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RISK MANAGEMENT FOR LAW ENFORCEMENT AGENCIES: TWO CASE STUDIES

by

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March 2023

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**RISK MANAGEMENT FOR LAW ENFORCEMENT AGENCIES: TWO CASE
STUDIES**

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Submitted in partial fulfillment of the
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ABSTRACT

Law enforcement agencies lack clear guidance on best practices for managing agency-wide risk. Conventional risk management focuses on reducing the risk of legal liability for police misconduct. This legal liability paradigm, which targets the narrow range of risks that lead to municipal financial liability, persists despite significant limitations. This thesis uses the case study method to examine the risk management practices of the Seattle Police Department (SPD) and the Oakland Police Department (OPD), two agencies whose approach to managing risk, having been shaped by federal court oversight and community activism, embraces a more capacious understanding of the harms caused by police activities. This thesis analyzes two established risk management strategies, early intervention systems and incident review boards, and two promising strategies, Compstat-style risk management meetings and sentinel event reviews. The study finds that early intervention systems may gain utility from advances in machine learning, that incident review boards play an essential role in ensuring an agency's continual risk-oriented self-scrutiny, and that sentinel event reviews can align agency practices with community values. Finally, the thesis finds that OPD's risk management meetings, which it uses to provide strategic oversight of agency-wide risk, are effective, and recommends agencies consider implementing a similarly iterative and holistic process.

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LIST OF ACRONYMS AND ABBREVIATIONS

AAR	after action review
BFO	Bureau of Field Operations
BRM	Bureau of Risk Management
BWC	body-worn camera
CAD	computer-aided dispatch
CALEA	Commission on Accreditation for Law Enforcement Agencies
CHDS	Center for Homeland Defense and Security
CIT	Crisis Intervention Training
CPC	Community Police Commission
Compstat	computerized statistics
COPS	Office of Community Oriented Policing Services
CPT	continuing professional training
DAP	data analytics platform
DAT	dedicated arrest team
DGO	Departmental General Order
DOJ	Department of Justice
EFRB	Executive Force Review Board
ECW	electronic control weapon
EIA	Early Intervention assessment
EIS	early intervention system
ESIM	elaborated social identity model
FDRB	Firearms Discharge Review Board
FRB	Force Review Board
FTO	Field Training Officer
IACP	International Association of Chiefs of Police
IAD	Internal Affairs Division
ICS	Incident Command System
IMT	independent monitoring team
ITD	Information Technology Department
IPAS	Internal Personnel Assessment System

IPR	Independent Police Review Division
LAPD	Los Angeles Police Department
LEMAS	law enforcement management and administrative statistics
MAP	Management Assessment Program
MNPD	Metropolitan Nashville Police Department
NLP	natural language processing
NSA	Negotiated Settlement Agreement
NYPD	New York Police Department
OATH	Officer Accountability and Trust Hub
OFD	Oakland Fire Department
OIG	Office of Inspector General for Public Safety
OIS	officer-involved shooting
OPA	Office of Police Accountability
OPD	Oakland Police Department
PACER	public access to court electronic records
PARC	Police Assessment Resource Center
PAS	Personnel Assessment System
PERF	Police Executive Research Forum
PIMS	Personnel Intervention Management System
PDRD	personal digital recording device
POET	Public Outreach and Engagement Team
PPB	Portland Police Bureau
PPD	Pittsburgh Police Department
PRCS	post release community supervision
PRIME	Performance Reporting Information Metrics Environment
PRO	patrol rifle officer
RIPA	Racial and Identity Profiling Act
RFQ	request for qualifications
RMM	risk management meeting
RMU	Risk Management Unit
SER	sentinel event review
SNF	Supervisory Notes File

SPARQ	social psychological answers to real world questions
SPD	Seattle Police Department
SME	subject matter expert
SPM	Seattle Police Monitor
UOF	use of force
UOFRB	Use of Force Review Board

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EXECUTIVE SUMMARY

Law enforcement agencies lack clear guidance on best practices for managing agency-wide risk. Far from proactively seeking solutions, many agencies outsource this important task, either to police liability insurance carriers, to private corporations such as Lexipol, or to credentialing authorities such as the Commission on Accreditation for Law Enforcement Agencies (CALEA). As a result, many agencies approach risk management primarily to limit legal liability. Recent legal scholarship highlights the prevalence—as well as the promise and peril—of this legal liability paradigm.¹ Legal scholars argue that although a focus on liability risk may work well for some police misconduct (e.g., excessive force), its effects on other police activities are “weak and perverse” because agencies lack incentive to manage the risk of adverse events that do not immediately give rise to colorable and compensable legal claims.² Legal scholars also emphasize that this paradigm tends to ignore the risks posed by police practices that inflict “constitutionally permissible harms on individuals or communities.”³ In this way, a focus on legal liability deflects attention from the full spectrum of adverse events that pose risks to an agency’s reputation and legitimacy.

Notwithstanding its limitations, the legal liability paradigm persists, even as law enforcement agencies find themselves on entirely new terrain. In the early 1980s, civil rights lawsuits stimulated sensationalized media coverage, and the looming threat of litigation forced police administrators to adopt emerging best practices. Now, law enforcement agencies face public scrutiny due to open data projects, the ubiquity of cellphone video, and the wide reach of social media. The new terrain thus encompasses a wider range of police activities and enforcement strategies than the legal liability framework. A “second information revolution” is here and is already challenging law

¹ John Rappaport, “How Private Insurers Regulate Public Police,” *Harvard Law Review* 130, no. 6 (2017): 1540–1614.

² John Rappaport, “An Insurance-Based Typology of Police Misconduct,” *University of Chicago Legal Forum*, 2016, <http://www.ssrn.com/abstract=2808106>.

³ Rachel A. Harmon, “The Problem of Policing,” *Michigan Law Review* 110, no. 5 (2012): 792.

enforcement's self-regulation capacity in unanticipated ways.⁴ This revolution includes big data analytics, machine learning models, innovative statistical methods for measuring discrimination, and natural language processing algorithms to review body-worn-camera video at scale. In this new landscape, agencies must adopt an iterative and holistic approach to managing agency-wide risks, continually scrutinizing the fairness and effectiveness of their everyday practices, and leveraging practitioner/academic partnerships to navigate the evolving terrain. Thus, whether they favor a pragmatic or principled approach to managing risks to their reputation and legitimacy, agencies have a vested interest in moving beyond the limitations of the legal liability paradigm, understanding the harms of policing from a more expansive perspective, and exploring promising new risk management strategies as well as ways to improve long-established strategies.

This thesis explores how to synthesize evidence-based risk management practices in a comprehensive strategy to manage agency-wide risk. It uses a capacious definition of risk—to include injury/harm to officers and community members, damage to public trust and agency legitimacy, and the financial liability of the relevant government entity. Once law enforcement agencies move beyond a focus on legal liability, the necessity of addressing the full spectrum of risks inherent in police work leads to the development and adoption of new management tools. This thesis presents case studies of two agencies that are enhancing and refining existing risk management tools and experimenting with new management tools which appear promising in this new terrain.

This thesis uses the case study method to examine the risk management practices of the Seattle Police Department (SPD) and the Oakland Police Department (OPD), two law enforcement agencies whose approach to managing risk, having been shaped by federal court oversight and community activism, embraces a broader understanding of the harms caused by police activities. The study analyzes two established risk management strategies,

⁴ Sharad Goel et al., "Combating Police Discrimination in the Age of Big Data," *New Criminal Law Review* 20, no. 2 (May 1, 2017): 181–232, <https://doi.org/10.1525/nclr.2017.20.2.181>. "The 'second information revolution' has yet to transform law enforcement as dramatically as home telephones and radio dispatch systems did, but that may be just a matter of time. Police departments have access to exponentially increasing amounts of information, and methods of processing and analyzing vast sets of data grow ever more sophisticated with dizzying speed. Big data is coming to policing" (182, citation omitted).

early intervention systems and incident review boards, and two promising strategies, Compstat-style risk management meetings and sentinel event reviews. The thesis finds that early intervention systems were, until recently, in an incipient stage of development, but that recent advances in machine learning may increase their utility. The thesis finds that incident review boards play an essential role in an agency's risk-oriented continual learning and improvement. The thesis finds that SPD's sentinel event review of its response to the 2020 protests has enabled a transparent, community-centered realignment of its crowd management strategies and tactics. Finally, the thesis finds that OPD's Compstat-style monthly risk management meetings, used to provide strategic oversight of agency-wide risk, are effective in equipping managers to make data-informed decisions. The iterative, holistic approach leads OPD to critically scrutinize the fairness and effectiveness of its enforcement strategies, seeking to maintain public safety while reducing harms caused by unnecessary stops and searches. The results of this approach are shown in Figure 1.

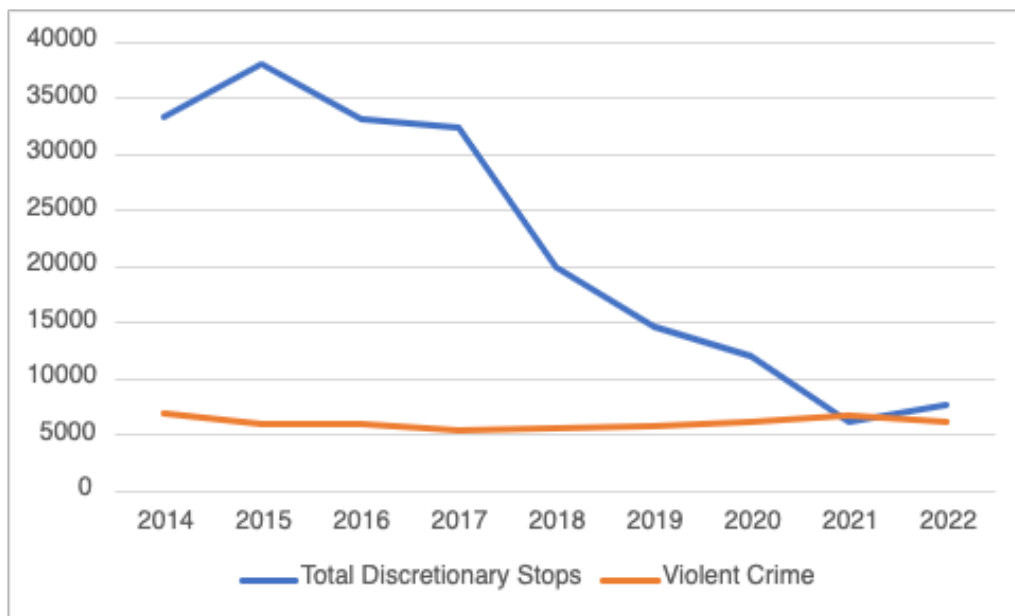


Figure 1. OPD discretionary stops vs. violent crime (2014-2022)⁵

The study concludes by making five recommendations:

⁵ Adapted from "Police Data," Oakland Police Department, accessed March 28, 2023, <https://www.oaklandca.gov/topics/police-data>.

1. Law enforcement agencies should consider creating a regular agency-wide command-level Compstat-for-risk meeting to review and discuss a broad set of risk indicators, including uses of force, vehicle pursuits, collisions, complaints, stop data, and other relevant risk-related statistical data. The meetings should aim to develop plans to manage and mitigate the full spectrum of risk associated with police activities. The meetings should aim to continually scrutinize and assess the fairness and effectiveness of the agency's enforcement strategies.
2. Law enforcement agencies with an early intervention system should consider partnering with an academic research institution to review and monitor the predictive validity of their existing system, as well as to explore how to improve the system using the latest advances in open-source machine learning models.
3. Law enforcement agencies without incident review boards should consider implementing incident review boards to conduct routine reviews of uses of force, pursuits, and other high-risk incidents.
4. Law enforcement agencies with sufficient resources should consider using sentinel event reviews (SER) to conduct root cause analyses of high-profile adverse incidents, especially incidents that were "in policy" but disastrous from a community relations standpoint. Agencies should consider working with an experienced SER facilitator familiar with the "peacekeeping circle" or similar framework.
5. Law enforcement agencies should consider developing data-visualization dashboards to equip their frontline supervisors and commanders with real-time risk-related data about their personnel.

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I. INTRODUCTION

A. PROBLEM STATEMENT

In the summer of 2020, the United States saw the largest wave of civil unrest since the 1960s. Protests against racial injustice and police violence catalyzed a national conversation about reimagining law enforcement and reallocating resources. Many advocated redirecting police funds to community-based initiatives capable of addressing the root causes of crime and disorder, such as concentrated poverty, mental health, homelessness, and addiction. Law enforcement agencies across the country realized that one incident could invite public scrutiny of their capacity to self-regulate. Public perception that many law enforcement agencies had mishandled both violent and non-violent protests eroded public trust and led many agencies to revisit their policies, tactics, and overall capacity to adapt and manage risk under dynamic and challenging circumstances.¹ Risk management practices currently employed by many agencies include data collection and analysis, internal and external benchmark selection, implementation of DOJ recommended policies and procedures, audits of body-worn-camera video, force and pursuit review boards, personnel early intervention systems, an iterative risk-prioritization and mitigation process, incident after action reviews, scenario-based training, and ongoing efforts to assess an agency's risk profile. Although an extensive literature covers some of these individual elements, how best to formulate risk metrics for police activities and methodologies for creating a robust risk management system for law enforcement agencies have scarcely been researched at all.

That said, as pressures to manage the risk of high-profile incidents escalate, law enforcement agencies lack clear guidance on best practices for managing agency-wide risk. Far from proactively seeking solutions, many agencies outsource this important task, either to police liability insurance carriers, to private corporations such as Lexipol, or to credentialing authorities such as the Commission on Accreditation for Law Enforcement

¹ Major Cities Chiefs Association, *Report on the 2020 Protests and Civil Unrest* (Salt Lake City, UT: Major Cities Chiefs Association, 2020), <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>.

Agencies (CALEA).² As a result, many agencies approach risk management primarily to limit legal liability. Recent legal scholarship highlights the prevalence—as well as the promise and peril—of this legal liability paradigm.³ For example, John Rappaport, a law professor at the University of Chicago, argues that although focusing on liability risk may work well for police misconduct, this gives rise to “high-dollar, short-tail” claims (the paradigmatic example being excessive force), and its effects on other police activities are “weak or even perverse” because insurers have minimal incentive to regulate the underlying conduct.⁴ Legal scholars also emphasize that this paradigm tends to ignore the risks posed by police practices that inflict “constitutionally permissible harms on individuals or communities.”⁵ In this way, a focus on legal liability deflects attention from the full spectrum of adverse events which pose risks to an agency’s reputation or legitimacy.

