

***Police Auditing, Police Reform,
and the Federal Consent Decree***

**Allan Y. Jiao
Jeffry R. Phillips**

From: Claudia Heinzemann and Erich Marks (Eds.):
International Perspectives of Crime Prevention 9
Contributions from the 10th Annual International Forum 2016
within the German Congress on Crime Prevention
Forum Verlag Godesberg GmbH 2017

978-3-942865-73-9 (Printausgabe)
978-3-942865-74-6 (eBook)

Allan Y. Jiao and Jeffrey R. Phillips

Police Auditing, Police Reform, and the Federal Consent Decree

Introduction

Police auditing has become an increasingly recognized approach to reforming the police and instituting best police practices in the United States. One of the most publicized auditing mechanisms is the federal consent decree. This paper is aimed at understanding the rationale behind the consent decree, its implementation, and its effectiveness in dealing with various police accountability issues. At the time of this paper's presentation at the 21st German Congress on Crime Prevention and 10th Annual International Forum in Magdeburg, Germany in June 2016, a more elaborate and academic version of a paper based on this topic and data from the Los Angeles Police Department had been accepted for publication in *Policing: An International Journal of Police Strategies and Management* (Phillips and Jiao, Forthcoming). This current paper is a simplified version of the paper focused on practical aspects of consent decree implementation, which were discussed at the presentation, although the data source is more or less the same.

As much publicized in the media, inappropriate police behaviors related to search and seizures, use of force, probable cause, and integrity have occasionally resulted in death or serious injury of citizens, particularly African-Americans in the U.S. Confronted with high-profile cases of police misconduct, the government and the public ask what should be done to reduce risk and improve police accountability. One increasingly recognized way is police auditing, which involves measuring how police perform in high-risk situations, identifying weaknesses in internal controls, and ensuring compliance with policies, procedures, and the law. More specifically, some police departments that demonstrate a pattern or practice of misconduct and corruption leading to civil rights violations may find themselves becoming the subjects of investigations by the U.S. Department of Justice (DOJ), at times leading to memoranda of agreement and consent decrees. And when a police agency is implementing a consent decree, performance measures are utilized to gauge the implementation process and assess effectiveness.

The concept of federal consent decree came about as a result of the U.S. Congress adoption of 42 U.S.C. § 14141 in 1994 in response to demand for systemic reform of police organizations. The statute authorizes the U.S. Attorney General to investigate a "pattern or practice" in police agencies that violate citizens' constitutional rights or

the law (Ross & Parke, 2009). Dependent on the outcome of the investigations, the U.S. DOJ may file civil litigation (Simmons, 2008; U.S. DOJ, 2010) or enter into memoranda of agreement and consent decrees (Ross & Parke, 2009). In most cases involving a consent decree, the subject police agency is tasked with implementing the requirements and compelled to provide evidence of the implementation (Ross & Parke, 2009) and the U.S. DOJ reports the progress to the district court through an intermediary independent monitor.

Research Focus and Data

This paper is focused on how the Los Angeles Police Department (LAPD) implemented a consent decree reached with the U.S. DOJ in 2001. The purpose is to understand how police auditing principles can be applied to reforming a police organization through the use of a federal consent decree. Usually organizations respond to their environments by incorporating policies, procedures, and practices regarded as effective, and changes in these areas occur oftentimes as a result of external pressure, professional norms, and need to model after successful organizations. When police managers are exposed to external pressures or become involved in professional networks, they are often able to move beyond bureaucratic intricacies and internal pressures commonly found in police organizations. They may be able to take advantage of the situation and shift away from conventions toward more effective systems utilized elsewhere. This process is similar to the dynamics of the consent decree with the LAPD as the demands made within the consent decree included changes in routines and structures consistent with the law and best police practices.

As the focus of the consent decree is performance measurement, it is important to consider the relationship between police reform and performance management. The essence of performance management is that it serves as the overarching tool to manage and improve the performance of an organization. In police auditing, Jiao (2015) identified the process of performance auditing as an input-output process that involves two interrelated concepts, performance gap and performance measurement. To a great extent, the consent decree required that the LAPD prove that mandated activities have taken place through proper measurement and that desired practices have been implemented. The focus on understanding the LAPD's implementation of the consent decree should help develop a better understanding of the relationship between police auditing and police reform.

