 14.

184. *Id.* at 13.

for sergeants, and regular monthly meetings related to POP were instituted.<sup>185</sup> The study of this process involved a survey of 150 randomly selected rank and file officers regarding their knowledge, attitudes, and behavior about POP.<sup>186</sup> The study's hypothesis was that if officers did not know about or were hostile to POP, one could safely conclude that POP had not been institutionalized in the department.<sup>187</sup> The study also included structured interviews with all thirty-three captains, and an examination of departmental policies and procedures related to POP.<sup>188</sup> The principal finding was that POP had been successfully institutionalized in the department.<sup>189</sup> Only one rank and file officer had not heard of POP. Half (49.2 percent) of officers felt it was a "valuable tool in dealing with crime and fear of crime," and 95.8 percent reported that they had engaged in POP in some way.<sup>190</sup> Among the captains, all but one demonstrated knowledge of POP, and 70 percent of the captains were able to provide a "strong definition" of the concept of problem oriented policing.<sup>191</sup> "Strong definition" was operationalized as a detailed description of POP as opposed to a short, clichéd response that would suggest little meaningful understanding of the concept.<sup>192</sup> Finally, 88 percent of the captains reported that they informally discussed POP with other officers on a somewhat regular basis.<sup>193</sup> The interview questions on this point were designed to assess whether POP was part of the "day-to-day language and culture" of the department.<sup>194</sup>

With respect to training, all thirty-three captains and 89.1 percent of the rank and file reported that they had participated in some formal training regarding POP.<sup>195</sup> At the time of the study, new recruits received approximately three days of police academy training related to POP.<sup>196</sup> In the field-training program (led by Police Training Officers, or PTOs), each trainee was required to develop a POP project and present the findings to the department.<sup>197</sup>

With regard to departmental practices, POP was made a factor in both performance evaluations and the promotional process.<sup>198</sup> The vast majority

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185. *Id.* at 11.

186. *Id.* at 13.

187. *Id.* at 13.

188. IKERD & WALKER, *supra* note 13, at 13.

189. *Id.* at 14.

190. *Id.* at 17.

191. *Id.* at 16.

192. *Id.*

193. *Id.* at 16.

194. IKERD & WALKER, *supra* note 13, at 16.

195. *Id.* at 20.

196. *Id.* at 21. In the context of standard police academy training, where a four-hour training period on a particular subject is common, a three-day block of time is noteworthy.

197. *Id.* at 21.

198. IKERD AND WALKER, *supra* note 13, at 22.



(86.6 percent) of the rank and file and 76 percent of the captains reported that they were aware that it was a part of their performance evaluations, while 82.4 percent of the rank and file and 70 percent of the captains reported they were aware it was a factor in promotions.<sup>199</sup> Significantly, 85 percent of the captains reported that they had been rewarded for their POP-related efforts.<sup>200</sup>

The findings regarding knowledge, attitudes and behavior clearly suggest that the department had indeed taken formal steps to institutionalize POP and that the effort, as measured in this research project, was successful.<sup>201</sup> However, several cautionary comments about the study are in order. The study involved only one department<sup>202</sup> and the absence of a comparison department or departments with a different approach or history regarding POP precludes a richer contextual perspective. Additionally, the study was done at what might prove to be a high point in the department's commitment to POP, a fact that might explain the extremely positive results on all of the indicators. Since the survey, a new police chief has arrived, and the level of commitment to POP at the present time is not known.<sup>203</sup>

The framework employed in the Charlotte study sheds useful perspective on other police reform efforts, and whether any similar attempts to institutionalize the reform in question were taken. With regard to the 1970s NYPD anti-corruption effort, for example, the Mollen Commission reported years later that no steps were taken to create "institutional mechanisms" to sustain the reforms.<sup>204</sup> With regard to COP, there is no evidence that, with a few exceptions, cities provided mandatory training of all officers regarding its goals and methods.<sup>205</sup> One exception appears to have been the Chicago CAPS effort. While the training reached only eighteen hundred officers in a twelve thousand officer department—it was nonetheless extensive—and this might account for the generally positive findings reported in the evaluations of CAPS.<sup>206</sup>

With regard to team policing, an evaluation of seven experiments in the 1970s found that one factor contributing to failure was that "team members

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199. *Id.*

200. *Id.*

201. *Id.* at 13.