Notwithstanding its limitations, the legal liability paradigm has endured for 40 years, even as law enforcement agencies find themselves on entirely new terrain. Whereas in the early 1980s, civil rights lawsuits stimulated sensationalized media coverage and the looming threat of litigation to compel police administrators to adopt emerging best practices, now law enforcement agencies face public scrutiny due to open data projects, the ubiquity of cellphone videos, and the wide reach of social media.⁶ The new terrain thus

² Ingrid V. Eagly and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 5 (April 2018): 891–976. The liability insurance category includes self-governed public risk pools, such as the Intergovernmental Risk Management Agency (IRMA), which covers municipalities in Illinois.

³ John Rappaport, “How Private Insurers Regulate Public Police,” *Harvard Law Review* 130, no. 6 (2017): 1540–1614.

⁴ John Rappaport, “An Insurance-Based Typology of Police Misconduct,” *University of Chicago Legal Forum*, 2016, <http://www.ssrn.com/abstract=2808106>.

⁵ Rachel A. Harmon, “The Problem of Policing,” *Michigan Law Review* 110, no. 5 (2012): 792. “[T]he problem of regulating the police extends beyond constitutional law to ensuring that the benefits of policing are worth the harms it imposes, including harms not prohibited by the Constitution” (763). Yet many police executives and managers continue to use the term “constitutional policing” as if the fundamental goal is merely to avoid constitutionally impermissible conduct.

⁶ A series of Supreme Court rulings have created a changed legal landscape in that law enforcement agencies are now shielded from financial liability to a remarkable degree. For an accessible account of the current state of policing and legal accountability, written by the foremost legal scholar on the subject, see: Joanna Schwartz, *Shielded: How the Police Became Untouchable* (New York, NY: Viking, 2023).

encompasses a broader range of police activities and enforcement strategies than the legal liability framework. A “second information revolution” has arrived and already challenges law enforcement’s self-regulation capacity in unanticipated ways. This revolution includes big data analytics, machine learning models, innovative statistical methods for measuring discrimination, and natural language processing algorithms to review body-worn-camera video at scale. In this new landscape, practitioners must adopt an iterative and holistic approach to managing agency-wide risks, continually scrutinizing the fairness and effectiveness of their everyday practices, and leveraging practitioner/academic partnerships to navigate the evolving terrain. Thus, whether they favor a pragmatic or principled approach to managing risks to their reputation and legitimacy, agencies have a vested interest in moving beyond the limitations of the legal liability paradigm, understanding the harms of policing from a more expansive perspective, and exploring promising new risk management strategies as well as ways to improve long-established strategies.

This thesis explores how to synthesize evidence-based risk management practices in a comprehensive strategy to manage agency-wide risk. It uses a broader definition of risk to include injury/harm to officers and community members, damage to public trust and agency legitimacy, and the financial liability of the relevant government entity.⁷ Once law enforcement agencies move beyond legal liability, the necessity of addressing the full spectrum of risks inherent in police work leads to the development and adoption of new management tools. This thesis presents case studies of two agencies—the Seattle Police Department (SPD) and the Oakland Police Department (OPD)—that have enhanced

⁷ There are two CHDS theses that have covered the narrower question of how law enforcement agencies can best reduce risks to police officer health and safety. See: Joseph W. Finch, “A Systematic Approach to Law Enforcement Safety” (master’s thesis, Naval Postgraduate School, 2018), <http://hdl.handle.net/10945/60401>. Finch finds that “expected practices for OSHA-consistent hazard analysis and mitigation,” which are used by many organizations in high-risk environments, “do not exist in law enforcement.” See also: Maggie A. DeBoard, “Applying Systems Thinking to Law Enforcement Safety: Recommendation for a Comprehensive Safety Management Framework” (master’s thesis, Naval Postgraduate School, 2015), <http://hdl.handle.net/10945/47932>. DeBoard argues for a “model law-enforcement safety framework” with the “goal of reducing accidents, injuries, and fatalities in the profession.”

existing risk management tools and have begun to experiment with new management tools that appear promising in this new terrain.

B. RESEARCH QUESTION

How can law enforcement agencies best use established and promising risk management strategies to identify, assess, prioritize, and mitigate the risks of police activities?

C. LITERATURE REVIEW

1. Early intervention systems

This section focuses on the literature covering the use of Early Intervention/Early Warning systems (EI systems) by law enforcement agencies to identify and address officers most likely to engage in future problematic behavior. An EI system is a personnel management tool consisting of four components: performance indicators, selection criteria to identify high-risk officers, intervention in the form of counseling or training, and post-intervention supervisory monitoring of the officers' performance.⁸ The foundation of an EI system is an automated database containing performance- and risk-oriented data. Performance indicators and risk metrics are entered into the database, and the system uses criteria to select (or "flag") high-risk officers for review and possible intervention (e.g., retraining, mentoring, and/or counseling). The selection criteria are usually simple thresholds, such as a particular number of complaints over a specified time span.⁹ Expert intuition rather than data-driven measures of effectiveness sets these thresholds.

Mandated oversight of police departments by the Department of Justice for civil rights offenses stimulated the implementation of EI systems. Although some agencies experimented with prototypes of intervention systems in the 1970s and 1980s, EI systems gained currency in the late 1990s, when consent decrees from the Department of Justice

⁸ Samuel Walker and Stacy Osnick Milligan, *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives* (Washington, DC: Police Executive Research Forum, 2005).

⁹ Some agencies have moved away from numerical thresholds and have instead adopted ratios (e.g., uses of force per arrest) or statistical measures such as standard deviations.

(DOJ) began consistently requiring such a system.¹⁰ Settling DOJ investigations of agencies with a “pattern or practice” of unconstitutional policing required EI systems. The first consent decree, a negotiated settlement of the DOJ’s investigation into a pattern of excessive force and illegal searches, required the Pittsburgh Police Department to establish an “automated early warning system.”¹¹ Soon thereafter, accreditation for law enforcement agencies required EI systems.¹² In a 2017 report, the DOJ described the implementation of an EI system as an essential best practice to manage personnel.¹³ An estimated 40 percent of law enforcement agencies now have some form of EI system.¹⁴ Many agencies have looked to the DOJ—and, in particular, to the provisions of current consent decrees—for guidance on selecting EI system risk indicators and selection criteria thresholds. The DOJ’s Special Litigation Section, however, customizes consent decrees to the unique circumstances of each agency, and thus even settlement-mandated EI systems exhibit considerable variation in their structure.

Although EI systems increased in use, empirical research into their effectiveness remains limited. In “Early Warning Systems for Police: Concept, History, and Issues,” the authors Samuel Walker, Geoffrey P. Alpert, and Dennis J. Kenney report that properly run EI systems effectively reduce the incidence of citizen complaints and uses of force among

¹⁰ Department of Justice, *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies* (Washington, DC: Department of Justice, 2001). In this summary of best practices as codified in the first generation of consent decrees, the DOJ described EI systems as “data-based personnel management systems” and as “‘early warning’ information management systems” designed “to provide law enforcement supervisors and managers with information relating to potential patterns of at-risk conduct involving the law enforcement agency.” For earlier initiatives, see: Herman Goldstein, *Policing a Free Society* (Cambridge, MA: Ballinger, 1977). Goldstein documents efforts by the Oakland Police Department and several other agencies to implement intervention systems in the early 1970s. None of these early efforts survived into the 1990s.

¹¹ *United States v. City of Pittsburgh* (2:97-cv-00354, W.D. Pa.), Consent Decree, Feb. 26, 1997, Section 12.a. Available at PACER and at: <https://clearinghouse.net/doc/5314/>.

¹² Commission on Accreditation for Law Enforcement Agencies, Standard 35.1.35 (Fairfax, VA: CALEA, 2001).

¹³ Department of Justice, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present* (Washington, DC: Department of Justice, 2017).

¹⁴ Stephen Rushin, *Federal Intervention in American Police Departments* (Cambridge, UK: Cambridge University Press, 2017).

officers selected for intervention.¹⁵ The authors find effective EI systems embedded within a larger accountability architecture that reflects the agency's commitment to risk management. The authors conclude on a skeptical note, however, observing that some agencies, lacking this commitment, adopt EI systems as "essentially symbolic gestures with little substantive content."¹⁶ Later empirical research, mostly limited to scattered case studies of individual agencies, generally shows positive results. A study of the Los Angeles Police Department's EI system, TEAMS II, finds that it successfully identified a unit engaged in statistically aberrant activities.¹⁷ A study of the Los Angeles County Sheriff's Department's EI system finds a substantial reduction in complaints, uses of force, and force-related lawsuits in the three-year period following an intervention.¹⁸ In this way, EI effectiveness depends on agency commitment and a system of accountability beyond the management tool.

A recent meta-analysis points not only to the relative scarcity of empirical studies of EI systems, but also to the absence of rigorous methodology in their research designs.¹⁹ Robert E. Worden et al., the authors of "Intervention with Problem Officers: An Outcome Evaluation of an EIS Intervention," review six separate case studies of EI systems and note that "[m]ost are one-group, pre-/posttest designs, with a limited range of measured outcomes. Thus, they are vulnerable to several threats to internal validity: maturation, regression toward the mean, and history."²⁰ In other words, the case studies' findings of the declines in individual officer complaints or uses of force may have alternative

¹⁵ Samuel Walker, Geoffrey P. Alpert, and Dennis J. Kenney, "Early Warning Systems for Police: Concept, History, and Issues," *Police Quarterly* 3, no. 2 (2000): 132–52, <https://doi.org/10.1177/1098611100003002001>. This study consisted of a national mail survey accompanied by case studies of three large departments that had implemented an EI system.

¹⁶ Walker, Alpert, and Kenney, 149.

¹⁷ Rushin, *Federal Intervention in American Police Departments*. LAPD's EI system flagged officers in the Central Division's Narcotics Unit who were neglecting to complete required reports to document their detentions of suspects. The system also revealed that the Unit's sergeants were disproportionately becoming involved in use-of-force incidents rather than functioning as supervisors.

¹⁸ Merrick Bobb, *Los Angeles County Sheriff's Department: 27th Semiannual Report* (Los Angeles: Police Assessment Resource Center, 2009), <https://clearinghouse.net/doc/42732/>.

¹⁹ Robert Worden et al., "Intervention with Problem Officers: An Outcome Evaluation of an EIS Intervention," *Criminal Justice and Behavior* 40, no. 4 (2013): 409–37.

²⁰ Worden et al., 411.

explanations: officers mature over their career and accrue fewer complaints. An observed “indicator spike” may be a statistical anomaly that could expect to return to normal independent of any intervention, and EI systems are often part of broader reforms or risk management strategies that explain the measured declines in outcome measures.

A prominent criticism of early EI systems centered on their reliance on citizen complaints and use of force incidents as leading risk indicators. In Kim Michelle Lersch, Tom Bazley, and Tom Mieczkowski’s article “Early Intervention Programs: An Effective Police Accountability Tool, or Punishment of the Productive?,” concerns were raised, given the high correlation between these indicators and measures of officer productivity. Researchers discuss that EI systems might unfairly target proactive officers, and that any post-intervention reduction in complaints or uses of force may in fact be due to officers feeling deterred from engaging in proactive policing.²¹ In response to this critique, some agencies began defining normative thresholds using peer groups and ratios of metrics (e.g., uses of force per arrest). Many agencies, however, have continued to rely on crude performance metrics and simple “time-and-numbers” thresholds.²²

Rapid innovation in machine learning algorithms, combined with the availability of large datasets of police activities, have inspired a new generation of researchers to propose improving EI system effectiveness through machine learning. Working with the Charlotte-Mecklenburg Police Department, data scientists developed “a machine learning model to predict which officers are at-risk for an adverse event.”²³ Preliminary results show a 20 percent decrease in false positives (low-risk officers incorrectly selected for

²¹ Kim Michelle Lersch, Tom Bazley, and Tom Mieczkowski, “Early Intervention Programs: An Effective Police Accountability Tool, or Punishment of the Productive?” *Policing* 29, no. 1 (2006): 58–76, <http://dx.doi.org/10.1108/13639510610648485>.

²² Robert E. Worden et al., *Features of Contemporary Early Intervention Systems: The State of the Art* (Albany, NY: John F. Finn Institute for Public Safety, Inc., 2015).

²³ Samuel Carton et al., “Identifying Police Officers at Risk of Adverse Events,” in *KDD ‘16: Proceedings of the 22nd ACM SIGKDD International Conference on Knowledge Discovery and Data Mining* (San Francisco: ACM, 2016), 67–76, <https://doi.org/10.1145/2939672.2939698>. The White House Police Data Initiative funded this collaboration between the University of Chicago’s Center for Data Science and Public Policy and Carnegie-Mellon University’s Data Science and Public Policy Lab, which also created EIS prototypes for Nashville and San Francisco. The model has been made available as open source: <https://github.com/dssg/police-eis>.

intervention), and a 75 percent increase in true positives (high-risk officers correctly selected for intervention).²⁴ Their EI model is promising because it assigns a testable data-driven risk score to each officer rather than relying on intuition-based binary thresholds to flag officers. The model may thus help develop validated risk assessment instruments to predict troubling police performance. A risk score EI system would also aggregate risk scores over groups of officers, allowing an agency to identify units or divisions at higher risk and initiate group interventions.

The machine learning approach, especially if it increases the ratio of true to false positives, promises significant enhancement of existing EI systems. Extant systems—whether they deploy thresholds, normative thresholds, ratios, or sophisticated statistical benchmarking—suffer from an excess of false positives, reducing confidence in their role in identifying at-risk officers.²⁵ False positives erode the legitimacy of the EI system in the eyes of both line officers and supervisors. The shift to machine learning and big data analytics also portends an evolution in identifying dynamic risk factors predictive of adverse events. This approach will likely encourage agencies to review and monitor the predictive validity of their EI systems, incentivizing the replacement of intuition-based thresholds with data-driven models that are fine-tuned to improve predictive accuracy.

Machine learning algorithms are already spurring innovation in the analysis of officer-citizen interactions. In a study that applied computational linguistic techniques to analyze body-worn-camera footage from the Oakland Police Department, researchers found racial disparities in the treatment of citizens.²⁶ Drawing on this natural language processing research, a legal scholar proposes using the audio-visual data afforded by body-worn-camera footage to train machine learning algorithms to detect worrisome behavior

²⁴ Jennifer Helsby et al., “Early Intervention Systems: Predicting Adverse Interactions Between Police and the Public,” *Criminal Justice Policy Review* 29, no. 2 (2018): 190–209, <https://doi.org/10.1177/0887403417695380>.

²⁵ Christopher J. Harris, “Early Intervention Systems and Prevention of Police Misconduct,” in *Stress in Policing: Sources, Consequences and Interventions*, ed. Ronald J. Burke (New York: Routledge, 2017), 207–19.