Data used for this research include documentary research, personal interviews, and personal observations. The documentary research includes a review of various reports and internal documents including the *Report of the Independent Commission on the Los Angeles Police Department* (Independent Commission on the Los Angeles Police Department, 1991), *LAPD Rampart Board of Inquiry Report* (2000), federal consent decree (*United States of America v. City of Los Angeles*, 2001), quarterly reports issu-

ed by the court-appointed independent monitor, Kroll and Associates, and other documents pertaining to the LAPD's Audit Division. The reports issued by the independent monitor were provided to the federal court and contained important information on the implementation of the consent decree and related performance measures.

Personal interviews involved a total of twelve individuals, 8 sworn officers and 4 civilians, who were either previously or currently employed with the LAPD's Audit Division. They all had direct knowledge of and experience with the development of the Audit Division as they were responsible for developing the mandated performance measures. Police personnel interviewed ranged from captain to police officer, including 2 police captains, 1 lieutenant, 1 sergeant, 3 detectives, and 1 police officer. Civilian personnel include 3 special investigators/police performance auditors and a representative of the independent monitor's office. The independent monitor had intimate knowledge of and experience with the audit process through a role with Kroll and Associates. The firm was charged with monitoring the LAPD's progress in implementing the consent decree and submitting reports to the U.S. DOJ and the federal judge.

Personal observations were conducted at the Los Angeles Board of Police Commissioners (BOPC) meetings. The BOPC acts as the governing body for the LAPD whereby pertinent police issues are presented, including use of force incidents, department policy changes, and audit reports completed by the Audit Division. The attendance of these meetings provided an opportunity to observe the presentations provided to the BOPC regarding the implementation of the consent decree.

Research Findings

The gathered materials demonstrate how the consent decree came about, how the LAPD responded to the consent decree, how the police developed performance measures to track its implementation, and how successful they were in dealing with the challenges in the reform process.

The consent decree was a legal document entered into a federal court with a federal judge (*United States of America v. City of Los Angeles*, 2001). It named the attorneys of the U.S. DOJ as the plaintiff and the attorneys representing the City of Los Angeles as the defendants. The document described the legal grounds of the plaintiff for bringing forth the lawsuit, information pertaining to "rules of engagement," and specific requirements of the consent decree (*United States of America v. City of Los Angeles*, 2001).

The need for reform can be traced to the Rodney King incident, which triggered the Christopher Commission report. That report suggests that a significant number of LAPD officers engaged in repeated excessive use of force while marginalizing LAPD policies and procedures (Independent Commission on the Los Angeles Police Department, 1991). In the latter part of 1997 and early 1998, three separate incidents

occurred in the LAPD's Rampart Division that involved officers committing serious criminal acts, which led to the creation of the Rampart Board of Inquiry (LAPD, 2000). The inquiry suggests that issues identified by the Christopher Commission were also present in the Rampart Board of Inquiry report, indicating that the systemic problems had remained in the LAPD.

Consistent with the previous reports, a strong emphasis was placed on leadership and command accountability in the consent decree. But the consent decree did not address the state of the LAPD other than a pattern or practice of constitutional rights violations. It did not address specific concerns or issues pertaining to the department, why the problems had occurred, or how to fix them. The consent decree was directed at what the LAPD was expected to do and the timelines by which the department was expected to accomplish the mandated reforms.

The LAPD's Audit Division was formed in 2001 in response to the consent decree and served as a primary channel by which the reforms were carried out and progress was reported to the federal judge. Currently, approximately forty-five employees work in the Audit Division. Aside from twelve performance auditors and a handful of civilian supporting staff, the division comprises mostly sworn officers. Structurally, the Audit Division reports directly to the Special Assistant for Constitutional Policing, who reports to the Chief of Police. The Audit Division developed an audit charter and an audit manual for its employees, including a mission and vision statement. The charter sets the tone on how the division conducts its business and outlines its independence and objectivity within the LAPD. Its mission is to provide the police management an independent, objective, and comprehensive review and evaluation of police operations, controls, and systems; make recommendations on how to improve police operations; promote integrity and transparency in the operations; and advance accountability (LAPD, 2011).

