

REPORT
OF THE CONFERENCE ON
POLICE PATTERN OR PRACTICE LITIGATION:
A 10-YEAR ASSESSMENT
February 10-11, 2005

EXECUTIVE SUMMARY

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ABOUT THE CONFERENCE

Conference Sponsors

On February 10-11, 2005 a conference was held in Washington, DC devoted to police pattern or practice litigation. The conference involved about 70 invited participants. The conference was cosponsored by the Police Professionalism Initiative (PPI) of the University of Nebraska at Omaha and the Police Executive Research Forum (PERF). Funding was provided by the Bureau of Justice Assistance (BJA).

The Purpose of the Conference

The purpose of the conference was to assess the nature and impact of police pattern or practice litigation over the past 10 years.

Participants

Conference participants included a wide range of professionals with an interest in pattern or practice litigation. They were police chief executives, representatives of the U.S. Department of Justice Special Litigation Section, plaintiffs' attorneys, police monitors, community representatives and police scholars.

Issues Covered

The conference discussed the following concerns:

- Has pattern or practice litigation succeeded in enhancing police accountability?
- What are the problems associated with the implementation of a consent decree or memorandum of agreement (MOA)?
- How do we measure the impact of a consent decree?
- What are the parallels between pattern or practice litigation and prison reform litigation?
- What is the future of pattern or practice litigation?
- How conference participants answered these questions is detailed in a forthcoming final report. Several of these issues are discussed more fully below in the context of themes that emerged from this session.

MAJOR THEMES OF THE CONFERENCE

Discussions at the conference identified ten major themes related to pattern or practice litigation. It is important to recognize that these discussions were based on the assumption that the benefits derived from pattern or practice litigation apply only when all other measures have failed.

1. Pattern or Practice Litigation and Police Accountability

Discussions at the conference clearly indicated that *when all other means for reform have been exhausted, a pattern or practice suit can be an effective instrument for enhancing police accountability.* Participants believed this is especially true in a law enforcement agency where standards of accountability do not exist. A pattern or practice suit can succeed, however, only under certain conditions. Much of the discussion at the conference explored those conditions of success. As a caveat, however, the conference did not include detailed discussions of law enforcement agencies where implementation of a consent decree or MOA have encountered exceptional difficulties.

2. The Critical Importance of Leadership

There was near universal agreement that the success of a consent decree or MOA *depends primarily on the commitment and leadership of the chief executive.* The opening session of the conference was devoted to a case study of Pittsburgh. All of the participants on that panel agreed that Chief Robert McNeilly was responsible for the successful implementation of the terms of the consent decree. This view was expressed not only by two independent evaluators, but also by the plaintiffs' attorney who brought the initial suit against the department.

3. The Need for an Implementation Plan

Under the strong leadership of the chief executive, successful implementation of a consent decree or MOA depends on having a *detailed*

implementation plan. The plan needs to include a clear set of goals, realistic deadlines and the appointment of a command officer responsible for the plan. This officer needs certain organizational and political skills and must have direct access to the chief executive.

4. Partnerships with the Community

Another theme that emerged from the discussions is the importance of *partnerships with the community and community groups*. Community residents are the ultimate “consumers” of a consent decree or MOA as they are the beneficiaries of improved police performance. In many cases, however, pattern or practice cases have had little input from or communication with community representatives. The final settlement in Cincinnati, by contrast, was substantively different from many others because of an engagement with the community by the plaintiff’s attorneys prior to the formal filing of the case.

5. Challenges to Organizational Change

Even under the best of circumstances, implementing a consent decree or MOA involves *extremely difficult challenges to organizational change*. Simply writing a new use-of-force policy, for example, does not ensure changes in police performance. A policy is effective only to the extent that there are concomitant reforms in supervision, training and discipline. The obstacles to organizational change are not unique to law enforcement agencies. All organizations inherently resist change, and comprehensive improvements involve transforming the culture of the organization.

6. Openness and Transparency

Conference participants were unanimous in stressing the *importance of openness and transparency*. This requirement applies not just to the police department in question, but also to the litigants and other parties involved in the case. One of the historical problems related to police accountability has been the lack of openness on the part of some law enforcement agencies. Pattern or practice suits, by their very nature, begin to open up police organizations. Monitors’

reports provide a dramatic new degree of access to information about police practices.

