

# Lawful Policing

By

WESLEY G. SKOGAN  
and  
TRACEY L. MEARES

Police compliance with the law is one of the most important aspects of a democratic society. Americans expect the police to enforce laws to promote safety and to reduce crime, victimization, and fear, but no one believes that the police should have unlimited power to do so. We expect police to enforce laws fairly according to law and rules that circumscribe their enforcement powers. The existence of these rules justify the claim that police are a rule-bound institution engaged in the pursuit of justice and the protection of individual liberties, as well as the battle against crime. This article reviews research on the extent to which police follow laws and rules, especially constitutional criminal procedure rules, addressing seizures, searches, interrogations, and deadly force. Also reviewed is research pertaining to police adherence to rules governing excessive force, corruption, and racial profiling.

*Keywords:* constitutionality; interrogation; search and seizure; excessive force; corruption

As the National Research Council's report *Fairness and Effectiveness in Policing: The Evidence* (hereafter referred to as the "committee's report") points out, police compliance with the law is one of the most important aspects of a democratic society. The committee reviewed research on police compliance with the U.S.

*Wesley G. Skogan has been a faculty member at Northwestern University since 1971 and holds joint appointments with the political science department and the Institute for Policy Research. His research focuses on the interface between the public and the legal system. Much of this research has examined public encounters with institutions of justice, in the form of crime prevention projects and community-oriented policing. His most recent books on policing are On the Beat: Police and Community Problem Solving (Westview, 1999) and Community Policing, Chicago Style (Oxford University Press, 1997). They are both empirical studies of Chicago's community policing initiative. His 1990 book Disorder and Decline examined public involvement in these programs, their efficacy, and the issues involved in police-citizen cooperation in order maintenance. This book won a prize from the American Sociological Association. He is also the author of two lengthy reports in the Home Office Research Series examining citizen contact*

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Constitution, state laws, and the policies and standards of their own organizations. The existence of these rules justify the claim that police are a rule-bound institution engaged in the pursuit of justice and the protection of individual liberties, as well as the battle against crime. Although the authority of the state granted to police to enforce the laws is circumscribed by the various types of laws we review here, it is also the case that the exercise of police power in the United States takes place largely at the discretion of individual officers. The decision to make a traffic stop or issue a ticket, to make an arrest or issue a stern warning, or to use force to accomplish any of these things is in the hands of officers on the street.

Everything about policing makes this exercise of discretion hard to monitor and control. The organization under which officers work struggles to keep control of its field force. Most police officers work alone or with a partner—not under the constant gaze of an assembly-line foreman. Police officers go out into the night heavily armed, and we know little about what they do there except what they report on pieces of paper that they sometimes fill out to document their activities. Many of the encounters police officers have occur under potentially troublesome circumstances. The individuals whom officers meet during these encounters include alleged offenders, drunks, the homeless, and prostitutes—those with “spoiled” identities. The complaints these individuals may have about their treatment by officers may not be taken very seriously. Because police work outside the public eye, they routinely have opportunities to engage in a laundry list of corrupt activities. Moreover, it is difficult to punish such misbehavior due to the civil service protections afforded police as public employees. In many regions of the country, policing is unionized, and provisions of the labor agreement can further bind the hands of top management when it comes to supervising, rewarding, disciplining, and firing employees.

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*and satisfaction with policing in Britain. Other articles on police-citizen issues include “The Impact of Community Policing on Neighborhood Residents: A Cross-Site Analysis” in Rosenbaum’s The Challenge of Community Policing. He chaired the National Research Council’s Committee to Review Research on Police Policies and Practices.*

*Tracey L. Meares graduated from the University of Illinois with a B.S. in general engineering in 1988. She then obtained her J.D. with honors from The Law School at The University of Chicago in 1991. After clerking for the Honorable Harlington Wood Jr. of the U.S. Court of Appeals for the Seventh Circuit, she was an Honors Program Trial Attorney for the U.S. Department of Justice in the Antitrust Division. In 1994, she joined the law faculty of The University of Chicago as an assistant professor. In 1999, she accepted a joint appointment as a research fellow at the American Bar Foundation. Her research brings insights from sociological theory and contemporary poverty research to the analysis of criminal law policy. A related group of writings explores the impact of the evolution of law enforcement policy on constitutional criminal procedure, of which “The Coming Crisis of Criminal Procedure,” 86 Georgetown Law Journal 1153 (1998) (with Dan Kahan), is a notable example. She is also involved in a large empirical study funded by the Catherine T. and John D. MacArthur Foundation of cooperation between churches (predominantly black) and the police on Chicago’s West Side. In “Place and Crime,” 73 Chicago-Kent Law Review 669 (1998), she offers a foundational framework for exploring the questions posed by this research, but the work, both theoretical and empirical, is ongoing. She was a member of the National Research Council’s Committee to Review Research on Police Policies and Practices.*