²⁶ Robert Voigt et al., “Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect,” *Proceedings of the National Academy of Sciences* 114, no. 25 (June 20, 2017): 6521–26, <https://doi.org/10.1073/pnas.1702413114>.

and identify factors that predict elevated risk of adverse outcomes.²⁷ In this context, the Seattle Police Department contracted with a vendor to create a machine learning EI system for analyzing body-worn-camera footage and using it to predict misconduct.²⁸ Whether these innovations will increase the overall effectiveness and internal legitimacy of EI systems remains unknown.

Notwithstanding their long history, EI systems remain in an incipient stage of development, and their role in a holistic risk management process is largely ignored by researchers and practitioners alike. This thesis aims to move beyond “symbolic gestures” and toward a risk management framework that views the design of, and experimentation with, an effective EI system as opportunities to identify, prioritize, and mitigate risk.

2. Incident review boards

Law enforcement agencies use incident review boards to subject everyday incidents (e.g., a vehicle pursuit or a use of force) to critical scrutiny. Agencies rely on review boards to assess compliance with training and policy, to appraise the quality of the supervision of—and investigation into—the incident, and to examine the adequacy of training, tactics, policy, or equipment in novel circumstances. Yet academic research on law enforcement agencies’ use of internal incident review boards is surprisingly sparse. While there is extensive literature on civilian oversight boards, and one CHDS thesis on the topic of civilians serving on force review boards, most literature on incident review boards is in the form of audit reports and compliance reviews written by court-appointed monitors under

²⁷ Mary D. Fan, “Smarter Early Intervention Systems for Police in an Era of Pervasive Recording,” *University of Illinois Law Review* 2018, no. 5 (2018): 1705–31.

²⁸ This contract for a pilot project was not renewed after the police union objected. See: Kurt Schlosser, “Seattle Police Union Objected to Use of Body-Cam Analysis Tech and Alleges Officers Were ‘Spied On,’” *GeekWire*, February 16, 2023, <https://www.geekwire.com/2023/seattle-police-union-objected-to-use-of-body-cam-analysis-tech-and-alleges-officers-were-spied-on/>.

the aegis of structural reform litigation.²⁹ There is no research on what makes for a well-functioning board, how boards should deliberate, what criteria should shape board composition, whether a standing or rotating board membership is preferable, how body-worn-camera video impacts board reviews, how to utilize subject matter experts, nor how to best to ensure that a board's non-punitive recommendations are implemented. Even the DOJ's Special Litigation Section, which includes "supervisory review of all significant uses of force" as a key element in reform agreements since their inception, does not require incident review boards,³⁰ and the DOJ's Office of Community Oriented Policing Services (COPS) omitted this topic from its most recent summary of law enforcement best practices.³¹

Insofar as force review boards receive academic attention, it is generally in the context of a discussion of officer-involved shootings. The canonical source is James Fyfe's dissertation on the effects of the New York Police Department (NYPD)'s 1972 revision of its deadly force policy, which required all police shootings to be reviewed by a Firearms Discharge Review Board (FDRB).³² Fyfe subsequently cannibalized his dissertation for a

²⁹ John H. Breckenridge, "Civilians on Police Use-Of-Force Review Boards: A Delphi Study Involving Six Police Departments" (master's thesis, Naval Postgraduate School, 2018), <https://www.hsdl.org/?abstract&did=818124>. True to its title, Breckenridge's thesis focuses on the *civilian* aspect of incident review boards, and as a result his literature review covers "the history of police oversight" and the "public administration literature" but does not attempt to survey the literature on incident review boards. The Portland Police Bureau is one of the six departments covered by Breckenridge's study. Portland's Police Review Board was established by ordinance in 2010, contains civilians as voting members, and has a dual role, advising the Chief of Police about disciplinary matters in addition to reviewing significant uses of force. See section 3.20.140 of Portland's City Code: <https://www.portland.gov/code/3/20/140>.

³⁰ Department of Justice, *The Civil Rights Division's Pattern*, 28.

³¹ Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field* (Washington, DC: Office of Community Oriented Policing Services, 2019), <https://cops.usdoj.gov/ric/Publications/cops-w0875-pub.pdf>. This report covers de-escalation and Crisis Intervention Training but is silent on the subject of force review boards. For a content analysis and a typology of DOJ's preferred reforms, see: Emily Donnelly and Nicole Salvatore, "Emerging Patterns in Federal Responses to Police Misconduct: A Review of 'Pattern or Practice' Agreements over Time," *Criminology, Criminal Justice, Law & Society* 20, no. 3 (2019): 23–45.

³² James J. Fyfe, "Shots Fired: An Examination of New York City Police Firearms Discharges" (PhD diss., Albany, NY, State University of New York at Albany, 1978).

series of influential articles on deadly force policies.³³ At their outset, FDRB reviews were compliance-oriented—i.e., “primarily directed toward determining whether the officer complied with the [agency’s] deadly force policy.”³⁴ When boards were a relatively new phenomenon, a 1977 Police Foundation comparison of OPD, the Indianapolis Police Department, and the Washington, D.C., Metropolitan Police Department’s FDRBs found that all of the agencies’ boards used the review process as an opportunity to assess the adequacy of the agencies’ policy guidance; furthermore, one of the agencies conditioned the justifiability of deadly force on an evaluation of the officer’s actions leading up to the force.³⁵ Yet currently, even when an agency’s review board announces a goal of reviewing officer tactics and decision making that led up to the force, this goal has been more honored in the breach than the observance. A systematic assessment of NYPD’s FDRB process by the RAND Corporation’s Center on Quality Policing notes that, even as late as 2007, FDRBs seldom review the tactics leading up to an officer-involved shooting.³⁶ The 2008 RAND report recommends “that the NYPD expand the focus of the firearm-discharge investigation to include a formal and mandatory review of the tactics used.”³⁷

For many agencies, the transition from a *compliance*-oriented to a *learning*-oriented approach to incident review boards is, as it were, stutter-stepped. In one of the

³³ See, e.g., James J. Fyfe, “Administrative Interventions on Police Shooting Discretion: An Empirical Examination,” *Journal of Criminal Justice* 7, no. 4 (December 1979): 309–23, [https://doi.org/10.1016/0047-2352\(79\)90065-5](https://doi.org/10.1016/0047-2352(79)90065-5).

³⁴ Samuel Walker and Carol Archbold, *The New World of Police Accountability*, 2nd ed. (Los Angeles, CA: SAGE, 2014), 202. As Fyfe notes, board case dispositions included “1. The discharge was in accordance with law and department policy. 2. The discharge was justifiable, but the officer should be given additional training in the use of firearms or in the law and department policy. 3. The shooting was justifiable under the law, but violated department policy and warrants department disciplinary action” (Fyfe, “Administrative Interventions on Police Shooting Discretion,” 312).

³⁵ Catherine H. Milton et al., *Police Use of Deadly Force* (Washington, D.C.: Police Foundation, 1977), <https://www.ojp.gov/pdffiles1/41735.pdf>. Of the seven agencies discussed, only three (Oakland, Indianapolis, and Washington, DC) had review boards for deadly force incidents. Oakland’s FDRB General Order stated: “When the circumstances at the time of the firing are justifiable but the firing was the result of the officer’s departure from acceptable police procedures, the finding shall be that the discharge was Non-justifiable” (77).

³⁶ Bernard Rostker et al., *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* (Santa Monica, CA: RAND Corporation, 2008), <https://doi.org/10.7249/MG717>.

³⁷ Rostker et al., 94.

most long-lasting and comprehensive external assessments, the challenges of moving from the binary question of whether an officer's force was justified and "in policy" to the more open-ended question of whether an officer could have taken a different approach to the situation—and therefore whether the agency can *learn* from the incident—appears repeatedly. From 2003 to 2020, the Police Assessment Resource Center (PARC) and the OIR Group, independent police oversight and review organizations, conducted a series of assessments of the Portland Police Bureau (PPB)'s critical incident review process to include the policies and practices of its force review board.³⁸ A common theme emerged that a force review board should use every incident "as a learning tool."³⁹ The first assessment noted that PPB "did not demonstrate a solid commitment to reviewing [incidents] with an eye toward ... improving the Bureau's response in the future."⁴⁰ From the beginning, PARC recognized this lack of commitment as a symptom of a larger issue with PPB's organizational culture. PARC quoted a senior officer who told them, "In after action reports, we are hesitant to be critical.... We hate to call each other on the carpet.... People are afraid to ask hard questions. People are afraid to hurt feelings."⁴¹ Until the organizational culture abandoned excessive deference and embraced a philosophy of self-critique, it would prove challenging to draw appropriate lessons from each incident under review. In its most recent assessment, OIR Group acknowledges continued cultural

³⁸ Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths* (Los Angeles, CA: Police Assessment Resource Center (PARC), 2003), <https://www.portlandoregon.gov/ipr/article/26225>. PARC was retained by the Independent Police Review (IPR) Division of the Office of the Portland City Auditor. PARC issued three follow-up reports, in 2005, 2006, and 2009. PARC is a Los Angeles-based non-profit initially funded by the Ford Foundation in 2001. PARC's long-time executive director, Merrick Bobb, served as the Special Counsel for the Los Angeles County Board of Supervisors, overseeing the Los Angeles County Sheriff's Department (LASD); Bobb also served as the Seattle Police Monitor from 2012 until 2020. See also: OIR Group, *Report to the City of Portland Concerning the In-Custody Death of James Chasse* (Playa Del Rey, CA: OIR Group, 2010), https://www.oirgroup.com/_files/ugd/d85a96_a769958f0a4d4c12b2dfb243a67c9486.pdf. After producing this report on an in-custody death incident, OIR Group went on to complete seven additional reports for IPR from 2012 to 2020—essentially second-order reviews of PPB's critical incident review process. Michael Gennaco, a founding Principal of OIR Group, previously served as Chief Attorney for LASD's Office of Independent Review. The additional OIR Group reports can be retrieved from: <https://www.portlandoregon.gov/ipr/54263>.

³⁹ Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths*, 134.

⁴⁰ Police Assessment Resource Center, 135.

⁴¹ Police Assessment Resource Center, 136.

resistance to adopt this learning-oriented perspective. Nonetheless, the consultants again emphasize the importance of a force review board's focus on considering alternative tactical decision making and courses of action:

Acknowledging that an officer might have approached a situation differently, deployed another tool, communicated more effectively, recalculated his or her risk assessment, or made a different tactical decision does not necessarily undermine a finding of justifiable use of force. Unfortunately, the consideration of alternative scenarios is too often seen as unfair, after-the-fact criticism of an officer's performance instead of a constructive attempt to improve the ways in which officers approach and resolve problems. We have presented this theme in various ways, through commentary and recommendations across numerous reports.⁴²

Another recurrent issue raised by the outside consultants' assessments is that PPB often failed to ensure that all of the board's recommendations for improvement were followed up on and implemented timely.⁴³ For a review board to function effectively as a locus of continual learning, its recommendations for training updates and policy changes must find support at the highest level of the organization, with its tasks and deliverables tracked by a reliable process.

D. RESEARCH DESIGN AND ROADMAP

Chapter II of this thesis draws on recent legal scholarship to explore the ways that law enforcement agencies have traditionally outsourced their risk management efforts—whether to insurance carriers who work to reduce police liability, or to private corporations (e.g., Lexipol), which supply policies and procedures with a focus on limiting legal liability risk. The chapter then considers how this legal liability risk management paradigm conflicts with the increasing recognition by legal scholars and policing experts that law

⁴² OIR Group, *Report to the City of Portland - Portland Police Bureau Officer-Involved Shootings and In-Custody Deaths - 7th Report*, 2020, 85–86, <https://www.portlandoregon.gov/ipr/article/766203>.

⁴³ Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths*, 159. “The PPB should create systems that ensure that all lessons learned—both successes and failures—are systematically identified and followed up on.” This issue surfaced repeatedly. See, e.g., OIR Group, *Report to the City of Portland - Portland Police Bureau Officer-Involved Shootings - 6th Report*, 2019, <https://www.portlandoregon.gov/ipr/article/711304>. “[I]t apparently is the rare case when those internal recommendations [for improvement] are subsequently formally considered, let alone implemented” (3).

enforcement agencies have a strong interest in mitigating harms that are not constitutionally impermissible. The chapter also engages with legal scholarship that questions the judiciary's capacity to assess and regulate police practices.

Chapters III and IV of this thesis use the case study method to review two established and two promising risk management strategies, and then assesses how the established practices have fared when they are reviewed and repeatedly tested by an external monitoring team, and how well the promising practices have held up under conditions of intense community concern and scrutiny. The assessment considers the experience of two different agencies: the Oakland Police Department (OPD) and the Seattle Police Department (SPD). OPD has been under a Negotiated Settlement Agreement overseen by a federal judge since 2003. Likewise, SPD has been under a Settlement Agreement and Memorandum of Understanding with the DOJ (which is also overseen by a federal judge) since 2012. Both agreements have generated an extensive public docket of court filings documenting the independent monitoring teams' evaluations of the agencies' respective attempts to implement risk management programs. Just as best practices result from a continuous exchange between researchers and practitioners, so the iterative process that constitutes consent decrees has "stress tested" the mandated practices and prompted innovative improvements. OPD and SPD were selected because (1) together they represent two generations of consent decrees; (2) the longevity of their monitoring has afforded ample opportunity for process refinement and improvement; (3) both agencies are committed to transparency and publish extensive public-facing data; and (4) both agencies recently entered the "sustainability period" of their court oversight and are independently working towards an agency-wide risk management framework that would assist in demonstrating the long-term sustainability of their reform efforts.

II. LEGAL LIABILITY PARADIGM

This chapter examines the endurance, and limitations, of the prevailing risk management paradigm in law enforcement—viz., the legal liability framework. From the early 1990s to the present, risk management guidance to police executives has been couched in the language of potential legal liability and its attendant financial consequences.⁴⁴ This paradigm is so prevalent that Carol A. Archbold, the author of an article purporting to present “the first national study of risk management in police agencies in the USA,” *defines* risk management as a process used “to control police liability.”⁴⁵ When fear of legal liability drives deliberations about how to reduce the harms of police activities, agencies come to view questions of risk management through the lens of constitutional permissibility. Hence the resonance among police administrators of calls for “constitutional policing” as the answer to communities’ concerns about the multifarious harms imposed by law enforcement. The Constitution, however, only sets a floor above which many harmful police practices proliferate. Thus, the legal liability paradigm, although it succeeds in motivating law enforcement agencies to curb some civil rights abuses (e.g., excessive force), ultimately diverts agencies’ attention from the importance of managing the risk of adverse events that do not immediately lead to colorable and compensable legal claims.⁴⁶

⁴⁴ See, for example, G. Patrick Gallagher, “Risk Management for Police Administrators,” *Police Chief*, June 1990, 19–29. See also: G. Patrick Gallagher, “The Six-Layered Liability Protection System for Police,” *Police Chief*, June 1990, 40–44. *Police Chief* is a trade magazine published continuously since 1934 by the International Association of Chiefs of Police (IACP). In August 2017, IACP published an issue dedicated to risk management. Gordon Graham, the founder of Lexipol, contributed an article (“Some Thoughts on Real Risk Management”). And Gallagher contributed an update of his views: G. Patrick Gallagher and Mary C. Kealoha, “Risk Management: Raising the Performance Level and Lowering the Liability Threat,” *Police Chief* 84, no. 8 (August 2017), <https://www.policiechiefmagazine.org/risk-management-raising-the-performance-level/>.