The independent monitor's quarterly reports indicated that early audits produced by the Audit Division were of poor quality and often incomplete. Problems arose during the planning and implementation of the audit procedures. The selection of random samples and creation of a matrix form to audit compliance were not successful due to poorly constructed questionnaires and imprecise responses. Most auditors had no prior training in auditing and did not have a clear understanding of random sampling. Some auditors had no executive guidance on how to properly strategize, execute and document the audit work and failed to critically analyze the data collected. Numerous work-paper discrepancies and a lack of supporting documentations were found (Kroll and Associates, 2002a). The initial reactive sentiments regarding the consent decree and the mandated reforms were also documented (Kroll and Associates, 2002b).

Although there was a clear understanding of the role of the Audit Division and task of conducting audits as specified in the consent decree, members of the Audit Division

were less certain about the methodology in conducting the audits at the inception of the Division. While the independent monitor insisted that the audits be done professionally, employees in the Audit Division conducted audits as they were accustomed to in conducting inspections. The methods used in inspections were arbitrary and not geared toward an objective assessment of the operations. Members of the Audit Division also described the initial relationship between the Audit Division and the U.S. DOJ and the independent monitor as poor and contentious. They felt that the consent decree was not so much about reform but about doing what the U.S. DOJ “mandated” and providing an opportunity for the independent monitor to take the city’s money. The employees of the division also viewed the DOJ as “intrusive” and their experience with the independent monitor as “confusing.” While the representative of the independent monitor knew about conducting audits, the knowledge related to policing was limited and the nature of what was expected as an end product for the Audit Division was unclear.

A serious lack of knowledge pertaining to auditing police operations was obvious in the early days of the Audit Division. The sworn employees had no experience in conducting formal audits and the civilian auditors had no direct police experience. A large learning curve existed for sworn employees in learning the audit process and for civilian auditors in learning the police operations. The audits completed were consistently found to be out of compliance by the independent monitor. To seek help in this situation, the Audit Division contacted other agencies and police associations such as the Commission on Accreditation for Police Agencies and the International Association of Chiefs of Police, but was not able to find any agencies conducting police audits in response to a consent decree.

The independent monitor did not recognize improvements in the quality of the audits conducted by the Audit Division until November 2002 (Kroll and Associates, 2002c). Of the twenty-two required audits completed, eighteen were in compliance and four were not (Kroll and Associates, 2005). As time passed, as the interviewees indicated, explicit methodologies were developed and better relationships were established. They shared the sentiment that changes within the LAPD would not have occurred without the consent decree and the independent monitor.

At the urge of the independent monitor, the Audit Division sought professional training from the Institute of Internal Auditors, Association of Local Government Auditors, MIS Training Institute, and the Association of Certified Fraud Examiners. The civilian auditors who were hired held various audit certifications such as Certified Public Accountant, Certified Internal Auditor, and Certified Fraud Examiner. The commanding officer and sworn members also pursued certifications. Audit staff members further attended the Association of Local Government Auditors conferences and studied Generally Accepted Government Auditing Standards promulgated by the U.S. Government Accountability Office (2011).

Both sworn and civilian interviewees indicated that training from professional audit organizations were not particularly applicable to police auditing. Three years after the Audit Division was created, with more experience and knowledge in police auditing, the commanding officer of the Audit Division created a training cadre and developed a police auditing course, the first of this kind in the U.S. The course, titled the Basic Police Performance Auditing Course, was certified through the California Peace Officer Standards and Training. As a result, other police agencies started consulting with the Audit Division on how to conduct their own audits.

All interviewees expressed the view that auditing was the most effective way to measure performance of the LAPD. The audit process established accountability by addressing the audit reports directly to those in charge of particular operational areas. For example, a complaint investigations audit was directly addressed to the commanding officer of the Internal Affairs Group. The LAPD command staff, particularly the Office of the Chief of Police, established accountability by directing the commanding officers subject to an audit to report to the Board of Police Commissioners and address their action plans to the commissioners. The Audit Division kept track of the recommendations made in the audits and followed up with the status of their implementation. The Division would then reconcile the closed recommendations that had been implemented with the Board of Police Commissioners, and the Board would require a status report on all open recommendations.

All interviewees voiced the belief that so long as the LAPD continues to conduct performance audits, the likelihood of it being targeted by the U.S. DOJ for a “pattern or practice” violation of citizens’ constitutional rights would be minimized. This is because the performance audits are designed to measure police efforts directly related to adhering to citizens’ constitutional rights, departmental policies and procedures, and the law. This does not mean that police incidents or related public outcries would not occur. But, if they do, they would be most likely isolated cases and should not amount to a pattern or practice of poor performance.