In addition to this long list of factors, many of the recent innovations reviewed in the committee's report recognize, celebrate, and extend this operational independence. The foundational premise underlying both problem-solving policing and community policing is that community and crime-related problems vary tremendously from place to place and that their causes and solutions are highly contextual. In such contexts, we expect police to use good judgment rather than enforce the letter of the law in order to produce good results. Decentralizing, reducing hierarchy, granting officers more independence, and trusting in their professionalism are the organizational reforms of choice today, not tightening up the management screws to further constrain officer discretion. This is especially true when "we," the segment of the public that has not traditionally had antagonistic relationship with the police, are the ones demanding better outcomes from policing.

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Somehow, this witches' brew of authority and autonomy usually works out. Most police officers are honest and stay out of serious trouble for their entire careers. Most citizens who come into contact with the police are satisfied with the experience, even when they were on the receiving end of an investigation. There is evidence that it has been working out better and better over time. In a paper reviewing trends in American policing over the course of the twentieth century, historian Samuel Walker (2001a) concludes that police at century's end are better trained, more professional, less likely to use excessive or fatal force, and more effective than they were in previous decades.

But, inevitably, it sometimes does not work out. Police are what the British call "the sharp end of the stick" when it comes to regulating the social and economic relationships in society. Their capacity to use force authoritatively and take lives lawfully in the course of regulating our lives uniquely defines *the police*. We are then led to the task of constructing legal and organizational mechanisms for hemming in the exercise of police discretion and ensuring that it is exercised in accor-

dance with law and public policy. Just how to construct and enforce such rules can be a difficult puzzle. It is not easy to impose these rules, and it is not easy to make them work. This article presents an overview of what is known about the nature and extent of police lawfulness and about the effectiveness of mechanisms to control it. The evidence that it summarizes is documented in detail in the committee's report. Here, we present our main conclusions about this research and our judgments about its implications for policies aimed at ensuring police lawfulness.

## How Police Get in Trouble

Since 1934, the Supreme Court has regularly reviewed the practices of local police. Like many early cases, *Brown v. Mississippi* (297 U.S. 278, 1935) evoked the Court's twin concern with racial discrimination—Brown was a black man—and egregious police conduct, in this instance the extraction of a confession through torture. Later cases erected a dense network of rules delimiting police power to stop people on the street, conduct searches, question them in custody, and listen in on their conversations. Taken together, these cases establish what we now recognize as modern constitutional criminal procedure: rules that provide the link between constitutional principles and the daily actions of the police. On their face, these rules greatly constrain the authority of the police. Social scientists know, of course, that pronouncing a rule does not automatically make it so. They are not self-enforcing, and individual officers have to learn and actually follow them. Where they do not, police can get in trouble, and this section reviews what we know about the lawfulness of police activities in the line of duty in several key areas. Neither are the more mundane laws that govern police corruption automatically effective, and corruption is another way that police get in trouble.

### *Interrogations*

*Brown* involved the lawfulness of an interrogation. It was followed by a line of cases reviewing under the due process clause of the Constitution the appropriate and voluntary nature of police questioning of suspects and taking of confessions. *Miranda v. Arizona* (372 U.S. 436, 1966), one of the best-known and most thoroughly researched Supreme Court decisions, represents a break in this sort of decision making. Rather than reviewing the voluntarism of Miranda's confession under due process principles, the Court imposed on police via the Fifth Amendment responsibility for delivering the famous four-part warning, which is familiar to any regular viewer of television drama, to any suspect during a custodial interrogation. In fact, *Miranda's* four-part warning may be the best-known element of criminal procedure. Initially, the *Miranda* decision was criticized for "hamstringing" police in the pursuit of criminals, but in *Dickerson v. United States* (120 S. Ct. 2326, 2000), even a Supreme Court that might have threatened the ruling decided instead that it "has become embedded in routine police practice to the point where the warnings have become part of our national culture (p. 2336)."

*Miranda* presented a natural case for social research. It involves a clearly observable requirement (the four warnings) that might be followed or ignored, and its critics posed a hypothesis to be tested (it would hamstring the police). The studies that followed paint an ironic picture of *Miranda* in action: it seems that the police follow the rule, and it does not have much effect.