⁴⁵ Carol A. Archbold, “Managing the Bottom Line: Risk Management in Policing,” *Policing* 28, no. 1 (2005): 30–48, <https://doi.org/10.1108/13639510510580968>. Archbold describes the purpose of her research as providing “quantitative data” on how “the largest U.S. law enforcement agencies use risk management in their effort to control the frequency and costs associated with liability within their organizations” (44).

⁴⁶ None of this is meant to deny the importance of the information that agencies may glean from litigation. Cf. Joanna C. Schwartz, “What Police Learn from Lawsuits,” *Cardozo Law Review* 33, no. 3 (2012): 841–94. For example, lawsuit data can be tracked in early intervention systems (see Chapter III, below).

The first section of this chapter traces the historical origin of this focus on legal liability—a preoccupation shared by police executives and police reformers alike—to the surge in civil rights litigation enabled by a series of Supreme Court decisions in the 1970s and 1980s.⁴⁷ Although contemporary legal scholars tended to downplay the liability sanction’s deterrent effect on police misconduct, this section shows that the fear of liability induced law enforcement executives to enact institutional reforms designed to regulate the use of force, especially the use of lethal force. Although triggered in part by a breakdown in the market for police liability insurance, police executives’ fear of civil litigation was less about its financial consequences and more about its risk to an agency’s reputation and legitimacy. The origin of the liability paradigm helps explain why the paradigm exerts such a hold on the imagination of reformers and bureaucrats to this day—namely, because it achieved a well-publicized victory in forcing law enforcement agencies to restrict deadly force, and because it entrenched a policy framework committed to legal norms and emerging best practices. An understanding of this history also points the way, analytically, to a broader, albeit structurally analogous, risk management orientation that is better adapted to the legal and professional terrain on which law enforcement agencies find themselves some forty years later.

Back-to-back crises in the municipal liability insurance market in the late 1970s and early 1980s highlighted the extent to which many municipalities sought to transfer the risk of legal liability to insurance carriers. The second section of this chapter discusses the role of police liability insurance companies in managing the risks associated with law enforcement activities. Assessing liability risk through the lens of insurance reveals critical limitations of the liability paradigm. For while an insurance-based emphasis on “loss prevention” may effectively reduce liability exposure for high-cost, immediately apparent incidents, it does so at the expense of neglecting adverse events whose nominal financial impact and/or delayed discovery render them invisible from this perspective.

⁴⁷ “Police Agencies Seek Ways to Avoid Citizens’ Lawsuits,” *New York Times*, November 3, 1985, sec. A. This article reports that national surveys by Americans for Effective Law Enforcement (AELE) tracked an explosive increase in civil lawsuits against the police, from 2,000 in 1967 to 13,000 in 1976 to over 20,000 a year by the mid-1980s.

To further illustrate the perils of a risk management paradigm that seeks above all to reduce liability, the third section of this chapter considers the example of Lexipol LLC, a private company that provides training and a suite of state-specific, off-the-shelf policies to thousands of law enforcement agencies across the country. Recent legal scholarship shows that “Lexipol’s focus on reducing liability risk is sometimes in tension with longstanding efforts to guide and restrict officer discretion through police policies.”⁴⁸ In crafting its 170+ ready-made policies, Lexipol uses language tailored to shield municipalities from liability. With its narrow mission of reducing liability exposure by maximizing officer discretion, Lexipol has consistently opposed expert recommendations that law enforcement agencies adopt use of force policies that would go beyond the constitutional floor set by Fourth Amendment jurisprudence.⁴⁹

The chapter concludes with a brief discussion of a fundamental assumption about constitutional jurisprudence that underlies the legal liability paradigm. Law enforcement administrators assume, despite decades’ worth of evidence to the contrary, that the Supreme Court is willing and able to promulgate clear doctrinal guidelines to regulate all aspects of policing that impact civil rights. Yet legal scholars point out that “for the most part today the Justices adopt a posture of extreme deference in policing cases,” preferring an after-the-fact review on a case-by-case basis, and repeatedly decline to provide bright-line regulatory guidance.⁵⁰

A. THE “FERTILE FEAR” OF LEGAL LIABILITY

Given the extensive academic literature warning against the false promise of legal liability as an impetus for police reform, the persistent prevalence of the liability paradigm can seem puzzling. Why do law enforcement executives and police reform activists alike turn so readily to the threat of civil damages as the ever-present background against which

⁴⁸ Eagly and Schwartz, “Lexipol,” 925.

⁴⁹ Ingrid V. Eagly and Joanna C. Schwartz, “Lexipol’s Fight Against Police Reform,” *Indiana Law Journal* 97, no. 1 (2022): 1–57.

⁵⁰ Barry Friedman and Maria Ponomarenko, “Democratic Policing,” *New York University Law Review* 90, no. 6 (December 2015): 1891. The authors note that “[c]ourts defer to policing decisions in part because they lack the data or the confidence to second-guess them.”

policy decisions should be made? To address this question, this section draws upon Charles Epp's analysis of the conjuncture, in the late 1970s and early 1980s, of liability pressure from activists, mass media coverage of high-profile lawsuits, and managerial practitioners' efforts to maintain their agencies' reputation and legitimacy.⁵¹ The concomitant explosion in what Epp calls the "fertile fear" of liability greatly enhanced the efficacy of litigation pressure as a catalyst of deadly force reform. This fear proved *productive* in that it fueled the law enforcement profession's development and propagation of a system of "legalized accountability"—a policy framework consisting of "written rules, formal systems of training, and internal systems of oversight to assess compliance with the rules"—whose underlying structure endures even as professional standards continue to evolve.⁵²

1. The empty threat of liability's financial sanction

As a 2022 *Washington Post* investigation reveals, the last decade saw local governments expend billions in settlements for police misconduct.⁵³ The courts, and many civil rights activists, operate on the assumption that financial liability concentrates the bureaucratic mind and therefore has a deterrent effect on civil rights violations.⁵⁴ Legal scholars like Daryl J. Levinson, however, note that instrumentalist accounts of the incentive effect of liability (the so-called "cost-internalization function") rely on unsound assumptions, including: that governments are analogous to profit-maximizing corporations; that government decision makers diligently gather information from lawsuits and use it to weigh the costs and benefits of the police activities in question; and that the

⁵¹ Charles R. Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State* (Chicago: University of Chicago Press, 2009).

⁵² Epp, 3.

⁵³ Keith L. Alexander, Steven Rich, and Hannah Thacker, "The Hidden Billion-Dollar Cost of Repeated Police Misconduct," *Washington Post*, March 9, 2022, <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements/>. "The Post collected data on nearly 40,000 payments at 25 of the largest police and sheriff's departments within the last decade, documenting more than \$3.2 billion spent to settle claims."

⁵⁴ Daryl J. Levinson, "Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs," *The University of Chicago Law Review* 67, no. 2 (2000): 345–420, <https://doi.org/10.2307/1600491>. "Courts and commenters routinely assume that [constitutional tort] damages will create incentives for government to avoid constitutional violations much as ordinary tort damages create incentives for private parties to take precautions against accidents" (350).

financial costs of constitutional tort damages directly impact law enforcement agencies' budgets.⁵⁵

Furthermore, notwithstanding the staggering sums involved in some high-profile judgments and settlements, legal scholars point out that law enforcement officers, in fact, enjoy a high level of impunity for their unconstitutional conduct. The various barriers to liability include the following:

- Most of those harmed by police civil rights abuses lack the interest and/or the wherewithal to file a lawsuit;⁵⁶
- Even motivated and well-resourced victims of unconstitutional policing may struggle to find an attorney willing to take a case with low recoverable damages, despite fee-shifting rules;⁵⁷
- Once an attorney agrees to take the case, the doctrine of qualified immunity raises a significant barrier to obtaining a hearing;⁵⁸

⁵⁵ Levinson. This article utilizes public choice models to argue that “we cannot assume that government will behave like a private, profit-maximizing firm” (356). On the relations between litigation, information, and the decision-making of government officials, see: Joanna C. Schwartz, “Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking,” *UCLA Law Review* 57 (April 2010): 1023–94. On the question of who ultimately pays civil litigation judgments and settlements, see: Joanna C. Schwartz, “How Governments Pay: Lawsuits, Budgets, and Police Reform,” *UCLA Law Review* 63, no. 5 (2016): 1144–1298.

⁵⁶ Various Bureau of Justice Statistics studies of contacts between the police and public have found that no more than 1% of those who believe that the police used excessive force against them ever file a legal claim. See, e.g.: Susannah N Tapp and Elizabeth J. Davis, *Contacts Between Police and the Public, 2020* (Washington, D.C.: Office of Justice Programs, 2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpb20.pdf>. There has never been a research study that goes beyond a “belief” and investigates the frequency with which actual incidents of excessive force result in lawsuits.

⁵⁷ 42 U.S.C. § 1988(b) (authorizing the award of attorneys’ fees in successful Section 1983 civil actions). It should be noted that many intangible harms are not compensable at all: “Recovery is not permitted for the inherent value of constitutional rights, their value as public goods, the ‘expressive harms’ inflicted by constitutional violations, the moral costs of breaching deontological prohibitions, third-party harms (such as those experienced by potential listeners of speech that is unconstitutionally suppressed), or any of the other conceivable harms to society that may occur when government violates constitutional rights.” Levinson, “Making Government Pay,” 372.

⁵⁸ The federal courts have granted law enforcement officers—qua government officials—so-called “good faith” immunity, finding them liable only for violations of “clearly established” case law. See, e.g.: *Safford v. Redding* 557 U.S. 364 (2009).

- The definition of “clearly established” law for purposes of qualified immunity has gotten so narrow that plaintiffs must locate a prior case with nearly identical facts;⁵⁹ and
- When immunity does not attach, law enforcement officers are virtually always indemnified by their municipality.⁶⁰

Perhaps due to increased public awareness of the inherent challenges facing police misconduct litigation, many advocacy groups’ recommendations for criminal justice reform are inflected by concerns with civil liability.⁶¹ For example, proposals to mandate professional liability insurance, to repeal qualified immunity, and to make it easier to sue municipalities for “policies and customs” that contribute to police misconduct—all take for granted the legal liability paradigm.⁶² And despite the legal barriers above, the alleged beneficial effect of the liability sanction continues to figure prominently in debates about how best to deter police misconduct. An illustration of this tendency is seen in the way the legal liability paradigm frames the long-running debate about whether to replace the exclusionary rule with monetary damages as the appropriate remedy for Fourth Amendment violations. Legal scholars argue that under the exclusionary rule, “the more guilty you are the more you benefit” and that “instead of excluding the bloodstained shirt,

⁵⁹ Seth W. Stoughton et al., “Policing Suspicion: Qualified Immunity and ‘Clearly Established’ Standards of Proof,” *The Journal of Criminal Law and Criminology* 112, no. 1 (2022): 36–78.

⁶⁰ Joanna C. Schwartz, “Police Indemnification,” *New York University Law Review* 89, no. 3 (June 2014), <https://doi.org/10.2139/ssrn.2297534>. This article documents the first systematic attempt to determine the prevalence of police indemnification. During the period covered by Schwartz’s quantitative analysis, she finds that governments paid 99.98% of all dollars that plaintiffs recovered from constitutional tort claims.

⁶¹ To cite just one example of this increased awareness, during the 2020 protests against police violence, many protestors carried “End Qualified Immunity” signs. See: Kimberly Kindy, “Dozens of States Have Tried to End Qualified Immunity. Police Officers and Unions Helped Beat Nearly Every Bill.: Only Colorado Has Passed Legislation Allowing Residents to Name Individual Officers in Lawsuits — but Even There, Police Wouldn’t Have to Pay the Judgment.,” *Washington Post*, October 7, 2021, ProQuest.

⁶² Deborah Ramirez et al., “Policing the Police: Could Mandatory Professional Liability Insurance for Officers Provide a New Accountability Model?,” *American Journal of Criminal Law* 45, no. 2 (2019): 407–59. For federal legislation addressing qualified immunity, see: Ending Qualified Immunity Act, H.R. 7085, 116th Congress (2019–2020) (proposing elimination of the “good faith” defense as well as the “clearly established law” defense). For a proposal to revisit Section 1983 doctrine, see: Myriam Gilles, “Breaking the Code of Silence: Rediscovering ‘Custom’ in Section 1983 Municipal Liability,” *Boston University Law Review* 80 (February 2000): 17–92.

why not assess damages against the police department set at a level to achieve the same quantum of deterrence.”⁶³ Civil money damages could benefit even innocent victims of unconstitutional searches, potentially calibrated to the exact set of circumstances to achieve optimal deterrence. Yet, for the reasons canvassed above, “money damages in theory are very different from money damages in practice. In the real world, the monetary remedy imagined by these commentators is a fantasy.”⁶⁴ Thus, despite extensive evidence to the contrary, risk management consultants and police reform activists continue to believe in the liability sanction’s efficacy.⁶⁵ The persistence of the “myths” underwriting this belief may seem mysterious. A brief history of the origin of the legal liability paradigm will dispel much of this mystery.

2. Activist pressure, media coverage, and the evolution of constitutional tort law

The Civil Rights Movement of the 1940s, 1950s, and 1960s mobilized a network of activist groups to deploy civil litigation as a lever to reform recalcitrant institutions.⁶⁶ Their efforts initially received sporadic support from state courts in the form of liberalized tort liability, but over time, this litigation approach was bolstered by the Supreme Court as it resurrected the remedy of “constitutional torts”⁶⁷ in *Monroe v. Pape*⁶⁸ and by Congress, which expanded this remedy by passing the Civil Rights Act of 1964.⁶⁹ The *Monroe* decision, which was the culmination of a decade-long coordinated campaign by police misconduct litigators, rejected the petitioners’ request for municipal liability but authorized

⁶³ Akhil Reed Amar, “Fourth Amendment First Principles,” *Harvard Law Review* 107, no. 4 (1994): 797, <https://doi.org/10.2307/1341994>.