The interviewees also suggested that the pressure from the consent decree was somehow transferred to the Board of Police Commissioners, who serves as the overseer of the LAPD and whom the chief of police reports to. During meetings at the Board of Police Commissioners, whereby LAPD command staff and the public were in attendance, audit reports were briefed with respective commanding officers whose operations were audited so the auditees had knowledge of the findings. As an audit report was brought before the Board of Police Commissioners, the auditee was expected to provide a plan of action for remedying the issues identified. If the Board was not satisfied with the plan of action, it could direct the auditee to return with an improved plan. The Board could also direct the Office of the Inspector General to conduct further inquiries, investigations, and audits if necessary.

The observations suggest a change in institutional practice and attitude toward auditing in the LAPD. While the consent decree identified the risk areas to be evaluated, a department-wide risk assessment process had been established for identifying and evaluating high risks. The role and function of the Audit Division and the audit process had been institutionalized. While in the early days of the Audit Division, the LAPD commanders were apprehensive about audits, they had come to see that audits were not used to penalize them but to address issues and improve performance. This had led to commanders voluntarily requesting audits of their commands. There is no doubt that apprehension of audits still exists as auditing is by nature a critical process and a commanding officer is ultimately held responsible for results. But it had been mitigated due to the professionalism of the audit staff and the buy-in of the audit process by many commanding officers. Moreover, the commanders were in a position to provide input on the recommendations in the audit reports and move forward in instituting those recommendations before the reports reached the Chief of Police or were heard before the Board of Police Commissioners.

Conclusions

The LAPD was under tremendous pressure to implement the 2001 consent decree. Both documentary research and personal interviews suggest that the Audit Division reacted to the external pressure in a confrontational manner initially. It is indicative of what is typically observed in many police agencies (Simmons, 2008) that change does not occur unless mandated in some way. Resistance to change by police organizations and need for strong external forces for fundamental change to occur are well-documented (Bennett, 1994; Dixon & Stanko, 1993; Jiao, Lau, & Lui, 2005). The DOJ and independent monitor represented the external pressure, under which the LAPD examined its policies, procedures, and overall practices and established a more professional audit division. The pressure was further transformed from the consent decree to the Board of Police Commissioners later as the Board serves as the overarching authority over the LAPD.

The Audit Division hired professional auditors, sought training and input from audit organizations, and developed methodologies to aid in determining compliance. The independent monitor also provided guidance on how to measure the consent decree paragraphs and determine compliance. Although the Audit Division actively searched for an audit process in other police agencies, it was unsuccessful in finding any. While some other agencies had undergone a federal consent decree, they were not required to conduct police audits. The Audit Division had to develop its own police auditing process by consulting with professional audit institutions. As the Audit Division developed its expertise and established itself as a successful internal police audit program, other agencies started modeling themselves after it in conducting their own audits.

This study sheds light on how to use the consent decree and auditing as an overar-

ching performance management tool for achieving accountability. As police managers respond to external oversight and professional norms, they can take advantage of the consent decree's coercive pressure to create change. The auditing mechanism is of assistance in this process because it requires that performance be measured accurately and objectively. This process allowed the LAPD to measure the extent to which the reforms were implemented and thus helped the LAPD in improving its overall performance. As a result, the U.S. DOJ and federal courts concluded the consent decree with the LAPD in 2009, considering the department's reforms successful and operational performance acceptable.