The first big study of *Miranda* did not actually come to that complete conclusion. Donald Black and Albert Reiss Jr. had a large field study of police operations under way when the decision was announced. They added the warning to the checklist of things their observers were looking for as they rode along with officers. They found that the required warnings were frequently not given when police arrested suspects, but they also found that for felonies, there was typically alternate physical evidence and eyewitness testimony that police could rely on (Black and Reiss 1967). Subsequent studies have almost universally found high levels of verbal compliance with this constitutional requirement, so it is likely that the low compliance rate they observed was an artifact of the timing of the Black and Reiss project. For example, Leo (1996) observed detectives at work and found essentially 100 percent compliance with the letter of the law.

Other studies have confirmed the other Black and Reiss conclusion: in routine cases, confessions are rarely the only evidence available for submission to the prosecutor. This is one of the factors that has mitigated the impact of *Miranda*, belying the early charge that it would severely undercut the crime-fighting effectiveness of the police. The reason that the existence of nonconfessional evidence can undercut the sting of *Miranda*'s exclusionary rule in situations in which police do follow *Miranda*'s prescriptions is that *Miranda*'s exclusionary rule requires that only a tainted confession be excluded from trial, not other evidence. Another mitigating influence on *Miranda*'s bite is the strategic manner in which police deliver the message. Leo noted how police presented the four warnings in ways that encouraged suspects to waive their rights. Terms like *perfunctory* and *superficial* are used by researchers to describe police delivery. Cassell and Hayman (1996) also observed a number of "noncustodial" interviews that took place (technically, legally) without warnings, presumably in an attempt to skirt the requirement. In a summary, Meares and Harcourt (2000) concluded that in practice, *Miranda* may reduce the number of confessions between 4 and 16 percent, but the availability of other evidence means that its real impact is considerably lower than that range.

### *Searches and seizures*

Seizing people and searching them and their properties are basic law enforcement tools. Searches and seizures are vital to removing weapons and contraband from the street, building criminal cases, and potentially preventing crime. But searches and seizures can also be extremely problematic for police. While Americans recognize that searches and seizures are necessary tools for police to do their jobs of maintaining order and responding to criminal events, Americans have always feared the misuse of these intrusions by the state into their lives. The Fourth Amendment speaks directly to "the right of the people to be secure in their per-

sons, houses, papers and effects, against unreasonable searches.” Through its interpretation of the Fourth Amendment, the Supreme Court has established concepts such as “probable cause” and “reasonable suspicion” in criminal procedure cases as the standard for justifying different types of searches and seizures.

The principal tool for enforcing judicially imposed injunctions against unreasonable police conduct is the exclusionary rule, which applies both to state and federal prosecutions. A deterrence model underlies the logic of the decision: the rule that a demonstrably bad guy can earn a “get out of jail free card” if the evidence required to convict him (perhaps a seized gun or trunk load of drugs) was obtained improperly is supposed to keep police and prosecutors in line.

Research in this area attempts to document the extent of police propriety and the factors associated with rule bending versus rule minding. Much of it has been reactive to changes in legal standards. A large body of research was stimulated by the Supreme Court’s decision in *Mapp v. Ohio* (367 U.S. 643, 1961) to extend the Fourth Amendment exclusionary rule to the states. More appeared in the wake of follow-up search-and-seizure cases. These include *Terry v. Ohio* (392 U.S. 1, 1968), which justifies pat-down searches under the rubric of Fourth Amendment reasonableness by sanctioning them so long as police could demonstrate reasonable suspicion; *United States v. Calandra* (414 U.S. 338, 1974), which balances the exclusion of evidence against its deterrent effect; and *United States v. Leon* (486 U.S. 897, 1984), which permits the use of evidence obtained faultily but in good faith. Because they have been reactive, there are few before-and-after studies assessing the impact of these new rules for police conduct, even though many of them read as if that were their goal.

Search-and-seizure actions by individual officers have been examined in a variety of ways. Researchers have ridden with detectives or interviewed them in the stationhouse, passed out questionnaires to uniformed officers, and observed encounters between the police and the public in the field. Collectively, these studies indicate that police mostly follow the rules, but sometimes, they do not. Officers know the rules, but they sometimes skirt constitutional standards because they want to deter crime by incarcerating the truly guilty. Or if deterrence is not their immediate goal, officers sometimes bend rules because they simply want an individual that they have identified as a lawbreaker to get his or her “due” in a sort of retributive justice sense. Officers can be quite strategic in pursuing these goals, including risking a bit of censure when they have other forms of evidence to fall back on if their actions are challenged. Several studies found that officers intent on seizing contraband, disrupting illicit networks, or asserting their authority on the street freely violated the rules because their goal was not principally to secure an individual conviction.