⁶⁴ Oren Bar-Gill and Barry Friedman, “Taking Warrants Seriously,” *Northwestern University Law Review* 106, no. 4 (2012): 1627.

⁶⁵ Schwartz, “Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking.”

⁶⁶ Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 17.

⁶⁷ Epp, 17. For a detailed history of the federal courts’ constitutional-torts jurisprudence as well as Congress’ enabling legislation, see: Sean Farhang, *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* (Princeton, NJ: Princeton University Press, 2010).

⁶⁸ *Monroe v. Pape*, 365 U.S. 167 (1961).

⁶⁹ Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (1964).

civil rights damages actions against police officers individually.⁷⁰ What is now known as Section 1983 constitutional tort liability soon served as the basis for a “litigation barrage” strategy by the plaintiffs’ bar that attempted to leverage media coverage of lawsuits to draw attention to problematic police policies and practices.⁷¹ These litigation campaigns gradually succeeded in reframing media narratives about excessive force from one-off stories of individual bad actors to symptoms of an institutional pattern and practice of civil rights violations.⁷²

As media coverage shifted to a focus on agency accountability, activist groups set their sights on two parallel litigation projects: first, a sustained campaign to establish Section 1983 vicarious municipal liability for civil rights violations by officers; second, a coordinated drive to obtain a federal court finding against the “fleeing felon” rule, an anachronistic common-law rule that allowed police to use any force (up to and including deadly force) “necessary to effect the arrest of a fleeing felon.”⁷³ The first project yielded a partial success when the Supreme Court’s 1978 *Monell* decision, an “accidental landmark,” expanded the federal remedy of Section 1983’s monetary relief to municipalities.⁷⁴ The success was only partial because the Court explicitly repudiated vicarious (“respondeat superior”) liability in favor of a more restricted liability for any

⁷⁰ *Monroe v. Pape*, 365 U.S. 167 (1961), holding that the Civil Rights Act of 1871 (amended and recodified as 42 U.S.C. § 1983) provides a federal remedy for civil rights violations committed by state and local officials.

⁷¹ Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 67. The quotation is drawn from an interview with Michael Avery, a civil rights attorney who had filed a flurry of lawsuits against the New Haven Police Department in the early 1970s. (At one point there were 45 pending civil actions.) In the interview, Avery notes that the overarching strategy was to use targeted litigation campaigns against a particular department to obtain favorable media coverage that would attract the attention of the broader law enforcement profession as well as the public.

⁷² Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*. “As media coverage grew, prominent stories began echoing the claim of activists that police abuses were widespread, were institutionalized, and required institutional reform” (75).

⁷³ Epp, 68. Quotation is from the majority decision in *Tennessee v. Garner*, 471 U.S. 1 (1985), at 12. In her dissent, Justice O’Connor refers to “the venerable common-law rule authorizing the use of deadly force if necessary to apprehend a fleeing felon” (at 23, emphasis added).

⁷⁴ *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978). For the story behind the case (co-written by the lead attorney/husband of the lead plaintiff), which involved a dispute about pregnancy leave, see: Oscar G. Chase and Arlo Monell Chase, “Monell: The Story Behind the Landmark,” *The Urban Lawyer* 31, no. 3 (1999): 491–501. They write that “no one involved in the case would have guessed that its resolution would reshape the contours of federal jurisdiction” (491).

official municipal “policy” or “custom” shown to cause a civil rights violation.⁷⁵ Nonetheless, *Monell* “opened the ‘deep pockets’ of government treasuries to civil rights plaintiffs who could demonstrate that they had been hurt by employees whose wrongful acts were the results of ... egregious customs, practices, and policies.”⁷⁶ Two years prior, persistent lobbying by the plaintiffs’ bar had resulted in the Civil Rights Attorney’s Fees Award Act of 1976,⁷⁷ which authorized courts to award “a reasonable attorney’s fee” to the prevailing party, thus encouraging attorneys to bring even low-damages meritorious civil rights claims.⁷⁸

The establishment of municipal liability (and the additional funds that flowed to plaintiffs’ attorneys thanks to the fee-shifting mechanism of the Civil Rights Attorney’s Fees Award Act) allowed activist groups to build a support structure for Section 1983 litigation, as they turned their attention to the fleeing felon rule.⁷⁹ As the plaintiffs’ bar ramped up litigation targeting police shootings, and as high-profile incidents dominated the news, academic researchers and reform-oriented police executives advocated for more restrictive policies governing deadly force. Several leading law enforcement agencies—most prominently, the New York Police Department in 1972 and the Los Angeles Police Department in 1977—revised their firearms policies. As researchers demonstrated these policies’ efficacy in reducing controversial police shootings, as seen in Figure 1, civil rights

⁷⁵ *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), at 691: “[T]he language of § 1983, read against the background of [its] legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless *action pursuant to official municipal policy* of some nature caused a constitutional tort” (emphasis added), adding, at 694–695: “[T]he doctrine of *respondeat superior* is not a basis for rendering municipalities liable under Section 1983 for the constitutional torts of their employees.” (“*Respondeat superior*” liability may be thought of as a kind of strict vicarious liability of the employer for the actions of employees.)

⁷⁶ Jerome H. Skolnick and James J. Fyfe, *Above the Law: Police and the Excessive Use of Force* (New York, NY: Free Press, 1993), 202.

⁷⁷ Civil Rights Attorney’s Fees Award Act, 42 U.S.C. § 1988(b) (1976).

⁷⁸ Farhang, *The Litigation State*. Farhang provides a detailed legislative history of “across-the-board civil rights fee shifting” which he shows was pushed by the “for-profit civil rights bar” in alignment with civil rights groups (168).

⁷⁹ The monetary success allowed the plaintiffs’ bar to develop a legal infrastructure that came to include the National Lawyers Guild’s network, the American Civil Liberties Union, and the NAACP’s Legal Defense Fund, as well as many local tort attorneys. See: Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 68.

attorneys seized on these reforms to argue that they “amounted to an *emerging professional standard* against which all departments and their officers should be judged.”⁸⁰



Figure 1. NYPD officer-involved shootings (1971-2015)⁸¹

3. The campaign to reform deadly force policies from inside the law enforcement profession

While increasingly well-funded and emboldened litigators pressed for the courts to recognize this emerging professional standard, reform-minded practitioners continued to push the profession from the inside. In 1977, the Police Foundation (now known as National Policing Institute) published *Police Use of Deadly Force*, a landmark study of the deadly force policies and practices of seven law enforcement agencies.⁸² The preface, after

⁸⁰ Epp, 83 (emphasis added).

⁸¹ Source: New York Police Department, *2015 Annual Firearms Discharge Report* (New York, NY: NYPD, 2016), 58, https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/firearms-discharge/annual-firearms-discharge-2015.pdf.

⁸² Milton et al., *Police Use of Deadly Force*. The National Police Foundation (now known as the National Policing Institute) was founded in 1970. Its initial funding was provided by a \$30 million grant from the Ford Foundation. Dedicated from the beginning to evidence-based policing, the Police Foundation has funded seminal research on the effectiveness of various police tactics and strategies and has overseen numerous influential after-action reports over the past decade. Patrick V. Murphy became president of the Police Foundation in 1973 after serving for three years as the NYPD commissioner. For a brief history, see: <https://www.policinginstitute.org/about-us/>. For a critical history of this chapter in the police-reform movement, see: Sam Collings-Wells, “From Black Power to Broken Windows: Liberal Philanthropy and the Carceral State,” *Journal of Urban History* 48, no. 4 (July 1, 2022): 739–59, <https://doi.org/10.1177/0096144220956617>.

trumpeting the report's finding of a "clear national trend" toward more restrictive deadly force policies, as well as lamenting that many agencies' policies remained contradictory and vague, notes: "The important thing now for those who affect policing is to accelerate the process of developing written, more carefully defined standards for the use of firearms and by stronger management to enforce them."⁸³ Along with recommendations that agencies enact the core components of the legalized accountability model (i.e., written policies, training, and reviews to ensure compliance), the report endorsed the idea of a "management information system" to empower supervisors and managers to identify and track "real or potential problems" with officers' conduct.⁸⁴

The Police Foundation's report, one of the first to call attention to the rising threat of civil suits, "pioneered the idea that legal liability is a powerful inducement" for agencies to adopt policies restricting officers' discretion in the use of lethal force.⁸⁵ The report predicted judicial intervention would impose a regime of legalized accountability on the law enforcement profession:

Substantial case law precedent now exists for the proposition that courts may compel police administrators to promulgate internal rules to provide guidelines for the conduct of their officers. It is a reasonably safe prediction that departments soon will have to become actively involved in developing rules or guidelines to govern a wide variety of police behavior, or face the prospect that the courts will insist that such rules be made.⁸⁶

⁸³ Milton et al., *Police Use of Deadly Force*, iii.

⁸⁴ Milton et al., 140. This recommendation contained the seeds of the early intervention systems that would become part of standard risk-management toolkit in the 1990s.

⁸⁵ Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 80. See: Milton et al., *Police Use of Deadly Force*. "Police departments should carefully note this trend [of rising civil suits against the police], not only because of the threatening prospect of more and larger recoveries by victims and their families, but also because of the legal philosophy underlying such decisions. In a sense, a *collective social judgment* is emerging through the resolution of lawsuits that accuse the police of using too much or the wrong kind of force" (43, emphasis added).

⁸⁶ Milton et al., *Police Use of Deadly Force*, 44.

At the time, however, reform-oriented police executives who attempted to promulgate more restrictive policies governing the discharge of firearms faced significant resistance from line officers and their unions.⁸⁷

In a striking echo of current debates about racial disparities in police stop data, the debate in the 1970s and early 1980s about deadly force was also a debate about the root cause of racial disparities in police shootings. James Fyfe, the practitioner-turned-academic who implemented NYPD's deadly force restrictions, noted that "the research invariably reports that the percentage of police shootings involving black victims far exceeds the percentage of blacks in the population."⁸⁸ Fyfe hypothesized that, whereas agencies like NYPD imposed restrictions and managed to reduce controversial shootings, for agencies like Memphis Police Department that still allowed broad discretion to resort to deadly force, problematic disparities would persist due to racialized decision making. To test his hypothesis, Fyfe conducted a path-breaking analysis of the Memphis Police Department's deadly force data, framing his conclusions in terms of a striking disparity: "This [analysis] yields a black death rate from police shootings while unarmed and nonassaultive (5.4 per 100,000) that is *18 times higher* than the comparable white rate (0.3)."⁸⁹ The Police Foundation subsequently submitted a Fyfe-authored amicus curiae brief in the *Garner* case, arguing for the Supreme Court to heed the developing professional consensus and the public's collective social judgment and put paid to the fleeing felon rule once and for all.⁹⁰

⁸⁷ In 1975, for example, the San Jose Police Officer's Association sued the chief to prevent the implementation of a new policy restricting the use of deadly force. A Santa Clara County Superior Court judge granted a temporary restraining order and subsequently a permanent injunction. [Cite to the appellate decision: 78 Cal.App.3d 936] (As a sign of the changing times, in 2020, in the aftermath of the murder of George Floyd by the Minneapolis Police Department, the San Jose Police Officer's Association joined two other police unions in taking out a full-page newspaper advertisement calling for "[a] national use-of-force standard that emphasizes a reverence for life, de-escalation, a duty to intercede, proportional responses to dangerous incidents and strong accountability provisions." See: <https://www.cbsnews.com/sanfrancisco/news/san-francisco-san-jose-police-launch-national-media-campaign-calling-for-reform/>.)

⁸⁸ James J. Fyfe, "Blind Justice: Police Shootings in Memphis," *The Journal of Criminal Law and Criminology* 73, no. 2 (1982): 707, <https://doi.org/10.2307/1143112>.

⁸⁹ Fyfe, 720 (emphasis added). The Memphis data were made available to Fyfe by the NAACP Legal Defense Fund, which had obtained them during the discovery phase of the *Garner* lawsuit (ibid., 712). Fyfe's analysis was later cited by the majority opinion in the Supreme Court's *Garner* decision.

⁹⁰ *Tennessee v. Garner*, 471 U.S. 1 (1985), at footnote 10.

4. Synergistic interactions between activists and reform-oriented administrators

Although police misconduct civil suits surged in the 1960s and 1970s, the increase in litigation initially passed largely unnoticed by law enforcement agencies. It took a liability insurance crisis to capture the undivided attention of the law enforcement profession.⁹¹ Charles Epp's archival research into practitioner publications (such as the International Association of Chiefs of Police (IACP)'s monthly magazine, *Police Chief*) unearthed articles from the late 1970s and early 1980s in which liability is repeatedly offered as the principal reason for specific reforms to policies governing lethal force.⁹² In fact, a perusal of trade publications pinpoints the exact moment when the threat of liability began to dominate practitioner discussions of the legal landscape: "November 1, 1977, was a day of reckoning for a substantial number of law enforcement agencies around the country which suddenly found themselves without police professional liability insurance coverage"⁹³ when the largest liability insurer temporarily abandoned the market. In response to this crisis in the insurance market, a networked group of reform-minded police administrators soon "filled professional publications with articles reporting a litigation explosion, and they offered policy reforms as the antidote to this threat."⁹⁴ While Epp is careful to note the crucial role played by hyperbole—"mass media and practitioner journals typically exaggerate the threat of liability, at least from the standpoint of legal experts"—he also points out that this panic about an "epidemic" of litigation focused not on its financial costs but rather on its potential harm to an agency's reputation, legitimacy and

⁹¹ Kenneth S. Abraham, "Making Sense of the Liability Insurance Crisis," *Ohio State Law Journal* 48 (Spring 1987): 399–411. Abraham considers four diagnoses of the cause of the insurance crisis, ultimately concluding that no single theory is sufficiently explanatory, and that each theory has "elements of plausibility" (410). It should be noted that, at the time, police executives attributed the crisis to the dramatic surge in civil damages actions. Cf. Rappaport, "How Private Insurers Regulate Public Police." "It was popular at the time to blame the 'epidemic' of constitutional tort litigation fueled by proliferating plaintiffs' attorneys and civil liberties groups" (1556).

⁹² Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 94. In assembling the historical evidence for his argument, Epp reviewed and coded every issue of *Police Chief* from 1960 to 2000, identifying articles that mentioned civil liability or use of force.

⁹³ Epp, 95. Here Epp is citing: Robert F. Thomas Jr., "Insurance for Police Agencies," *Police Chief* (January 1979), 16.

⁹⁴ Epp, 21.

credibility with the public.⁹⁵ Lawsuits bring publicity; publicity throws into stark relief any gap between an agency’s policies and industry-wide best practices, as well as any misalignment between an agency’s policies and the collective expectations of the agency’s community.