202. *Id.*

203. A recent review of the department's website contains only a few passing references to problem solving, with no descriptions of specific POP programs or a department-wide commitment. CHARLOTTE-MECKLENBURG POLICE DEPARTMENT, <http://charmeck.org/city/charlotte/cmpd/Pages/default.aspx> (last visited Jan. 10, 2013).

204. MOLLEN COMMISSION, *supra* note 25, at 75.

205. SKOGAN AND HARTNETT, *supra* note 43, at 96 (little or no training regarding COP or POP in cities other than Chicago is reported). In Houston, Texas, officers "received neither training nor even a briefing" regarding its Innovative Neighborhood Policing (INOP) program. *Id.*

206. *Id.* at 96–104.

had been left out of the planning,” and as a consequence did not understand the reform they were to implement and often had “erroneous” ideas about it.<sup>207</sup> Scott’s twenty-year assessment of POP, meanwhile, discusses training largely in terms of national level training that is external to individual departments, with no reference to the kind of department-level training found in Charlotte.<sup>208</sup>

In the various Justice Department consent decrees and MOAs, there is no evidence that departments were required to undertake, or undertook on their own initiative, department-wide training about the nature and goals of the required reforms.<sup>209</sup> The Department of Justice 2001 report, *Principles for Promoting Police Integrity*, is arguably the closest thing to an official statement of minimum expectations for policing. The *Principles* Report contains only a brief standard on training, but it is confined to training over the report’s substantive recommendations (e.g., use of force, EIS, citizen complaints) and is silent with regard to training on the nature, purpose, and benefits of the required reforms themselves.<sup>210</sup> The MOA between the Department of Justice, the City of Cincinnati, and the Cincinnati Police Department, to take one example, follows the approach in the Justice Department’s *Principles* report, and requires nothing regarding training or explanation of the reforms themselves.<sup>211</sup>

#### B. A Model Program for Institutionalizing Accountability-Related Reforms

This Section presents a model program for institutionalizing police accountability reforms, based on the preceding discussion of the Charlotte experience and drawing on research discussed earlier in this Article. While the specific program described here involves accountability related reforms, it has general relevance for all major reforms or changes within a police department. The challenge is to change the culture of the department to the point where the goals and values underlying the reforms are understood, accepted, and actively supported by a critical mass of officers.<sup>212</sup>

Training involving accountability-related reforms should include pre-service academy training, field training, and in-service training. Each of these

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207. SHERMAN ET AL., *supra* note 29, at 67.

208. SCOTT, *supra* note 15, at 111–15.

209. The police union expressed public opposition to the consent decree and was consequently not invited to participate in the Implementation Committee. DAVIS ET AL., *supra* note 59, at 10.

210. U.S. DEP’T OF JUSTICE, *supra* note 18, at 14.

211. Memorandum of Agreement Between the U.S. Dep’t of Justice & the City of Cincinnati, Ohio & the Cincinnati Police Dep’t (Apr. 12, 2002) (on file with author).

212. No attempt is made here to define of what that “critical mass” would consist. It may not necessarily involve a majority of all officers. Determining the “tipping point” where a critical mass begins to exist should be the subject of future empirical research.

training units should cover the nature of the specific reform or reforms, the underlying values, and the potential benefits to the department, individual officers, and the community. The potential benefits of accountability-related reforms are arguably the most neglected aspect of the reform process. Officers, for example, generally view stricter use of force policies as an intrusion on their discretion and essentially a means by which supervisors can catch and punish them.<sup>213</sup> All training units should emphasize the extent to which clear policies on use of force or other officer actions in critical incidents, however restrictive, provide necessary and useful guidance regarding which actions are prohibited or approved in given situations. The potential benefits to officers include helping them avoid actions that are likely to generate a citizen complaint or an internally generated complaint.<sup>214</sup> Research on citizen complaints, for example, suggests that being the subject of complaint investigations is one of the greatest sources of low morale among police officers.<sup>215</sup> Some law enforcement experts involved with EIS talk in terms of the system's purpose being to "save" officers' careers—by identifying their performance problems early and providing the proper intervention to correct those problems—saving them from the costs of use of force or citizen complaint investigations as well as having such incidents on their performance record.<sup>216</sup> The EIS is the source of discontent among rank and file officers and supervisors.<sup>217</sup> Rank and file officers tend to regard it as a "big brother" system whose primary purpose it is to catch and discipline officers.<sup>218</sup> To the extent that an EIS gives management a documented record, there is some truth to that perception.<sup>219</sup> Training should emphasize the point that it is intended to be activated only in the case of officers with repeated performance problems. One of the major complaints among many officers is that the department does not punish those officers whose performance is inadequate or unprofessional.<sup>220</sup> An EIS also has the potential for identifying exemplary officer performance, which could be measured in terms of a low ratio of citizen complaints and use of force incidents to arrests or field and traffic stops or both.<sup>221</sup>