One of the most recent of these studies involved observations of what happens when police confront citizens in the field. The study (Gould and Mastrofski forthcoming) documents that field searches are fairly uncommon. Trained observers in two cities spent in total more than 2,800 hours in the field observing 12,000 police-citizen encounters. During this period, they observed just 115 searches. About 30 percent were judged to be unconstitutional, but only 10 percent of those (and just 3

percent of all searches) involved what they classified as egregious police misconduct. About 7 percent of suspects who were arrested or cited were searched improperly. Most improper searches occurred when officers were looking for drugs, a finding that is consistent with earlier work on detective practices. Most of the observed violations involved frisking suspect's outer clothing and were not particularly invasive. The authors describe the officers involved as "respectful, even solicitous," and not distinguishable by their attitudes or other behaviors. Most of the rule violations arose during encounters that did not ultimately lead to an arrest or citation, so no record of them was left behind.

Another large study examined the lawfulness of street encounters in New York City. The New York Office of the Attorney General (1999) analyzed forms that are supposed to be completed by officers when they conduct a stop and frisk. On their face, the stops described there were judged to violate *Terry* standards 14 percent of the time (Fagan and Davies 2000). Two measures were also used to test whether there was racial bias in the stops themselves. One compared stops by race with the race of the neighborhood in which they occurred, while the other made a similar adjustment for the racial makeup of arrests in the area as a proxy for who the troublemakers there were. Both analyses suggested that African Americans were disproportionately stopped.

Researchers have used case files to assess the magnitude of search-and-seizure issues and their aggregate consequences at the system level. To assess the cost of excluding evidence of guilt, studies have counted lost convictions and concluded that they are not particularly frequent. Sutton's (1986) study tracked a large sample of cases in seven cities. He found that search warrants were rarely used, judges gave only perfunctory review of warrant applications, and the participants subverted the process by fabricating evidence when necessary. Other researchers have done pre-post studies of the impact of *Leon* and found no impact on police practices (Uchida and Bynum 1991).

### *Excessive and lethal force*

The use of force is so integral to the police role that a common definition of the term *police* is the body that is lawfully authorized to exercise deadly force against citizens. As a price for holding a virtual monopoly over this power, there are standards for the use of force, standards that are too often violated. In the United States, use of deadly force has been a major source of conflict between minority groups and the police. Numerous studies have demonstrated large discrepancies between the rate at which African Americans are shot and killed by the police and the comparable rate for whites. One found that between 1950 and 1960, African Americans were killed by Chicago police at a rate of 16.1 per 100,000, compared with a rate of 2.1 per 100,000 for whites (Robin 1963).

The constitutional rule adopted by the Court to circumscribe the use of deadly force by police officers is found in *Tennessee v. Garner* (471 U.S. 1, 1985). In this case, the Supreme Court overturned a permissive fleeing-felon rule that allowed police officers to use "all the means necessary to effect an arrest" of even an

unarmed fleeing felon. The case arose from the killing of a fifteen-year-old African American male in suburban Memphis, and it was imbued with racial tensions. Interestingly, few of the states whose statutes on this matter did not comply with the Court's ruling were willing to change them; the states relied instead on departments to change their policies and procedures. Generally, police are now authorized to use force in self-defense or when a life is in danger, when certain forcible felons flee, or when other means have been exhausted. Both deadly force and excessive force claims are also grounds for civil suits under state tort law and federal civil rights laws.

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This is a difficult research area. There is no national repository of data on police use of force, and access to local records is difficult. Virtually every study has been based on the records of one or a small number of local police departments. Official case files inevitably present a situation in which every incentive exists for the organization to present a favorable version of events. Studies conducted in agencies that voluntarily open their records to researchers probably represent those that are most confident of their professionalism. Studies of agencies that are forced to open their records because of suits alleging use of excessive force, or through freedom of information suits by media organizations, tend to find more racial disparity in the use of force, great deals of disparity in the use of deadly force, and higher rates of shootings of racial minorities that appear to be questionable (Fyfe 2002). For example, Meyer (1980) found that African Americans in Los Angeles were more often unarmed when they were shot, and Fyfe (1982) found that African Americans in Memphis were more often shot in circumstances that were not as threatening to the officer.