In this time period, when offering advice to law enforcement executives, a flood of risk management articles tend to direct attention to a potential lawsuit’s risk to “departmental credibility.”⁹⁶ This advice is welcomed by reform-oriented bureaucrats who, in turn, ensure their agencies keep pace with the ever-advancing best practices, as well as adopt the written policies and managerial innovations of the legalized accountability framework. This dynamic and adaptive feedback mechanism between activists, academics, and practitioners has endured for 40 years as professional standards continue to evolve.⁹⁷ Several iterations of this mutually reinforcing dynamic preceded the Supreme Court’s *Garner* decision in 1985, allowing the majority opinion to cite the Police Foundation’s amicus curiae brief—which highlighted both the clear national trend toward more restrictive policies and the salutary effect of these policies in reducing controversial police shootings without compromising public safety.⁹⁸

The myths propping up the legal liability paradigm persist because perceptions of an “epidemic” of litigation really did lead—by way of synergistic interactions between litigators, reform-minded practitioners, and academic—to a landmark Supreme Court

⁹⁵ Epp, 22.

⁹⁶ Epp, 97–98.

⁹⁷ Additional momentum was created by litigators’ hard-won success in obtaining the Supreme Court’s imprimatur for a new “failure to train” standard. See: *City of Canton v. Harris*, 489 U.S. 378 (1989) (holding that inadequate police training may serve as the basis for Section 1983 liability if and only if the failure to train amounted to “deliberate indifference” to the civil rights of community members).

⁹⁸ *Tennessee v. Garner*, 471 U.S. 1 (1985), at 18: “The long-term movement [by states] has been away from the rule that deadly force may be used against any fleeing felon ... [and] this trend is more evident and impressive when viewed in light of the policies adopted by the police departments themselves. Overwhelmingly, these are more restrictive than the common law rule.”

decision that declared an unambiguous standard for deadly force.⁹⁹ The same interactions, over time, institutionalized the legalized accountability model that committed law enforcement agencies to align their policies, training, and compliance system with legal norms and emerging community expectations.¹⁰⁰ Now, nearly 40 years later, the legalized accountability model remains firmly entrenched, but the terrain of police legitimacy has changed dramatically. The reputation and legitimacy of law enforcement agencies are continually contested in the unprecedented landscape of open data projects with large-scale policing data, new statistical tests of discrimination, and burgeoning research on evidence-based, harm-efficient police tactics.¹⁰¹

B. OUTSOURCING RISK MANAGEMENT TO INSURANCE CARRIERS

The legal liability paradigm cashes out the risk of law enforcement activities in terms of the probability of financial liability. Looking at police activities through the lens of police liability insurance reveals that insurance companies, assuming the financial risk of police conduct, have a strong incentive to reduce the number of adverse events that result in monetary damages. This financial incentive leads insurers to encourage insured agencies to adopt policies and practices that reduce the risk of legal liability. In insurance parlance, these risk management initiatives are referred to as “loss prevention,” “loss control,” or “self-protection.”¹⁰² Examining the landscape of police misconduct from the perspective of an insurer concerned to reduce the incidence of civil rights damages actions, the limits of the liability paradigm come into focus. Not only does a fixation on financial liability

⁹⁹ Cf. Candace McCoy, “How Civil Rights Lawsuits Improve American Policing,” in *Holding Police Accountable* (Washington, D.C.: Urban Institute Press, 2010). McCoy, citing insurance company documents as well as James Fyfe’s extensive records of his time as an expert witness, argues that constitutional torts played an underrated role in the development and propagation of policies restricting police discretion in the use of deadly force.

¹⁰⁰ Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 25.

¹⁰¹ See, e.g.: Goel et al., “Combatting Police Discrimination in the Age of Big Data.” “The ‘second information revolution’ has yet to transform law enforcement as dramatically as home telephones and radio dispatch systems did, but that may be just a matter of time. Police departments have access to exponentially increasing amounts of information, and methods of processing and analyzing vast sets of data grow ever more sophisticated with dizzying speed. Big data is coming to policing” (182, citation omitted).

¹⁰² Isaac Ehrlich and Gary S. Becker, “Market Insurance, Self-Insurance, and Self-Protection,” *Journal of Political Economy* 80, no. 4 (1972): 623–48.

turn a blind eye to many of the harms imposed by constitutionally permissible policing activities, but this preoccupation also fails to adequately address several categories of unconstitutional police conduct.

Outsized—and highly publicized—jury awards and settlements in police misconduct lawsuits are once again drawing attention to the market for police liability insurance.¹⁰³ Increases in the size and frequency of legal settlements result in increased insurance premiums, higher deductibles, and threats by intergovernmental risk pools to terminate coverage.¹⁰⁴ As in 2010, which saw the disbanding of the Maywood (California) Police Department after it lost its liability coverage, small and middle-sized law enforcement agencies with an excessive claim history face the possibility of being locked out of the liability insurance market altogether.¹⁰⁵ Insurance carriers and risk pools use the threat of higher premiums and deductibles—and the ever-present possibility of coverage denial—to compel insured agencies to adopt policies, procedures, and training that reduce their exposure to legal liability.¹⁰⁶

Over the past decade, legal scholars have examined the role insurance companies play in inducing law enforcement agencies to adopt strategies to mitigate the risk of legal liability.¹⁰⁷ Of the estimated 14,700 general-purpose law enforcement agencies in the United States, the vast majority serve small and midsize municipalities that obtain

¹⁰³ Kimberly Kindy, “Insurers Force Change on Police Departments Long Resistant to It,” *Washington Post*, September 14, 2022, <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-insurance-settlements-reform/>.

¹⁰⁴ Kindy. “Departments with a long history of large civil rights settlements have seen their insurance rates shoot up by 200 to 400 percent over the past three years, according to insurance industry and police experts. Even departments with few problems are experiencing rate increases of 30 to 100 percent.”

¹⁰⁵ Ruben Vives, “Maywood to Disband Police Department,” *Los Angeles Times*, June 17, 2010, <https://www.latimes.com/local/la-xpm-2010-jun-17-la-me-maywood-pd-20100617-story.html>. After years of unsuccessfully attempting to impose reforms on Maywood PD, the California Joint Powers Insurance Authority announced the termination of Maywood’s liability coverage based on its risk profile.

¹⁰⁶ Rappaport, “How Private Insurers Regulate Public Police.” “Control over the availability and pricing of coverage gives the insurers the leverage to effect change within police agencies” (1587).

¹⁰⁷ See, e.g.: Rappaport. See also: Schwartz, “How Governments Pay.”

insurance policies to indemnify themselves against legal claims for police misconduct.¹⁰⁸ Municipalities either purchase police liability insurance in the commercial insurance market, participate in an intergovernmental risk pool, or self-insure.¹⁰⁹ The choice of how (and whether) to insure depends on the size of the municipality and varies from state to state.¹¹⁰

In an illuminating discussion of the incapacity of the insurance regulatory mechanism to properly address many of the risks associated with law enforcement activities, legal scholar John Rappaport deploys two criteria—the *expected money value* of a legal claim alleging misconduct and the *time elapsed* between the misconduct and the filing of a legal claim—to construct a typology of police wrongdoing.¹¹¹ The resulting four-quadrant matrix of Figure 2 categorizes police malfeasance as high-damages/short-tail, high-damages/long-tail, low-damages/short-tail, and low-damages/long-tail.¹¹² Rappaport uses this typology to argue that a focus on legal liability is only effective in mitigating the risk of a limited sphere of police misconduct (viz., high-damages/short-tail

¹⁰⁸ Rappaport, “How Private Insurers Regulate Public Police,” 1542. The DOJ’s Bureau of Justice Statistics conducts regular surveys of law enforcement agencies. The estimate of 14,700 “general-purpose” law enforcement agencies comes from its most recent Law Enforcement Management and Administrative Statistics (LEMAS) survey. This includes 11,800 local police departments, of which 46% employ “fewer than 10 full-time-equivalent sworn officers.” See: Sean E Goodison, *Local Police Departments Personnel, 2020* (Washington, D.C.: Department of Justice, Bureau of Justice Statistics, 2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/lpdp20.pdf>.

¹⁰⁹ Kenneth S. Abraham, “Police Liability Insurance After Repeal of Qualified Immunity, and Before,” *Tort Trial & Insurance Practice Law Journal* 56, no. 1 (2021): 33. For a detailed explanation of the inner workings of risk pools, see: Marcos Antonio Mendoza, “Reinsurance as Governance: Governmental Risk Management Pools as a Case Study in the Governance Role Played by Reinsurance Institutions,” *Connecticut Insurance Law Journal* 21, no. 1 (2014): 53–147. For an account of the risk pools’ origination in the liability insurance crisis of the 1980s, see: Abraham, “Making Sense of the Liability Insurance Crisis.”

¹¹⁰ Rappaport, “How Private Insurers Regulate Public Police.” “In many states, small municipalities—under, say, 100,000 residents—tend to join pools. Midsized entities are divided, with the majority—some estimate 70%—in pools and the rest insured by commercial carriers. The pooling figure is higher for cities than for counties. And the largest municipalities—the big cities and counties, certainly those with over 500,000 or 750,000 residents, and some well below that point—*self-insure*” (1559, emphasis in original, citations omitted).

¹¹¹ Rappaport, “An Insurance-Based Typology of Police Misconduct,” 370.

¹¹² “Short-tail” claims manifest immediately whereas for “long-tail” claims years may elapse before a claim is brought. See: Kenneth S. Abraham and Daniel Schwarcz, *Insurance Law and Regulation, Cases and Materials*, 7th ed. (St. Paul, MN: Foundation Press, 2020), 170.

misconduct, such as excessive force) and is wholly inadequate for other categories of constitutional violations.

	High-damages	Low-damages
Short-tail	Excessive force	Unlawful detention; Miranda violation
Long-tail	Wrongful conviction	Racial profiling

Figure 2. Insurance-based typology of police misconduct.¹¹³

Excessive force allegations make up the “archetype” of the high-damages/short-tail category: when an officer causes serious bodily injury or death as a result of unjustified force the harm is likely to result in a substantial payout (high-damages) and it is also “immediately apparent and actionable” (short-tail).¹¹⁴ Constitutional doctrine regulating police use of force holds that force may be used to further a legitimate law enforcement interest, so long as the force is “objectively reasonable” under the “totality of the circumstances.”¹¹⁵ Allegations of excessive force typically arise in federal lawsuits filed pursuant to Section 1983, which prohibits acts under the color of authority that deprive a person of “any rights, privileges, or immunities secured by the Constitution and laws.”¹¹⁶

¹¹³ Adapted from Rappaport, “An Insurance-Based Typology of Police Misconduct,” 373. There are, of course, other ways to construct a typology, including a more familiar risk-oriented matrix that tracks frequency/probability on one axis and cost/consequence on the other axis.

¹¹⁴ Rappaport, 371.

¹¹⁵ *Graham v. Connor*, 490 U.S. 386 (1989).

¹¹⁶ 42 U.S.C. § 1983. For a quantitative analysis of Fourth Amendment claims, see: Nancy Leong, “Making Rights,” *Boston University Law Review* 92, no. 2 (March 2012): 405–81. Leong notes that “98% of excessive force claims are litigated in the civil context” whereas 95% of “*Terry* claims”—of unlawful detention or unlawful cursory search—are litigated in the context of criminal procedure (in motions that invoke the exclusionary rule to suppress evidence) (425).

Furthermore, in the case of unlawful force, as described in the previous section, liability-based pressure is often validated and amplified by social media and viral videos.¹¹⁷ Insurers are thus financially incentivized to reduce the incidence of excessive force claims by employing various loss prevention initiatives. Common loss prevention techniques include furnishing insured agencies with model use of force and pursuit policies, subsidizing subscriptions to policy-writing companies (such as Lexipol), facilitating access to cutting-edge training (such as immersive use of force simulators), and pressing for the adoption of DOJ-sanctioned best practices.¹¹⁸

Wrongful convictions—which expose municipalities to immense liability but take, on average, over a decade to work through the court system—constitute a clear example of high-damages/long-tail claims.¹¹⁹ Unlike civil lawsuits alleging unlawful force, wrongful conviction claims may or may not allege police misconduct.¹²⁰ According to the Innocence Project, police-implicated factors that contribute to erroneous convictions include eyewitness misidentification, problematic application of forensic science, false confessions or admissions, and perjured informant testimony.¹²¹ Rappaport uses insurance theory to explain why “[t]he long-tail of most wrongful conviction claims—the delay between when the wrongful conduct occurred and when the claim was filed—makes the claims an

¹¹⁷ Justin R Ellis, “Social Media, Police Excessive Force and the Limits of Outrage: Evaluating Models of Police Scandal,” *Criminology & Criminal Justice* 23, no. 1 (February 1, 2023): 117–34, <https://doi.org/10.1177/17488958211017384>.

¹¹⁸ Rappaport, “How Private Insurers Regulate Public Police,” 1573–78.

¹¹⁹ See the database maintained by the National Registry of Exonerations (<https://www.law.umich.edu/special/exoneration/Pages/about.aspx>), covering all known exonerations since 1989. The average payout for a wrongful conviction is \$3.7 million. These payouts are so predictable that a *New York Times* article documented the recent development of a market for companies that offer “high interest cash advances while exonerated people await their claims.” See: Corey Kilgannon, “For the Exonerated, Quick Cash at Steep Rates,” *New York Times*, November 27, 2022, sec. A. For DNA exonerations, the average exoneree spent 14 years in prison. See: <https://innocenceproject.org/dna-exonerations-in-the-united-states/>.

¹²⁰ Some erroneous convictions can be attributed to prosecutorial misconduct or inadequate defense counsel, while others result from provincial deviations from well-known evidence-based national best practices. Wrongful convictions, with their complex concatenation of contributing causes, may be particularly amenable to root-cause analysis and to the forward-looking, error-based methodology advanced by proponents of sentinel event review. (See Chapter IV for further.)

¹²¹ See: <https://innocenceproject.org/dna-exonerations-in-the-united-states/>.

insurance nightmare.”¹²² First, the long-tail of these claims exposes insurance companies to the potential of increased correlation between different agencies’ risk: changes in the law or in inflation or in anti-police sentiment can have a correlated effect on the success rate and/or cost of future claims. Second, the average decade-long delay may lead insurance companies to “externalize to the future,” putting short-term profits ahead of remote future risks.¹²³ Third, the delay injects a large dose of uncertainty into the attempt to predict the frequency and volume of wrongful conviction claims. And fourth, low-probability/high-impact events are notoriously susceptible to being ignored by decisionmakers.¹²⁴ Although the first explanation affects only insurers and risk pools who attempt to reduce risks by aggregating them, the next three explanations apply no less to self-insured agencies.¹²⁵

In the low-damages/short-tail category are unlawful searches and detentions (the core topics of Fourth Amendment jurisprudence) and *Miranda*¹²⁶ violations. Although the harm of an unlawful detention is immediate, “the compensable damage that an individual suffers from a single unlawful traffic stop is often minimal, making it highly unlikely that potential plaintiffs will take advantage of their right to seek civil damages against police officers who violate their constitutional rights.”¹²⁷ This goes double for *Miranda* violations, which the Supreme Court has ruled are not, in and of themselves, violations of the Fifth Amendment (provided that the testimony is not introduced in a legal proceeding)

¹²² Rappaport, “An Insurance-Based Typology of Police Misconduct,” 385.