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213. MOLLEN COMMISSION, *supra* note 25, at 63–64.

214. JAYSON WECHTER, S.F. OFFICE OF CITIZEN COMPLAINTS, INVESTIGATING CITIZEN COMPLAINTS IS DIFFERENT: THE SPECIAL CHALLENGES OF INVESTIGATING CITIZEN COMPLAINTS AGAINST POLICE OFFICERS 8–9 (2004).

215. *Id.*

216. WALKER, *supra* note 122, at 3.

217. SAMUEL WALKER ET AL., U.S. DEP'T OF JUSTICE OFFICE OF CMTY. ORIENTED POLICING SERVS., SUPERVISION & INTERVENTION WITHIN EARLY INTERVENTION SYSTEMS: A GUIDE FOR LAW ENFORCEMENT CHIEF EXECUTIVES 36 (2005).

218. *Id.* at 37–38.

219. *Id.*

220. *Id.* at 38.

221. *Id.* at 5.

The benefits to the department include time saved through a reduction in the number of allegations of misconduct,<sup>222</sup> a reduction in lawsuits against the department,<sup>223</sup> and a general improvement in community relations.<sup>224</sup> Training could emphasize the potential public relations value of EIS data. Where the data documents decline in use of force incidents, it would communicate to the public that the department is vigilant in monitoring the performance of its officers and quick to take action to correct problems that appear. Traditionally, a police department's claims that it vigorously enforces its rules are greeted with great skepticism by much of the public.<sup>225</sup> This response is in large part because the claims are never supported by data, and the department has already lost trust among critical segments of the public.<sup>226</sup> An EIS potentially overcomes this problem by supporting claims with data.<sup>227</sup> An increase in use of force incidents, on the other hand, would alert the department to the need for an inquiry into the causes of that increase and the need to take corrective action.

In-service training is extremely important in order to ensure continuous reinforcement of specific programs and procedures and the values underlying them. In service training should include both classroom and roll call training.<sup>228</sup> In this regard, we should note the California POST standard that requires training on a set of "perishable skills,"<sup>229</sup> which include a minimum of twelve hours every two years, with a minimum of four hours each on "Arrest and Control," "Driver Training/Awareness or Driving Simulator," and "Tactical Firearms or Force Options Simulator."<sup>230</sup> The concept of perishable skills recognizes that certain skills easily erode under pressures of the job and that it is necessary to continually reinforce those skills through training. This principle certainly applies to all accountability-related reforms.<sup>231</sup>

Accountability-related reforms should also be reinforced by including them in performance evaluations and the promotional process—following the Charlotte example. An officer's performance evaluation, for example, should

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222. *Id.* at 5. The efficiencies arising from time saved for both officers subject to investigations and investigators could be readily quantified through a properly designed study, but no such study presently exists.

223. WALKER ET AL., *supra* note 217, at 5, 6.

224. *Id.*

225. SAMUEL WALKER, WHAT REAL POLICE ACCOUNTABILITY LOOKS LIKE: THE "120 SHOTS" INCIDENT & THE LOS ANGELES SHERIFF'S DEPARTMENT RESPONSE 7 (2005).

226. *Id.*

227. *Id.* at 41.

228. SKOGAN & HARTNETT, *supra* note 43, at 104–05.

229. *Perishable Skills Program*, CAL. COMM'N ON PEACE OFFICER STANDARDS AND TRAINING, <http://post.ca.gov/perishable-skills-program.aspx> (last visited Jan. 10, 2013).