One firm conclusion that can be drawn from this research is that rates of police use of force and deadly force are highly variable. In a recent study, Fyfe (2002) analyzed the results of a project conducted by the *Washington Post*. Using freedom of information requests and suits, they assembled data on fatal police shootings in fifty-one large municipal and county police and sheriff's departments during 1990 to 2000. Fatal shootings rates for county police departments varied by a factor of 14, while for city departments, the ratio of shootings from top to bottom was 8:1

and among sheriff's departments it was almost 6:1. In a seven-city study by Milton et al. (1977), the top to bottom ratio was also 6:1. Another general conclusion is that most police use of force is nonfatal. In one six-agency study, only 17 percent of "potentially volatile encounters" (a high-risk sample of incidents) led to the use of force, and most of the force was confined to threats, use of restraints, weaponless tactics, and control holds (Garner and Maxwell 1999). A final conclusion is that there is usually considerable racial disparity in the use of force and often in the use of fatal force. Many see such disparities in the exercise of force lying at the core of challenges to the legitimacy of American policing in the twenty-first century.

There is also evidence of the positive effects of legal and administrative efforts to control police use of force. Many before-and-after studies of changes in department rules or leadership find evidence that management makes a difference. In a study of the use of force by the New York Police Department, Fyfe (1979) found that a policy change by the agency led to a precipitous drop in shootings by officers there. He also found that New York City police rarely shot unarmed people. Sparger and Giacomassi (1992) conducted a follow-up study in Memphis, the jurisdiction in which the *Garner* decision originated, and found a dramatic reduction in racial disparities in police shootings in the post-*Garner* period. Tennenbaum (1994) concluded that *Garner* reduced fatal police shootings by about sixty per year.

### *Corruption*

The previous sections reviewed research in which the disjuncture between police activity and legal standards ostensibly and typically were grounded in the officers' desire to pursue public ends. However, police also deviate from the law for personal gain. Corruption is to a certain extent endemic in police departments because of the attractive opportunities officers can face when deciding when and how to enforce the law. The range of what constitutes corruption is a wide one and, at the lower end, depends on department policies. "Police discounts" for meals and haircuts fall at one end of the continuum, which widens to include the sale of inside information, accepting bribes not to enforce the law or to testify falsely, and even payoffs to secure advancement within the department. Corruption may be proactive, as when officers seek out and rob street drug dealers, or reactive to offers large and small from community members. Some researchers include so-called noble-cause corruption in their inventories. This includes investigating, arresting, and "testi-lying" people who are "deserving" of punishment, whatever the "legal niceties." It is not clear, however, whether including these practices increases our ability to understand the scope and frequency of corruption for gain or if it just muddies the concept. Other important distinctions are whether corruption is organized or freelance work, if it is widespread or found only in isolated pockets, if it permeates management ranks or is confined to street officers, and if it is linked to more widespread political corruption or is largely confined to police ranks.

Corruption is not only hard to control but also hard to study systematically. Much of what we know in any detailed fashion flows from investigations and testimony collected by commissions set up in response to public uproar over revelations of corruption. New York City provides a treasure trove of these reports, including those of the Knapp Commission (City of New York 1973) and the Mollen Commission (City of New York 1994). Sherman (1978) used media reports and investigatory material like these commission reports to develop comparative case studies of corruption and reform efforts in four cities. He concluded that corruption was highly organized before it surfaced in public view. Another approach is to survey officers. While self-report surveys are unlikely to uncover revelations of any but the smallest scale side benefits of serving the public, Klockars et al. (2000) and others have demonstrated that it is quite fruitful to ask police about the practices of others in their agency, the “climate of opinion” among their peers concerning corruption, their awareness of the rules concerning misconduct, their support for imposing discipline, and their (hypothetical) willingness to report various kinds of misconduct internally. For example, Klockars et al. (2000) surveyed officers in thirty American police departments and found that, overall, a majority would not report a colleague who engaged in the least serious misbehavior (e.g., accepting free meals and discounts) but that they would report someone who engaged in behaviors judged to be at intermediate or high levels of seriousness (e.g., accepting kickbacks from an auto repair shop for referrals, turning in a lost wallet while keeping the cash from that wallet). Their study also found that police departments varied considerably in the climate of integrity.

Surveys have also asked the general public whether they had been required to bribe public officials, including the police, and these open an alternative window into the extent of that problem. Some of these, conducted in a number of countries, lend a comparative aspect to experiences with police corruption. Unfortunately, no studies have compared police with any other occupation’s corruption rate, for this would provide a useful avenue for testing hypotheses involving some of the reputedly unique features of police work.