¹²³ Rappaport, 386. The fundamental issue here is the problem of coordinating action across long stretches of time, and it applies equally to the expected personnel turnover of decision-makers and risk managers in the public sector.

¹²⁴ Deborah Stone, *Policy Paradox: The Art of Political Decision Making*, 3rd ed. (New York, NY: W. W. Norton & Company, 2012), 135.

¹²⁵ While Rappaport makes a convincing case for how legal liability’s long tail complicates efforts to accurately gauge the risk of wrongful conviction, policymakers have not entirely ignored the evidence-based policies known to reduce this risk. For example, double-blind application of sequential photo lineups, which has been shown by multiple studies to reduce eyewitness misidentification, is now required by many states. See: Margaret Bull Kovera and Andrew J. Evelo, “Improving Eyewitness-Identification Evidence Through Double-Blind Lineup Administration,” *Current Directions in Psychological Science* 29, no. 6 (December 1, 2020): 563–68, <https://doi.org/10.1177/0963721420969366>.

¹²⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹²⁷ Stephen Rushin and Griffin Edwards, “An Empirical Assessment of Pretextual Stops and Racial Profiling,” *Stanford Law Review* 73, no. 3 (March 2021): 701.

and therefore are not compensable.¹²⁸ Even if the unconstitutional stop is accompanied by an unjustified search, there remains no real civil damages recourse. Any evidence obtained during the search may be successfully excluded during a suppression motion, but “the judicial system has never been particularly good at compensating the sort of psychological and emotional injuries” visited upon those whose rights to privacy and dignity are violated.¹²⁹ Furthermore, the courts provide no guidance on the type and amount of force that can be used to search a detainee for weapons. As legal scholar William J. Stuntz puts it, “we have a large and detailed body of law to tell police when they may open paper bags or the trunks of cars [but] the law speaks softly (or not at all) when it comes to the level of force that may be used in ... conducting a search.”¹³⁰ Thus, from a legal liability perspective, an unconstitutional detention and search (“stop and frisk”) that violates an individual’s privacy and dignity but causes no physical injury or property damage, is essentially invisible.

At first blush, the low-damages/long-tail category may appear a null set. Rappaport argues, however, that racial profiling claims belong in this category. The Constitution prohibits racial profiling. Yet in the *Whren* decision,¹³¹ a unanimous Supreme Court found that pretextual stops—i.e., traffic stops that use a minor vehicle code violation as a pretextual justification to investigate (constitutionally insufficient) suspicion of unrelated criminal activity—do not violate the Fourth Amendment, and that claims of racial profiling (or any other “selective enforcement”) must accordingly be made under the Fourteenth Amendment’s Equal Protection Clause. *Whren* thus rendered subjective discriminatory

¹²⁸ *Chavez v. Martinez*, 538 U.S. 760 (2003).

¹²⁹ Friedman and Ponomarenko, “Democratic Policing.” (p. 1874) This deficiency persists even though, in the famous Supreme Court case allowing eponymous *Terry* stops and cursory searches (“frisks”), Chief Justice Earl Warren emphasized that a frisk “is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment.” See: *Terry v. Ohio*, 392 U.S. 1, at 10.

¹³⁰ William J. Stuntz, “Privacy’s Problem and the Law of Criminal Procedure,” *Michigan Law Review* 93 (1995): 1077. See also: David Alan Sklansky, *A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice* (Cambridge, MA: Harvard University Press, 2021). “Ever since *Terry*, courts have largely read violence out of the stop and frisk. More precisely, they have read violence out of the *execution* of a stop and frisk” (104, emphasis in original).

¹³¹ *Whren v. United States*, 517 U.S. 806, at 813 (1996): “the Constitution prohibits selective enforcement of the law based on considerations such as race.”

intent irrelevant to Fourth Amendment jurisprudence. This effectively removes racial profiling claims from the short-tail category, because although a victim of racial profiling may immediately suspect race was the real reason for the stop, any justiciable Equal Protection claim will ultimately rest on a methodologically complex statistical analysis of a large amount of stop data. “This can make it impossible to prove that racial profiling is happening right when it first occurs—only situating the challenged conduct within the context of future (or future-disclosed) police activities will reveal its discriminatory nature.”¹³²

Rappaport’s typology offers a schematic explanation of why Section 1983 liability litigation is used to remedy some constitutional violations, but not others. It dovetails with the contention by some legal scholars that Section 1983 now provides no real remedy beyond high-dollar claims.¹³³ Other kinds of police activity, even when they do not rise to the level of misconduct, also find their place in this helpful schema. For example, vehicle pursuits can be categorized along with excessive force as short-tail/high-dollar-value incidents. The federal judiciary, following the Supreme Court, declines to provide bright-line guidance in the case of vehicle pursuits.¹³⁴ Nonetheless, insurance companies and

¹³² Rappaport, “An Insurance-Based Typology of Police Misconduct,” 400.

¹³³ Paul D. Reingold, “Requiem for Section 1983,” *Duke Journal of Constitutional Law & Public Policy* 3 (2008): 1–47. Reingold notes that the Civil Rights Attorney’s Fees Award Act of 1976 (codified at 42 U.S.C. § 1988(b)), which authorized a fee-shifting mechanism to encourage attorneys to take on even low-dollar meritorious civil rights claims, enjoyed ten years in the sun before effectively being dismantled by a Supreme Court decision (viz., *Evans v. Jeff D.* (475 U.S. 717 (1986))). “*Evans* pushed a small shockwave into the public-interest/plaintiffs’ bar” by allowing defendant municipalities in Section 1983 litigation to “condition settlement on the waiver of the plaintiffs’ attorney’s fees” (4). For a quantitative assessment of the impact of *Evans* on low-damage and no-damage claims, see: William H. Fedullo, “Classless and Uncivil: The Three-Decade Legacy of *Evans v. Jeff D.*,” *University of Pennsylvania Journal of Constitutional Law* 21 (2019): 1349–75.

¹³⁴ *Scott v. Harris*, 550 U.S. 372 (2007), ruling that the deputy’s use of a Pursuit Intervention Technique was reasonable to bring to an end “a Hollywood-style car chase of the most frightening sort, placing police officers and bystanders alike at great risk of serious injury.” See also: *Plumhoff v. Rickard*, 572 U.S. 765 (2014), finding that the officers’ use of lethal force was reasonable because the suspect’s “outrageously reckless driving posed a grave public safety risk.” In *Plumhoff*, the initial vehicle code offense was a broken headlamp. In *Scott*, it was speeding (73mph in a 55mph zone). As Justice Scalia wrote in the *Scott* decision, “we are loath to lay down a rule requiring police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people’s lives in danger.... The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness” (emphasis in original). For a detailed criticism of the deficiencies of the Supreme Court’s risk analyses, see: Jonathan Remy Nash, “The Supreme Court and the Regulation of Risk in Criminal Law Enforcement,” *Boston University Law Review* 92 (January 2012): 171–225.

intergovernmental risk pools, having assumed the financial risk for police pursuits that cause serious bodily injury or death, are interested in regulating insured agencies' vehicle pursuit policies.¹³⁵

C. LEXIPOL VS. USE-OF-FORCE REFORM

The legal liability paradigm catalyzed the explosive growth of a private limited liability corporation—Lexipol LLC—that advertises itself as “America’s leading provider of state-specific policy management resources for law enforcement organizations.”¹³⁶ Since its creation in 2003, Lexipol expanded rapidly and now counts thousands of law enforcement agencies as subscribers to its continuously updated policy library.¹³⁷ Legal scholars Ingrid V. Eagly and Joanna C. Schwartz, who closely follow this expansion, write that “[t]he key to Lexipol’s commercial success appears to be its claims to reduce legal liability in a cost-effective manner.”¹³⁸ A Lexipol subscription is deployed as a key loss prevention technique by insurance carriers and intergovernmental risk pools, to the point of covering or subsidizing its cost.¹³⁹ One of the co-founders of Lexipol once explained that the company owes its initial success to the solicitude of the police liability insurance industry.¹⁴⁰

¹³⁵ See, e.g., the stories of regulation-by-insurer in Kindy, “Insurers Force Change on Police Departments Long Resistant to It.” This article relays the story of the St. Ann (Missouri) Police Department and its strained relationship with the St. Louis Area Insurance Trust risk pool. Under pressure from the risk pool, the St. Ann Police Department was forced to abandon its motto—“St. Ann will chase you until the wheels come off”—and restrict officer discretion with respect to vehicle pursuits.

¹³⁶ Eagly and Schwartz, “Lexipol,” 893. This passage references Lexipol’s website, archived at: <https://perma.cc/TMH9-ZTZX>.

¹³⁷ The Riverside Company, a private equity firm, purchased Lexipol in 2014, and embarked on an acquisition spree (adding Praetorian Digital in 2019, Cordico in 2020, and The Rodgers Group in 2021) before selling Lexipol to another private equity firm, GTCR, in 2021. See: <https://www.riversidecompany.com/currents/riverside-signs-definitive-agreement-to-sell-lexipol/>.

¹³⁸ Eagly and Schwartz, “Lexipol,” 895. The authors quote from Lexipol’s marketing material: “Law Enforcement agencies by their nature are a high frequency target for litigation. It is the most compelling reason why our customers choose our services” (917).

¹³⁹ Rappaport, “How Private Insurers Regulate Public Police,” 1575.

¹⁴⁰ Rappaport, 1576.

Lexipol’s promotional materials tout its state-specific, off-the-shelf policies as capable of reducing the incidence of lawsuits and lowering the cost of legal settlements.¹⁴¹ To limit liability for police use of force, Lexipol crafted a national policy called “Lexipol 300: Use of Force,” which adhered strictly to the constitutional standard of “objective reasonableness” as adumbrated in *Graham v. Connor* (1989).¹⁴² The *Graham* standard, which is against unnecessary aggression during police interactions, is criticized for providing necessary but insufficient guidance: “The U.S. Supreme Court’s landmark 1989 decision in *Graham* outlines broad principles regarding what police officers *can legally do* in possible use of force situations, but it does not provide specific guidance on what officers *should do*.”¹⁴³ Yet Lexipol’s “unwavering focus” on managing the risk of legal liability led the private company for years to resist calls for more restrictive use of force policies that move beyond the baseline standard of the Supreme Court’s Fourth Amendment jurisprudence.¹⁴⁴

Lexipol’s considered position was that going beyond *Graham*’s bare requirements would result in increased exposure to legal liability. In 2018, in response to more restrictive model use of force policies proposed by law enforcement practitioner groups, such as the Police Executive Research Forum (PERF), Lexipol went so far as to publish a white paper, “Use of Force Policy: Dispelling the Myths,” arguing that any policy that “boxes officers in is likely to create—not solve—legal issues for the agency.”¹⁴⁵ Lexipol’s liability risk management approach thus favors policy language that maximizes officer discretion in

¹⁴¹ However, it should be noted that Lexipol has cited “no dataset, study, or other evidence” to back up its promotional materials. Eagly and Schwartz, “Lexipol,” 919.

¹⁴² *Graham v. Connor*, 490 U.S. 386 (1989).

¹⁴³ Police Executive Research Forum (PERF), *Guiding Principles on Use of Force* (Washington, DC: PERF, 2016), 16 (emphasis in original), <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>. For a critical assessment of PERF’s guiding principles, see: Tracy A. Avelar, “Race to Force the Issue: A Use-of-Force Doctrine in Policing” (master’s thesis, Naval Postgraduate School, 2017), <https://www.hsdl.org/?abstract&did=800862>.

¹⁴⁴ Eagly and Schwartz, “Lexipol,” 924.

¹⁴⁵ Cited by: Eagly and Schwartz, “Lexipol’s Fight Against Police Reform,” 34–35. Lexipol has since removed this white paper from its website, but it is archived at: <https://perma.cc/S7FG-BNVQ>.

order to minimize liability exposure.¹⁴⁶ Lexipol's resistance to more restrictive use of force policies echoes the concerns of an earlier generation of police administrators who relied on a similar logic to avoid cabining officer discretion with respect to deadly force.¹⁴⁷

Lexipol, which counts 95 percent of California law enforcement agencies as clients and holds itself out in its promotional material as a neutral translator of best practices into policy, actively opposed California's AB 392, "The Act to Save Lives," which went into effect on January 1, 2020. AB 392 made a modest change to state law, authorizing deadly force only when "necessary."¹⁴⁸ One of Lexipol's co-founders attacked the bill as soon as it was introduced, telling the *Los Angeles Times*, "It's going to take years and cost millions to define what is negligent tactics... In the meantime, who becomes the guinea pig? Which officers get sacrificed to test the new law?"¹⁴⁹ Lexipol's opposition to the bill centered on the clear legislative intent to move beyond *Graham* and establish an additional restriction on officer discretion to use deadly force. As with its rejection of the model policies proposed by IACP and PERF, Lexipol seemed most focused on how the new law could potentially increase liability exposure by constraining officer discretion. By elevating legal liability above other concerns, such an approach loses sight of other values (e.g., police

¹⁴⁶ For example, Lexipol's website contains several explanations of its preference for "should" rather than "shall" to shield officers from mandatory language. Cf. Bruce Praet, *National Consensus Policy on Use of Force Should Not Trigger Changes to Agency Policies* (Irvine, CA: Lexipol, 2017), <https://perma.cc/UR2T-DUH2>. In this white paper, Praet cautions against "the unnecessary use of 'shall.'" Praet is one of the co-founders of Lexipol. This white paper has also since been removed from Lexipol's website, but the site still contains references to Lexipol's preference for "should" over "shall." For a brief history of Praet's career (as a police officer and as an attorney defending municipalities), and an account of Lexipol as a "barrier to reform" and a "bulwark for the status quo," see: Rowan Moore Gerety, "Who Writes the Rules for Cops?," *Esquire*, February 2, 2022, <https://www.esquire.com/news-politics/a38941594/lexipol-bruce-praet-police-policy-guidelines-handbooks/>.