References

- Bennett, T. (1994). Community policing on the ground: Developments in Britain. In D.P. Rosenbaum (Ed.), *The challenge of community policing: Testing the promises* (pp. 224-246). Thousand Oaks, CA: Sage.
- Dixon, B., & Stanko, E. (1993). *Serving the people: Sector policing and public accountability*. Uxbridge, Ontario, Canada: Brunel University.
- Independent Commission on the Los Angeles Police Department. (1991). *Report of the Independent Commission on the Los Angeles Police Department*. Los Angeles, CA: Author.
- Jiao, A.Y. (2015). *Police auditing: Standards and applications*. Springfield, IL: Charles C. Thomas.
- Jiao, A.Y., Lau, R.W.K., & Lui, P. (2005). An institutional perspective of organizational change: The case of the Hong Kong Police. *International Criminal Justice Review*, 15(1), 38-57.
- Kroll and Associates, Inc. (2002a). *Report of the independent monitor, first quarterly report*. New York, NY: Author.
- Kroll and Associates, Inc. (2002b). *Report of the independent monitor, second quarterly report*. New York, NY: Author.
- Kroll and Associates, Inc. (2002c). *Report of the independent monitor, third quarterly report*. New York, NY: Author.
- Kroll and Associates, Inc. (2005). *Report of the independent monitor, third quarterly report*. New York, NY: Author.
- Los Angeles Police Department. (2000). *Board of inquiry into the rampart area corruption incident*. Retrieved from http://www.lapdonline.org/assets/pdf/boi_pub.pdf
- Philips, J.R., & Jiao, A.J. (Forthcoming). Institutional isomorphism and the federal consent decree: The case of the Los Angeles Police Department. *Policing: An International Journal of Police Strategies and Management*.
- Ross, D. L., & Parke, P. A. (2009). Policing by consent decree: An analysis of 42 U.S.C. § 14141 and the new model for police accountability. *Police Practice and Research*, 10(3), 199-208.

- Simmons, K. C. (2008). The politics of policing: Ensuring stakeholder collaboration in the federal reform of local law enforcement agencies. *Journal of Criminal Law & Criminology*, 98(2), 489-546.
- United States of America v. City of Los Angeles, California, Board of Police Commissioners of the City of Los Angeles, and the Los Angeles Police Department. (2001). Retrieved from http://www.lapdonline.org/assets/pdf/final_consent_decree.pdf
- U.S. Department of Justice. (2010). Civil rights division: Special litigation section cases and matters. Retrieved February 8, 2010, from <http://www.justice.gov/crt/about/spl/findsettle.php>
- U.S. Government Accountability Office. (2011). *Government auditing standards*. Retrieved from <http://www.gao.gov/govaud/iv2011gagas.pdf>

Content

Introduction	5
 REGINA AMMICHT QUINN	
Prevention and freedom: On the necessity of an ethical discourse	9
 ERICH MARKS	
German Congress on Crime Prevention 2016 in Magdeburg – Welcome to the annual prevention surveying in troubled times	21
 DEUTSCHE GESELLSCHAFT FÜR INTERNATIONALE ZUSAMMENARBEIT (GIZ) GMBH	
Social Cohesion and Integration - A presentation of methods for violence prevention and conflict transformation in development cooperation as a possible contribution to the integration of refugees.....	27
 EUROPEAN FORUM FOR URBAN SECURITY (EFUS)	
European Forum for Urban Security (Efus) in Exchange with the German Congress on Crime Prevention (GCOCP).....	75
 KOREAN INSTITUTE OF CRIMINOLOGY (KIC)	
Korean Institute of Criminology (KIC) in Exchange with the DPT (GCOCP)	85
 RAN CENTRE OF EXCELLENCE	
Radicalisation Awareness Network (RAN): Prevention of radicalisation in Germany – EX POST PAPER, RAN Study visit DPT, Magdeburg 6 and 7 June 2016	91
 ALEXANDRE CHITOV	
Buddhism within the walls of Thai Juvenile Justice	97
 JEE-YOUNG YUN	
Legal Issues of Drones used by Law Enforcement Agencies	121
 ALLAN Y. JIAO / JEFFRY R. PHILLIPS	
Police Auditing, Police Reform, and the Federal Consent Decree	129
 PATRICIA M. MARTIN	
IV. JUVENILE JUSTICE REFORM FORUM – “Prevention and Ethics” Panel Discussion.....	139

MELISSA H. SICKMUND

The New Juvenile Justice Model Data Project:
Better Information to Advance Prevention and
Juvenile Justice System Reform..... 145

JEFFREY G. GREGRO

United States Juvenile Justice Reform – The Pennsylvania Story &
The Standardized Program Evaluation Protocol (SPEP™) 159

CAROLINE L. DAVEY / ANDREW B. WOOTTON

Prospects for EU-funded security research –
The ethics of impact outside the EU discourse 171

SVENJA KIRBIS

Preventive support for successful integration – www.pufii.de –..... 197

STEPHAN VOß / ERICH MARKS

Violence Prevention in Germany - Experts' evaluation and perspectives203

GERMAN CONGRESS ON CRIME PREVENTION
AND CONGRESS PARTNERS

“Magdeburger Declaration“ of the 21st German Congress on Crime Prevention 211

Programme of the 10th Annual International Forum.....217

Authors221