230. *Id.*

231. *Id.*

include a review of his or her record in the EIS. Even though an officer has not been identified by the system for intervention, there are undoubtedly many cases of officers with a higher than average number of problematic indicators (uses of force, citizen complaints, excessive use of leave time) that should be properly noted in the performance evaluation. Similarly, the EIS record should be a major consideration in considering officers for promotion. In this regard, it should be noted that the Christopher Commission report on the LAPD following the 1991 Rodney King incident found that (in that pre-EIS era) the department did not use available information such as use of force incidents, citizen complaints, or even disciplinary records in promotional decisions.<sup>232</sup> In fact, the Christopher Commission found cases of officers given laudatory evaluations or promotions despite records that included serious incidents of officer misconduct.<sup>233</sup>

Evidence on policing cited in this Article suggests that properly designed training can be effective in changing the police officer subculture. The traditional concept of a homogenous subculture resistant to change appears no longer valid. The police officer work force is now far more diverse than in the past.<sup>234</sup> Some elements of that work force are more receptive to change than others.<sup>235</sup> Significant variations have been found among police departments with regard to receptivity to change.<sup>236</sup> Finally, properly designed training does appear to improve officer receptivity to innovation and change.<sup>237</sup> In short, there are pockets of support or potential support for accountability-related reform within the American police work force that can be exploited.

### C. *Monitoring the Continuity of Reforms*

Assuming that accountability reforms are instituted and a department adopts the program described in the above section to ensure the continuity of those reforms, the question becomes how to ensure the continuity-related effort itself continues. The following discussion argues that the police auditor form of citizen oversight represents the best answer to that question.

The police auditor arose in the mid-1990s as an alternative to citizen review boards.<sup>238</sup> Police auditors should not be confused with what are commonly referred to as independent police monitors. In common policing

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232. INDEP. COMM'N ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 140-42 (1991).

233. *Id.* at 143-44. Note the LAPD's failure to take into account the misconduct of forty-four officers the Christopher Commission identified as having the highest rate of involvement in use of force incidents. *Id.* at 40-41.

234. *Id.* at 71.

235. WALKER, *supra* note 18, at 183.

236. *Id.* at 180.

237. *Id.* at 183-84.

238. *Id.* at 135.

usage, the term independent monitor refers to a court-appointed official (although in practice usually a team of experts) with responsibility for monitoring the implementation of a consent decree or MOA.<sup>239</sup> The monitor is an officer of the court, its role is limited to the specific terms of the consent decree or MOA, and it goes out of existence once the decree or MOA is lifted by the court.<sup>240</sup> A police auditor, by contrast, is a permanent municipal, county, or state agency whose role involves auditing, monitoring or reviewing any and every aspect of the police agency under his or her purview.<sup>241</sup> Police auditors are different from citizen review boards primarily in that the latter investigate and review individual citizen complaints against police officers for purposes of determining whether the complaint is valid and the officer acted wrongly.<sup>242</sup> Thus, civilian review boards may be defined as embodying a “justice” model of oversight—oriented toward determining right or wrong with regard to a particular incident—while police auditors embody a “policy” model, oriented toward reviewing and potentially changing departmental policies.<sup>243</sup> Review boards are retrospective, examining what happened,<sup>244</sup> while police auditors are prospective, seeking to influence future actions.<sup>245</sup> Police auditors may respond to particular incidents or controversies, but their primary responsibility is to review policies and procedures of the agency under their purview and to make recommendations for change.<sup>246</sup> Particularly important, police auditors have the power to initiate investigations of any issue at their own discretion and are not limited to the terms of a consent decree or MOA.<sup>247</sup> The Special Counsel to the Los Angeles County Sheriff’s Department, for example, has investigated innumerable issues since 1993, with most of those embracing a number of subsidiary issues.<sup>248</sup> Police auditors do not have the power to mandate changes, however.<sup>249</sup> Their power lies in their capacity to investigate

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239. *Id.* at 144.

240. *Id.*

241. WALKER, *supra* note 18, at 136. Police auditors have a variety of different official names—the Philadelphia, Pennsylvania, auditor, for example, is the Integrity and Accountability Office (IAO). *Id.* at 136–37. This author has sought to clarify discussions by using generic terms based on the respective functions of different offices and agencies.

242. *Id.* at 135.

243. *Id.* at 144.

244. *Id.*

245. *Id.* Some citizen review boards have original jurisdiction to investigate citizen complaints; others review investigations conducted by the police department’s internal affairs or professional standards unit.

246. *Id.* at 136.

247. *See* WALKER, *supra* note 18, at 144.