What seems to lead to corruption?<sup>9</sup> As noted above, many of the most important explanations are systemic in character. History provides evidence of the importance of very broad social and regulatory factors, for probably no event had a greater corrupting effect on police and the American political system generally than did the passage of a constitutional amendment prohibiting the manufacture and sale of alcoholic beverages in the 1920s. Today’s equivalent is drugs. Police work combines high discretion with low-visibility decision making in an environment that can be awash with tempting opportunities and an ample supply of “regular” citizens willing to offer up even more. The drug dealers, prostitutes, and others that officers routinely deal with can be robbed or abused with relative impunity. Narcotics units are especially prone to problems because of the very large sums of money and drugs that come their way, the willingness of both buyers and sellers in the marketplace to pay bribes to avoid regulation, and the very low visibility of the many discretionary decisions that are made on a daily basis by investigators and

their supervisors (U.S. General Accounting Office 1998; Manning and Redlinger 1977). Officers whose opportunities for career advancement have come to an end may be more prone to being on the take. Corruption is very much facilitated by tolerance—or at least passive unresponsiveness—by peer officers in the organization. Integrity, on the other hand, can be measured by officers' support for the rules, their belief that internal complaints will be investigated fully and fairly, and their willingness to report misconduct (Klockars et al. 2000). The public's standards concerning what constitutes intolerable corruption may set an upper boundary on how out of hand corruption may get, and the views of the politicians who represent them are probably even more directly important. The aggressiveness of local and federal prosecutors, and the intrusiveness of the media, also determine how much can go on before heads start to roll.

### *Racial profiling*

No controversy in law enforcement today has received more attention than racial profiling. There is no ready agreement on what the term means, however. While the law enforcement community has defined *racial profiling* as the practice of stopping citizens solely or exclusively because of their race, many others use the term to refer to police using race in any way in deciding whom to stop or search, except in the instance when race is part of a specific description of a wanted offender. Police have defended the legitimacy of considering race along with other factors with respect to their decision to stop, search, or otherwise engage citizens, arguing that consideration of race in decision making is justified by statistics demonstrating that racial minorities make up a disproportionate number of suspects arrested, convicted, and sentenced nationwide. This stance was quickly challenged by the observation that this proved only that the criminal justice system targeted black male offenders. While this debate continues, there can be little doubt that the term *racial profiling* and the offense known as *driving while black* have become a part of the nation's lexicon. And it seems that the threat of global terrorism will keep the debate alive.

The problem of racial profiling is inextricably intertwined with the fact that police officers have a great deal of discretion in performing their job. Key Supreme Court decisions have further increased the range of police discretion in ways that are relevant to the racial profiling controversy. *Ohio v. Robinette* (519 U.S. 33, 1996) made it easier for police to talk suspects into consenting to a search of their person or vehicle. *Whren v. United States* (517 U.S. 806, 1996) holds that police can make traffic stops to investigate suspicions that have nothing to do with the traffic offense for which the stop was made—so long as there is an offense. These are known as “pretextual traffic stops.”

Given that police must make determinations as to how to perform their job, it is not surprising that their judgments could be influenced by racial, ethnic, or gender stereotypes. At some point, this becomes a lawfulness issue, although debate over where the boundary begins and the appropriate penalties continues. For example, a bill introduced (but not passed) during the 107th Congress (*Racial Profiling Pro-*

*hibition Act of 2001*, HR 1907, 107th Cong., 2nd sess.) defined racial profiling as the consideration of race “to any degree or in any fashion” by an officer when deciding whom to stop or search, except when race is part of a specific description of an offender who committed a crime. The penalties that have been considered include losing federal highway funds and other federal grants. On various hit lists are the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs; the “Cops on the Beat” program under part Q of title I of the Omnibus Crime Control and Safe Streets; and the Local Law Enforcement Block Grant program of the Department of Justice.

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The legal handle for judicial intervention to restrict racial profiling is the constitutional injunction against depriving persons of their rights, privileges, or immunities because of their race, a “legally protected” social category. In the federal system, the Justice Department is authorized to investigate allegations of a pattern or practice of discrimination, and it can file civil litigation against police agencies found not to be in compliance with the Constitution.