7. The Need to Engage Local Police Unions

Many conference participants emphasized the need to *engage the police union* in local law enforcement agencies. One of the short-comings of the conference was the failure to include union representatives among the participants. It goes without saying that many aspects of accountability are affected by provisions in collective bargaining agreements and law enforcement officers’ bill of rights legislation related to the investigation of alleged misconduct and the discipline of officers who are found guilty.

8. The Impact of a Consent Decree or MOA

Several participants expressed concerns about the *difficulties in measuring the impact* of consent decrees and MOAs on officer behavior. Monitors’ reports, for example, tend to emphasize the implementation of formal policy and procedure changes (e.g., whether the department has an operational early intervention system). There is a lack of effective means for measuring whether the use of excessive force has declined as a result of the decree or agreement, however.

9. The Permanence of Reforms

Many participants expressed concern about *ensuring the permanence of reforms* that consent decrees and MOAs bring about. No consensus was reached about how to address this problem, although it is widely recognized as a major issue. In at least one case it was said that there are sufficient command staff who understand and support the new reforms and that they will ensure continuity. In general, continuity of reform depends on the extent to which the culture of the organization has been transformed.

10. Beyond Current Consent Decrees and MOAs

Some conference participants argued that *consideration* needs to be given to *adding new issues* to the content of consent decrees and MOAs. Virtually all of the existing consent decrees and MOAs contain a similar package of reforms,

including use of force policy changes, improved citizen complaint procedures, and an early intervention system. Some participants recommended including diversity in employment, community policing, and changes in collective bargaining agreements (as well as proposing changes to state police officer bill of rights statutes). One participant argued that the federal statute (Section 14141 of the 1994 Violent Crime Control Act) should be amended to cover federal law enforcement agencies. Addressing the concern about institutionalizing reforms, some participants also suggested that consent decrees include a provision for the creation of a permanent oversight process (the settlement in the Philadelphia suit included such a provision). There was also discussion of the wisdom of utilizing court-appointed special masters, with a more activist mandate, than monitors.

ISSUES FOR FURTHER DISCUSSION AND RESEARCH

The conference was designed as a first look at pattern or practice litigation. Given limitations of time and funds, it was not possible to consider all of the relevant issues in depth, to give close attention to all agencies that have been subject to litigation, or to invite many people who would have offered a valuable perspective on the subject.

The forthcoming final report will detail the issues outlined above that were considered by conference participants, but does not address a number of concerns that were identified as important for future development.

1. Comparative Analyses of the Impact of Consent Decrees and MOAs

One of the most important gaps in our knowledge is a comparative perspective on both the process of implementing a consent decree or MOA and the impact of these settlements. Monitors' reports and media coverage from some cities indicate that the implementation process has been plagued by problems.

It is important, therefore, to undertake a

broader, more systematic comparative analysis of the implementation of consent decrees and MOAs. Such an analysis should attempt to identify the conditions of successful implementation and the principal obstacles to implementation.

2. Appropriate Measures of Impact

The conference highlighted the problem of measuring the impact of consent decrees and MOAs on on-the-street officer behavior, particularly with regard to use of force and citizen complaints. Social scientists have found that measuring these phenomena is difficult even in the best of circumstances. The problem is compounded by the fact that law enforcement agencies that are sued often do not have good management information systems and reliable data on use of force. Consequently, it is difficult to establish useful baseline data for measuring the impact of reforms instituted as a result of litigation.

Social scientists, law enforcement professionals and monitors should convene appropriate seminars to begin developing appropriate impact measures.

3. Police Unions Involvement in Accountability Efforts

Just as representatives of police unions were not involved in the conference, their absence has been generally characteristic of the various conferences and events related to police accountability and integrity over the years. Yet, as conference participants pointed out, police unions and collective bargaining agreements not only have a profound impact on the implementation of consent decrees and MOAs but on police accountability generally.

Immediate steps should be taken to arrange meetings related to accountability involving police union leaders, law enforcement executives, police scholars, and others involved in pattern or practice litigation. The meetings should seek to define common ground where accountability measures such as improved use of force reporting and early intervention systems can benefit rank-and-file officers and their union representatives.