248. *See Index of LASD Reports*, POLICE ASSESSMENT RES. CTR., [http://www.parc.info/client\\_files/LASD/12-12%20LASD%20Index.htm](http://www.parc.info/client_files/LASD/12-12%20LASD%20Index.htm) (last visited Jan. 10, 2013).

249. *See* WALKER, *supra* note 18, at 140.

broadly and to make their findings and recommendations public.<sup>250</sup> Finally, it should be noted that some oversight agencies, such as the Office of Police Complaints, combine both complaint review and auditing functions.<sup>251</sup>

Particularly relevant for this Article are the examples of police auditors identifying the deterioration of important reforms the departments experienced under their purview. In 2003, for example, the Special Counsel to the LASD issued a highly critical report finding that the department's EIS (known as the Personnel Performance Index [PPI]) had declined in some important respects and was not being used to its full capacity.<sup>252</sup> The PPI, at that time, was widely regarded as perhaps the best EIS in the nation, and it had served as a model for systems in other departments.<sup>253</sup> The Special Counsel, however, found that the PPI was not being used to its fullest capacity and suffered from a number of problems.<sup>254</sup> These included failure to enter data in a timely manner, a high rate of errors (more than 50 percent) in citizen complaint reports, inconsistencies in the reporting of certain incidents, and a lack of understanding about the PPI on the part of some supervisors.<sup>255</sup> A follow-up report a year later found that the LASD had made significant progress in correcting the problems identified in the previous report.<sup>256</sup>

A second example, also from the Special Counsel to the LASD, involves the checkered history of the Century Station (what would be called a precinct station in most departments).<sup>257</sup> The station was marked by a number of problems in the early 1990s, including a high rate of officer-involved shootings, a very bad image of the Station in the community, and, within the

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250. *See id.* at 141.

251. *See Office of Police Complaints*, THE DISTRICT OF COLUMBIA, <http://policecomplaints.dc.gov/page/about-office-police-complaints> (last visited Nov. 20, 2012). The New York City Civilian Complaint Review Board and the San Francisco Office of Citizen Complaints, while nominally review boards, have also issued auditor-style reports. *See Mission Statement and Rules*, N.Y.C. CIVILIAN COMPLAINT REVIEW BOARD, <http://www.nyc.gov/html/ccrb/html/mission.html> (last visited Nov. 20, 2012); *Office of Citizen Complaints*, CITY & COUNTY OF S.F., <http://www.sf.gov3.org/index.aspx?page=419> (last visited Nov. 20, 2012).

252. *See* MERRICK J. BOBB ET AL., L.A. CNTY. SHERIFF'S DEP'T, 16TH SEMIANNUAL REPORT 2 (2003), available at [http://www.parc.info/client\\_files/LASD/16th%20Semiannual%20Report.pdf](http://www.parc.info/client_files/LASD/16th%20Semiannual%20Report.pdf).

253. *See* WALKER, *supra* note 18, at 152.

254. *See* BOBB ET AL., *supra* note 252, at 44.

255. *See id.* at 43–59 (outlining in detail the various problems contributing to the underutilization of PPI).

256. *See* MERRICK J. BOBB ET AL., L.A. CNTY. SHERIFF'S DEP'T, 18TH SEMIANNUAL REPORT 47–56 (2004), available at [http://www.parc.info/client\\_files/LASD/18th%20Semiannual%20Report.pdf](http://www.parc.info/client_files/LASD/18th%20Semiannual%20Report.pdf) (outlining improvements including reducing data entry lags and increasing the accuracy of documentation in the PPI database).

257. *See* WALKER, *supra* note 18, at 151–52.

department, low officer morale and a high rate of officer turnover.<sup>258</sup> Investigation by the Special Counsel found several serious management deficiencies: a sergeant-to-officer span of control that was twice the department's own standard of eight to one;<sup>259</sup> use of the station as a training ground for new officers;<sup>260</sup> low morale and a desire for most officers to transfer out as quickly as possible.<sup>261</sup> A series of changes corrected many of these problems and the number of shootings had declined substantially—despite the fact that external factors such as the crime rate and community violence remained stable.<sup>262</sup> Several management reforms contributed to this positive development: the Station had for the first time a full complement of lieutenants and sergeants, sergeants were spending more time in the field, supervisors imposed stricter standards for arrests (resulting in a decline in the number of arrests), standards for selecting field training officers had been raised, and the department had reduced the number of officer foot pursuits which were related to many shootings in the past.<sup>263</sup> In 2001, however, the Special Counsel revisited the station and found that standards had eroded and the number of officer-involved shootings had returned to high levels compared with other Stations in the LASD. The captain responsible for the successful reforms had transferred out.<sup>264</sup>