However, there is just as much controversy over the extent of racial profiling as there is over its definition or any other part of this issue. The lack of definitional clarity, combined with serious flaws in methods for assessing profiling, make it difficult to identify with any confidence how much of it there is, who is doing it, or whether it is increasing or decreasing in the face of new policies. A large number of agencies are now engaged in new data collection documenting their activities; some of this is voluntary, while many are doing so in the face of municipal or state requirements. But detecting a “pattern of profiling” (whatever that is defined to be) presents difficult data and analytic issues. Studies of the accuracy with which officers complete the forms they are supposed to use to record stops, and the accuracy with which they guess citizens’ races, do not point in a hopeful direction. Furthermore, the racial distribution of stops, citations, and even searches does not in itself demonstrate much. Profiling can be identified only by comparing the frequency of encounters to some baseline, a denominator that yields an interpretable stop rate. Some have compared traffic stops by race to the population composition of the neighborhoods in which they were made. This has little to do with the popu-

lation at risk of being stopped, or even better, the offending population at risk of being apprehended. There have been attempts to standardize stop counts by the racial distribution of drivers, in the expectation that everyone speeds. Traffic offending is not randomly distributed, however, and not all police-initiated encounters involve only traffic offenses. Studies have used the racial distribution of arrests in the area, and even counts of the racial distribution of drivers timed to be actually exceeding the speed limit, to estimate the relative size of offending populations. However, it is clear that the cheap and simple denominators do not adequately represent the population at risk of being stopped and that the effort and expense required to generate more focused and localized measures is far beyond the scope of policing agencies. It is not even clear that the population at risk is the most appropriate baseline measure. To develop policies to address the problem, it is not enough simply to gather information about those stopped; therefore, another way to measure profiling activity might be to focus on the group doing the stopping—police. Common sense suggests that the problem of racial profiling, however defined, is different if a small isolated number of officers are stopping individuals as opposed to a large dispersed group (Walker 2001c). Other strategies that have been proposed for eliminating racial profiling, including in-car video cameras, have not been evaluated.

## How Police Can Get Out of Trouble

In the view of the committee, the road to police reform is largely an internal one, featuring training, supervision, internal inspections, performance measures, and policy making. At this level, controlling police behavior is a management problem. For example, a department's use of force policy includes the types of weapons that are made available to officers, the rules for their use, training in weapon safety, reporting requirements when they are employed, procedures for reviewing the appropriateness of their use in an "after-action" report, and the kinds of sanctions that can be imposed for their misuse.

To date, however, little research has examined the effectiveness of managerial strategies to secure officer compliance with department policies. As noted earlier, some the best evidence comes from studies of the use of lethal force, which has shown that administrative changes and determined leadership can reduce shootings by police. Changes in policies governing high-speed pursuits can reduce their number and save lives. Randomized experiments in responding to domestic violence have demonstrated along the way that careful training and supervision can change how officers handle those cases, whatever the eventual findings regarding their effectiveness. Research on corruption points to the importance of leadership, internal accountability, training, internal inspections, and a willingness to challenge informal practices and peer tolerance.

Otherwise, there is not much research on internal police control processes. In particular, virtually no research has studied police internal inspection bureaus, which are increasingly called professional standards units. They are recognized by

police leaders to play a critical role in keeping their organizations in line, but little is known about the organization, management, and staffing of these units. Nor is much known about the investigative procedures used or patterns of discipline. Interestingly, unlike the private sector, virtually no research has focused on systems for rewarding good officer performance, through pay or perquisites. Traditionally, police management consists of overseeing subordinates until they break a rule in the book and then punishing them. It is essentially negative, with little in their management kitbag but sanctions for noncompliance; hence, the emphasis on internal inspections to ensure compliance with rules.

If internal processes could be effective at controlling police misconduct, why are so many departments demonstrably lacking effective internal controls? One problem is that there are contrary political and organizational pressures. Calls to get tough on crime can drown out concern about excessive police zeal. In fact, one controversial feature of the committee report itself is that it tried to attend to research on police lawfulness as well as their crime-fighting effectiveness. Public-sector workers, including police and firefighters, are usually well organized on the political front, with independent links to powerful local politicians, state legislators, and the governor's office. Attempts to reform their organizations thus can lead to a tough political fight. In many cities, police departments operate with a significant degree of autonomy, protected by law and order rhetoric, labor agreements, and the political clout of their employees. Calls for administrative reform can seem to fall on deaf ears, when they do not have to listen. Instead, we tend to get individualized, short-term responses to widespread, systemic problems.

In reaction to the perceived inability of departments to manage themselves, external pressure can be mounted in an attempt to reign in police. We have emphasized internal management efforts because ultimately processes have to be put into motion inside the organization to make those changes. In the end, these processes make up the "transmission belt" by which external pressures translate into internal change, and in our judgment, they should be the central focus of reform efforts. Without engaging these, most externally imposed solutions to lawfulness problems will not be very effective.