The Special Counsel to the LASD reports on the Century Station illuminate a problem that is inherent in policing and important to the subject of this Article. While the initial improvements in the Century Station were impressive, the speed with which they deteriorated is deeply troubling. There is reason to believe that the Century Station experience is a common phenomenon in American police departments, and this only heightens the importance of devising procedures to ensure the continuity of reforms.

The work of the Denver, Colorado, Office of the Independent Monitor (OIM) provides an example of how a police auditor can address a full range of accountability-related issues to ensure their continuity. The 2010 OIM Annual

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258. *See id.*

259. MERRICK J. BOBB & STAFF, L.A. CNTY. SHERIFF'S DEP'T, 9TH SEMIANNUAL REPORT 23 (1998), available at [http://www.parc.info/client\\_files/LASD/9th%20Semiannual%20Report.pdf](http://www.parc.info/client_files/LASD/9th%20Semiannual%20Report.pdf). A proper span of control is regarded by law enforcement professionals as a vital element in an effective system of supervision. *See* WALKER, *supra* note 18, at 181–82.

260. BOBB & STAFF, *supra* note 259, at 18.

261. *Id.* at 8.

262. *See id.* at 7–34; *see also* MERRICK J. BOBB & STAFF, L.A. COUNTY SHERIFF'S DEP'T, 13TH SEMIANNUAL REPORT 7–15 (2000), available at [http://www.parc.info/client\\_files/LASD/13th%20Semiannual%20Report.pdf](http://www.parc.info/client_files/LASD/13th%20Semiannual%20Report.pdf).

263. *See* BOBB & STAFF, *supra* note 262, at 11–15.

264. *See* MERRICK J. BOBB ET. AL., L.A. COUNTY SHERIFF'S DEP'T, 14TH SEMIANNUAL REPORT 84 n.13 (2001), available at [http://www.parc.info/client\\_files/LASD/14th%20Semiannual%20Report.pdf](http://www.parc.info/client_files/LASD/14th%20Semiannual%20Report.pdf).



Report provides a status report on its six goals for the year.<sup>265</sup> The goals include: implementing the recommendations of an outside report on policies related to deadly force or other forms of force;<sup>266</sup> a continuation of the citizen complaint mediation program;<sup>267</sup> conducting an annual evaluation of the Denver Police Department's EIS (known as the Personnel Assessment System [PAS]);<sup>268</sup> monitoring the implementation of the Denver Sheriff's Department's disciplinary matrix (a new management tool designed to ensure consistency in disciplinary actions);<sup>269</sup> improving the timeliness of imposition of discipline in the Denver Police Department;<sup>270</sup> and evaluating the police department's policies, training, and practices related to alleged "excited delirium" cases.<sup>271</sup>

The Denver OIM list and discussion of goals for the year is ambitious and impressive. All of the items involve accountability-related reforms, including all three of the major items in DOJ-negotiated consent decrees and MOAs: use of force policies, the EIS, and the citizen complaint process. Indeed, what is particularly impressive is the comprehensive nature of the auditing process by the OIM—covering such a wide range of issues.<sup>272</sup>

The work of the Omaha Police Auditor, currently inactive due to the termination of the initial auditor in 2006, offers an example of a missed opportunity in police auditing, which resulted in a failure to correct police problems before they escalate into more serious incidents.<sup>273</sup> In a series of

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265. See RICHARD ROSENTHAL, OFFICE OF THE INDEP. MONITOR, ANNUAL REPORT 2010, 1-4 to 1-5 (2010), available at [http://www.denvergov.org/Portals/374/documents/2010\\_OIM\\_Annual\\_Report—Finalforweb.pdf](http://www.denvergov.org/Portals/374/documents/2010_OIM_Annual_Report—Finalforweb.pdf).

266. *Id.* at 1-4.

267. *Id.*

268. *Id.* at 1-5.

269. *Id.*

270. *Id.*

271. ROSENTHAL, *supra* note 265, at 1-5. "Excited delirium" is a behavioral condition that arises in a certain number of uses of force cases. The 2008 and 2009 annual reports of the OIM contain similar discussions of Goals, indicating that the process had become institutionalized in the OIM.

272. *Id.* at 1-4 to 1-5.

273. See generally TRISTAN BONN, PUBLIC SAFETY AUDITOR, CITY OF OMAHA, ANATOMY OF TRAFFIC STOPS (2006) [hereinafter TRAFFIC STOPS], available at <http://omahapoliceauditor.files.wordpress.com/2012/06/omahaauditortrafficstopsoct06.pdf>; see also TRISTAN BONN, PUBLIC SAFETY AUDITOR, CITY OF OMAHA, PUBLIC SAFETY AUDITOR'S REPORT (Mar. 31, 2003) [hereinafter MARCH AUDITOR REPORT], available at <http://omahapoliceauditor.files.wordpress.com/2012/06/psa-2003-1q-report-final.pdf>; TRISTAN BONN, PUBLIC SAFETY AUDITOR, CITY OF OMAHA, PUBLIC SAFETY AUDITOR'S REPORT (June 30, 2004) [hereinafter JUNE AUDITOR REPORT], available at <http://omahapoliceauditor.files.wordpress.com/2012/06/psa-2004-2q-report-final.pdf>; TRISTAN BONN, PUBLIC SAFETY AUDITOR, CITY OF OMAHA, QUARTERLY REPORT (Sept. 30, 2004) [hereinafter SEPTEMBER AUDITOR REPORT], available at

Quarterly Reports and then in a comprehensive report on traffic stop-related issues, the Omaha Police Auditor documented a variety of practices by Omaha police officers that ranged from the illegal to the unprofessional—the failure of the police department to provide adequate training and supervision for officers and, in some instances, even to enforce its own policies.<sup>274</sup> The problems included vehicle stops and arrests without adequate legal justification, pat down searches in violation of the Fourth Amendment, using visual estimates of vehicle speed in violation of state statute, failure to conduct after action reviews of use of force incidents, failure to enforce the department’s policy on accepting gratuities, and others.<sup>275</sup> The Auditor was fired in October 2006, and improper conduct by officers worsened to the point where a set of very serious use of force incidents in 2011 prompted a community group request for a Justice Department pattern or practice investigation.<sup>276</sup>

In short, the work of various police auditors from around the country provide instructive examples of how this form of citizen oversight can provide a form of continuous auditing and monitoring that is likely to ensure that police departments continue to maintain accountability-related reforms.

It is worth noting that the work of police auditors addresses an issue that is central to the decades-long controversy over the role of the Supreme Court as an agency of police accountability. Summarizing and extending this debate, Rachel Harmon has pointed out that the Supreme Court lacks the institutional capacity not only to enforce its decisions (apart from appeals that reach the Court), but also the capacity “to undertake complex empirical analysis of policing or to constrain the police beyond identifying and enforcing constitutional rights.”<sup>277</sup> Police auditors do have that capacity, are able to choose issues at their own discretion, and are able to conduct their own investigations or employ independent experts for investigations.<sup>278</sup> The inherently broad mandate of police auditors addresses the related problem discussed by Harmon that the focus on key Supreme Court decisions (e.g.,

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<http://omahapoliceauditor.files.wordpress.com/2012/06/psa-2004-3q-report-final.pdf>. The former police auditor is continuing police oversight work as a private individual.

274. See, e.g., TRAFFIC STOPS, *supra* note 273, at 6–8 (discussing officers improperly applying the reasonable articulable suspicion standard).

275. *Id.* at 3–21. See also JUNE AUDITOR REPORT, *supra* note 273, at 21 (addressing inadequacies in excessive force complaint procedures); SEPTEMBER AUDITOR REPORT, *supra* note 273, at 15–17 (identifying practices and behaviors violating conflict of interest policies).

276. Letter from Omaha Alliance for Justice, to Jonathan M. Smith, Chief, Special Litig. Section, Civil Rights Div., U.S. Dep’t of Justice (Mar. 13, 2012) (on file with author), available at <http://samuelwalker.net/wp-content/uploads/2012/03/DOJLetterFinal.pdf>. In the interest of full disclosure, it needs to be noted that the author of this Article was the principal author of the 2012 Omaha Letter to the Justice Department.