For example, prosecutors can bring criminal charges against individual police officers accused of using excessive force or engaging in acts of corruption. In addition to exacting justice in that case, we can hope that the message that initiating a prosecution sends sets in motion deterrent processes leading to general changes in behavior within the organization. However, the committee concluded that this is an extremely limited vehicle for changing police organizations. Few cases are brought forward by internal inspectors, prosecutors are wary of indicting the police officers on whom they depend, intent is difficult to document in excessive force cases, it is difficult to convince judges and juries to convict, and the best evidence is that the few sentences that are actually imposed in these cases are light.

The odds of effecting organizational change through civil suits are only a little better. In most states, individual victims can sue police for damages, and federal rules are in place that allow similar cases to be brought. To a certain extent, civil rights and civil liberties groups have begun to use the civil process, again to both

right individual wrongs and force organizational reform. Although they can be difficult to win, these cases can elicit fairly substantial individual payments. Their deterrent impact is muted, however, because legal fees and judgments are paid by the city's taxpayers not by individual officers or even (typically) out of the department's own budget. The limited research on this point also suggests that departments often do not take meaningful disciplinary action against the officers

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involved, even when they are found at fault in civil court. There is also little evidence of structural changes in big-city police organizations as a result of damage payments, despite the public lamentations of mayors and city council members over their cost. It is a cost of doing business, and in actuality, the cost amounts to only a small fraction of municipal budgets. Patton (1993, 767) concluded that in Los Angeles, the cost of civil suits is considered "a reasonable price for the presumed deterrent effect of the department's most violent responses to lawbreaking."

A very limited number of agencies have been swept up in federal "pattern-and-practice" suits initiated by the civil rights division of the Department of Justice. Congress empowers the department to conduct investigations and to bring suits against departments that routinely deprive persons of rights, privileges, or immunities secured or protected by the Constitution. Three features of these cases promise that they may have more impact than the usual criminal and civil suits. First, the pattern-and-practice language of the act enables litigation against the general practices of a police department, as opposed to identifying and holding a single officer culpable for unlawful actions. Second, the settlement agreements that arise from these cases include implementing agreed-upon best practices in new training, internal investigations, use of potentially lethal equipment, and incident reporting. These are the mechanisms for making change in police organizations. Third, there is continued supervision of the settlement agreements. In every case, a court-appointed monitor watches over its implementation, and in some cities (including Pittsburgh and Cincinnati), universities or nonprofit research groups monitor the effectiveness of the decrees in resolving the problems that led to them in the first place. Often, consent decrees require the collection of systematic data

on departmental practices, increasing their transparency. Most have focused on police use of force, but the federal settlement with the New Jersey State Police required the collection of data on traffic stops, and these have been used to monitor for racial disparities. In other words, although they are not numerous, pattern-and-practice settlements are designed to activate the internal organizational mechanisms that we identified at the outset as crucial for sustaining true organizational change.

Citizen-complaint review agencies provide another form of external control of the police. There has been a steady growth in the number of citizen-complaint review agencies in the United States over the past twenty years. By 2001, there were slightly more than a hundred such agencies (Walker 2001b). Virtually all of them are created by local ordinances. They take a variety of forms, and this count used a broad definition that included any procedure where there is some input, however limited, by persons who are not sworn officers in the review of citizen complaints against police officers. Some of these agencies have original jurisdiction for receiving and investigating citizen complaints. Others play an auditing or monitoring function, generally overseeing the internal investigatory actions of departments. They take so many forms and responsibilities that it is difficult to say much in general about them, and the committee's review indicated that so little systematic research on these agencies has taken place that their impact is unknown. Their appearance reflects a widely enough held belief that police internal affairs units, in varying degrees, discourage complaints, fail to investigate complaints thoroughly and fairly, and fail to discipline officers who are found to have committed misconduct. Police and their supporters in turn deny that excessive force is a problem and argue that police departments are better equipped to investigate complaints internally, for no one outside the organization can really understand police work.

## Conclusion

The National Research Council's report on policing, *Fairness and Effectiveness in Policing: The Evidence*, emphasizes fairness for a reason. People expect the police to enforce laws to promote safety; to reduce crime, victimization, and fear; and to redress wrongs, but no one believes that the police should have unlimited power to prevent, reduce, or deter crime. In a democratic society, fundamental principles of liberty and justice require the circumscription of the authority of the state to enforce laws. It is police adherence to the rules that limit their power that informs at least one notion of the legitimacy of police operation. The research reviewed here goes some way to demonstrating—at least according to available research—that police tend to obey the law. The more important, and perhaps deeper, question is whether adherence to these rules is enough to establish the legitimacy of a key government institution.

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