277. Harmon, *supra* note 82, at 764, 772–76.

278. See *supra* notes 235–51 and accompanying text.

*Mapp v. Ohio*<sup>279</sup> and *Miranda v. Arizona*<sup>280</sup>), has greatly narrowed the scope of research and discussions of policing and police accountability to an unfortunate degree.<sup>281</sup> As Harmon states, “scholars take their subject to be Supreme Court cases involving the Constitution rather than the problem of policing.”<sup>282</sup> It is a truism in police studies that law enforcement activities that are likely to involve Fourth and Fifth Amendment issues constitute only a portion of police activities. Focusing on constitutional issues, consequently, ignores the majority of police–citizen interactions that involve order maintenance, problem solving, and service. In short, police auditors are not only a necessary instrument in terms of sustaining police reforms, but can be a major instrument in a new and broadly defined police reform effort generally.

## VI. CONCLUSION

Sustaining accountability-related reforms is an important frontier issue in policing that has not received sufficient attention from reform activists or police scholars.<sup>283</sup> There is a long history of important reforms that, for one reason or another, simply faded away.<sup>284</sup> Skogan has ably listed the formidable list of factors that cause reforms to fail, and we should not lose sight of the challenges that face both instituting and institutionalizing reform in police departments.<sup>285</sup> The problem of sustaining reform, moreover, extends to all aspects of policing, including: community-oriented policing, problem-oriented policing, and essentially all aspects of police management.<sup>286</sup>

This Article has examined the factors related to sustaining reforms including the impact of the police officer subculture—which many, if not most, police experts regard as one of the major obstacles to reform and the continuity of reforms that are achieved.<sup>287</sup> Citing research on the changing police officer work force and new research from the National Police Research Platform—this Article has argued that the police officer work force is not as monolithic as traditionally portrayed. There is evidence that some departments and officers are more amenable to change (and, thus, reform) than others, and properly designed training can have a positive impact with regard to attitudes toward accountability-related reform.<sup>288</sup>

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279. *Mapp v. Ohio*, 367 U.S. 643 (1961).

280. *Miranda v. Arizona*, 384 U.S. 436 (1966).

281. Harmon, *supra* note 82, at 782–86.

282. *Id.* at 783.

283. Mastrofski & Willis, *supra* note 5, at 127–28.

284. *Id.* at 113.

285. Skogan, *supra* note 10, at 23–24.

286. *Id.* at 23.

287. Armacost, *supra* note 83, at 455.

288. *See supra* text accompanying notes 131–145.

This Article concludes with a recommended model policy to enhance the sustainability of accountability-related reforms.<sup>289</sup> The policy involves developing training procedures designed to explain the nature, goals, and benefits of such reforms to all officers in a department.<sup>290</sup> Traditional practice in reform efforts has neglected this dimension of training and its potential impact on the culture of a department.<sup>291</sup> The result is that major reforms—including Justice Department consent decrees and memoranda of agreement—appear to rank and file officers as offensive bolts from the blue, without much warning and even less explanation.<sup>292</sup> The model policy involves training officers to explain major reforms that occur.<sup>293</sup> This approach is based on the example of the institutionalization of problem oriented policing in Charlotte, North Carolina’s Police Department.<sup>294</sup> Research from the National Police Research Platform suggests that training can increase the receptivity of police officers to innovations.<sup>295</sup>

The final element of the model involves continuous external monitoring to ensure that accountability reforms are being maintained in a department.<sup>296</sup> The experience of several police auditors, and an alternative form of citizen oversight of the police, provides a practical example of how continuous monitoring can be achieved.<sup>297</sup>

In conclusion, maintaining the continuity of accountability-related reforms in policing is an important problem that has been neglected to date. This Article has offered a model program for ensuring the continuity of such reforms by institutionalizing them in a police department based on the evidence from several different aspects of policing.

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289. *See supra* Part V.

290. *See supra* Part V.B.

291. *See supra* Part IV.

292. Skogan, *supra* note 10, at 26–27.

293. IKERD & WALKER, *supra* note 13, at 13, 20–21.

294. *Id.*

295. MASTROFSKI & ROSENBAUM, *supra* note 92, at 8.

296. ROSENTHAL, *supra* note 265, at 1-4 to 1-5.

297. *Id.*