¹⁴⁷ Compare, e.g.: Milton et al., *Police Use of Deadly Force*. "Frequently, police administrators want their officers to exercise restraint, but are reluctant to commit that desire to paper, for fear that a narrow department firearms policy will merely invite more civil suits and judgments in the wake of police shootings. The administrators believe that courts will, in effect, hold departments accountable to their own strict policies despite more lenient or ambiguous state laws" (45).

¹⁴⁸ California Penal Code § 835a(a)(2): "As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer."

¹⁴⁹ Anita Chabria, "Why California's Proposed Law on Deadly Police Force Isn't as Tough as It Seems," *Los Angeles Times*, April 4, 2019, ProQuest.

legitimacy, community trust) that legislators and policymakers have good reason to promote.

D. THE INHERENT LIMITATIONS OF JUDICIAL REMEDIES

A leitmotif running through the last two sections is the propensity of many law enforcement agencies to *outsource* their management of risk, either to insurance companies or to a private policymaking corporation (or both).¹⁵⁰ This section touches briefly on the notion that the legal liability paradigm rests fundamentally on law enforcement agencies' willingness to defer to the judiciary certain core decisions about the proper limits on police discretion. As seen, the focus on legal liability is closely tied (via Section 1983) to a concern with constitutional violations. As seen in Figure 3, police executives increasingly tout the importance of "constitutional policing," but the federal judiciary is reluctant to establish clear constitutional guidelines regarding numerous aspects of policing. As legal scholars continue to point out, there are inherent limitations of constitutional judicial review as a forum for police policymaking.¹⁵¹ This is partly because, as the Supreme Court itself explains, its opinions eschew "rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach."¹⁵²

¹⁵⁰ Similarly, for larger, self-insured municipalities, there is a tendency to sequester risk management in the municipal counsel's office. See: Archbold, "Managing the Bottom Line." See also: Carol A. Archbold, *Police Accountability, Risk Management, and Legal Advising* (New York, NY: LFB Scholarly Publishing LLC, 2004).

¹⁵¹ Friedman and Ponomarenko, "Democratic Policing," 1865. The authors argue that "constitutional judicial review is completely inadequate" to the task of regulating police misconduct.

¹⁵² *Florida v. Harris*, 133 S. Ct. 1050, 1055–1056 (2013).

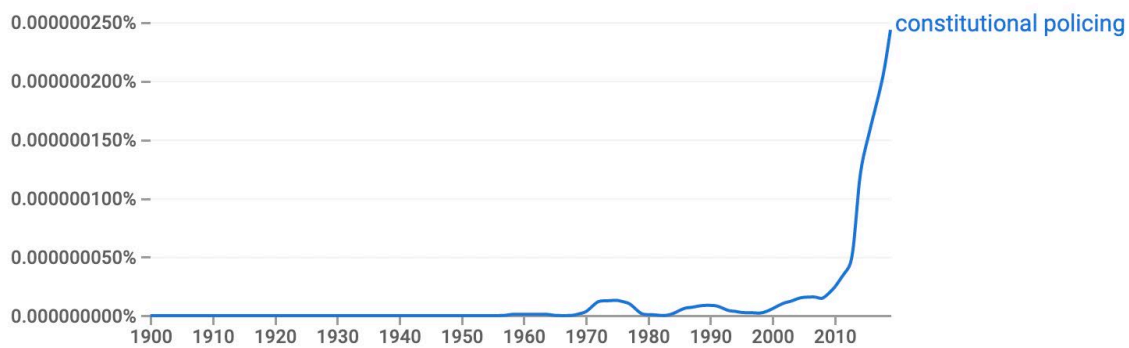


Figure 3. Google Books NGram Viewer¹⁵³

With the notable exception of restrictions on deadly force, federal courts generally deferred to law enforcement agencies to set their own standards. As legal scholar David Sklansky puts it: “We do not have [court-delineated] rules for police uses of nondeadly force; instead, we mostly have highly deferential, after-the-fact, case-by-case review, allowing a finding of liability only if prior decisions in cases with similar facts made it crystal clear that the force used was unconstitutional.”¹⁵⁴ As a result, law enforcement agencies whose risk management efforts focus on reducing liability exposure lack incentive to curtail many constitutionally questionable police activities, let alone motivation to manage the risk of harmful yet constitutionally permissible activities. In a sense, such agencies are abdicating their professional duty to continually assess the extent to which they are responsibly exercising the state’s monopoly on the legitimate use of coercive force.¹⁵⁵

E. CONCLUSION

In the origin story of the legal liability paradigm, a mutually reinforcing dynamic between the threat of liability and developing best practices (what Epp calls “emerging

¹⁵³ Source: “Google Books NGram Viewer,” Google, accessed October 22, 2022, https://books.google.com/ngrams/graph?content=constitutional+policing&year_start=1800&year_end=2019&corpus=en-2019&smoothing=3.

¹⁵⁴ Sklansky, *A Pattern of Violence: How the Law Classifies Crimes and What It Means for Justice*, 106.

¹⁵⁵ Max Weber, *Charisma and Disenchantment: The Vocation Lectures* (New York, NY: New York Review Books, 2019), 46.

professional standards”) achieved remarkable results: the institutionalization of the legalized accountability model, as well as a definitive Supreme Court case that announced a clear standard for deadly force. Parts of this dynamic continue today in the interplay between activists seeking reform, innovative administrators seeking promising practices, and academics seeking research opportunities. An important insight that emerges from an analysis of this interactive, iterative process is that fear of liability per se (the “amorphous legally framed risk” of deviation from shared norms/practices) is far more productive than fear of financial penalties.¹⁵⁶ The former fear manifests as anxiety about the agency’s reputation and legitimacy in the face of “collective social judgment”—the ever-evolving norms and expectations of the community.¹⁵⁷ Therefore, what is salvageable from the legal liability paradigm is the aspiration by practitioners to keep pace with evolving professional standards—the spur of “promising practices” found at the interface between academia and the law enforcement profession.

The salutary influence of the legalized accountability model is seen in the risk management strategies covered in Chapter III. Fearing the financial and reputational consequences of unconstitutional misconduct, many law enforcement agencies have adopted early intervention systems and incident review boards. Chapter III uses case studies to show how these strategies are refined and institutionalized by two agencies, with the assistance of iterative feedback from federal overseers.

Chapter IV considers case studies that illustrate the possibilities that emerge when law enforcement agencies leave behind the prevailing paradigm, which sees the scope of risk management as coterminous with the constitutional limits on policing. Chapter IV also examines the argument that limiting liability becomes the “enemy” of prevention, and that treating adverse events (i.e., wrongful convictions, police shootings, and even crowd control events) as “tragic organizational accidents” can more effectively reduce their incidence.¹⁵⁸

¹⁵⁶ Epp, *Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State*, 228.

¹⁵⁷ Milton et al., *Police Use of Deadly Force*, 43.

¹⁵⁸ Barbara Armacost, “Police Shootings: Is Accountability the Enemy of Prevention?,” *Ohio State University Law Review* 80 (2019): 910.

III. ESTABLISHED RISK MANAGEMENT STRATEGIES

To critically assess the developing best practices that law enforcement agencies might use as part of a risk management framework, this chapter introduces two core strategies to identify, prioritize, monitor, and mitigate operational risks across a wide array of police activities. These strategies—early intervention systems and incident review boards—have long figured in police reform agreements brokered by the Department of Justice. Just as best practices result from continuous exchange between researchers and practitioners, and are therefore always under development, so the iterative process of monitored police reform has “stress tested” these strategies and prompted innovative improvements to enhance their role in risk management.

This chapter evaluates how these strategies have been institutionalized under the critical review of an external monitoring team. The assessment considers the experience of two law enforcement agencies: the Oakland Police Department (OPD) and the Seattle Police Department (SPD). Since 2003, OPD has been under a Negotiated Settlement Agreement overseen by a federal judge. Likewise, the SPD has been under a Settlement Agreement and Memorandum of Understanding with the Department of Justice (also overseen by a federal judge) since 2012. Both cities have a long history of community organizations mobilizing and engaging in activism to promote police reform.¹⁵⁹ Both cities also have a long history of local civilian oversight of their police departments that predates federal court intervention.¹⁶⁰ In preparation for the anticipated end of federal court oversight, both Oakland and Seattle updated their civilian oversight systems. In 2016, Oakland voters approved and, in 2020, strengthened the most powerful police commission

¹⁵⁹ Sandra Bass, “Negotiating Change: Community Organizations and the Politics of Policing,” *Urban Affairs Review* 36, no. 2 (November 1, 2000): 148–77, <https://doi.org/10.1177/10780870022184813>.

¹⁶⁰ Civilian police oversight in Oakland dates from 1981, when Oakland’s first black mayor, Lionel Wilson, pushed for the creation of a civilian complaint board. In 1996, the board gained additional power and was renamed the Citizens Police Review Board. Seattle’s experience with civilian police oversight began in 1992 with the establishment of a civilian police auditor. In 2002, the Seattle City Council added the Office of Professional Accountability. In 2012, the Consent Decree mandated the creation of the Community Police Commission (CPC); the Seattle City Council accomplished this by ordinance later that year with City of Seattle Ordinance 124021.

in the United States.¹⁶¹ In 2017, the Seattle City Council passed a police accountability ordinance, which created an Office of Inspector General for Public Safety and made the Community Police Commission permanent.¹⁶² The enhanced civilian oversight ensured that agency-wide risk assessments were both transparent and attentive to community concerns.

In recounting these agencies' travails as they struggle to achieve a set of reforms, certain common themes emerge. The reform efforts catalyzed innovation: Pushed by external monitoring teams to adopt effective practices and design systems that survive scrutiny, both agencies became early adopters of novel technologies and promising practices. The agencies, however, also discover inherent difficulties in improving systems to collect and analyze data about police activities. Ultimately, the agencies discover that process refinements are not imagined a priori, but require real world feedback and sensitivity to local conditions and history. Along the way, both agencies repeatedly demonstrate a willingness to move beyond the four corners of their reform agreements to expand and institutionalize their risk management efforts.

A. BACKGROUND

1. Early intervention systems

An Early Intervention (EI) system is a risk management tool used by law enforcement agencies to identify and address officers most likely to engage in future problematic or "at-risk" behavior. The typical EI system consists of four components: officer performance metrics (or indicators), selection criteria to identify high-risk officers, intervention (e.g., counseling or training), and post-intervention supervisory monitoring of the officers' performance. EI systems are a "consistent feature" of the Department of

¹⁶¹ See: Oakland City Council Resolution 86333 (for the 2016 ballot measure, Measure LL). Text is at: <https://cao-94612.s3.amazonaws.com/documents/oak062931.pdf>. See: Oakland City Council Resolution 88237 (for the 2020 ballot measure, Measure S1). Text is at: <https://cao-94612.s3.amazonaws.com/documents/Police-Commission-ballot-measure.pdf>. The Oakland Police Commission has the power to fire the police chief. In February 2020, in conjunction with the Mayor, the Commission exercised that power for the first time.

¹⁶² City of Seattle Ordinance 125315. Text is at: <https://www.seattle.gov/a/83748>.

Justice’s police reform agreements since the inception of pattern-or-practice litigation.¹⁶³ And, as one legal scholar presciently observed, these reform agreements have stimulated “the articulation and dissemination of national standards governing core police managerial responsibilities.”¹⁶⁴

The implementation of an EI system has been touted by the Department of Justice as a managerial best practice for many years.¹⁶⁵ There is limited empirical evidence, however, for their effectiveness in identifying and mitigating at-risk behavior.¹⁶⁶ Furthermore, law enforcement agencies are discovering that creating and maintaining a suitable database, as well as incorporating the use of the database into an overarching performance management system, pose considerable challenges.

The case studies presented in this chapter will detail the efforts of two agencies to meet these challenges with technical assistance and iterative feedback from their respective independent monitoring teams. The experiences of OPD and SPD followed a similar path: from an initial focus on crude performance metrics (e.g., internal affairs complaints, use of force incidents, and vehicle pursuits) to the collection and analysis of a wider array of data (e.g., granular details about search decisions and contacts with individuals in crisis). Along the way, both agencies took to training, and relying on, their first-line supervisors as risk managers. More fundamentally, both agencies gradually ceased to see an EI system as a standalone strategy and endeavored to integrate it with other risk management strategies.

¹⁶³ Department of Justice, *The Civil Rights Division’s Pattern*. The very first pattern-or-practice case required the Pittsburgh Police Department (PPD) to implement an “automated early warning system,” but the PPD Consent Decree contained only a brief outline of what such a warning system might include. See: *United States v. City of Pittsburgh* (2:97-cv-00354, W.D. Pa.), Consent Decree, Feb. 26, 1997, Section 12.a. Available at PACER and at: <https://clearinghouse.net/doc/5314/>.

¹⁶⁴ Debra Livingston, “Police Reform and The Department of Justice: An Essay on Accountability,” *Buffalo Criminal Law Review* 2, no. 2 (January 1, 1999): 817–59, <https://doi.org/10.1525/nclr.1999.2.2.817>.

¹⁶⁵ Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field*.

¹⁶⁶ See I.C.1 (Literature Review), above.

2. Incident review boards

Law enforcement agencies use internal review boards to submit uses of force, vehicle pursuits, and other significant incidents to critical review and assessment. Since 1972, when the New York Police Department implemented its Firearms Discharge Review Board, incident review boards are now a standard feature of law enforcement agencies' accountability architecture.¹⁶⁷ Board membership typically comprises the agency's command staff and sworn subject matter experts; however, some agencies include civilians on their boards.¹⁶⁸ The boards serve as a key forum for the discussions that are constitutive of two essential risk management tasks: first, to evaluate incidents for compliance with policy and procedure; and second, to assess how policy and procedure fared when officers were confronted with novel and possibly unanticipated real world circumstances. Thus, boards may generate referrals of possible misconduct, as well as recommend revisions to policy, procedure, and/or training.

The case studies presented below will explore how OPD and SPD modified their board policies and agendas in response to the iterative feedback of their respective monitoring teams. The boards, over time, came to function as venues for the formal discussion and dissemination of lessons learned—not just during critical incidents, but also during the more mundane incidents that constitute the majority of their deliberations. The boards thus formalize and institutionalize the informal practice of after action reviews which constitute an essential feature of learning organizations. As part of this formalization, the boards adopt a more synoptic scope—scrutinizing the antecedent tactics and decision making that contributed to the incident in question for ways to mitigate risk in future incidents—and develop formal systems to track the boards' recommendations and follow-up actions.

¹⁶⁷ Fyfe, "Administrative Interventions on Police Shooting Discretion." Fyfe analyzed NYPD's officer-involved shootings from 1971 to 1975 and found a 30% decrease that he attributed to the change in policy and enhanced review. He also found that "this reduction was greatest among the most controversial shooting incidents: shootings to prevent or terminate crimes, which frequently involve police shots at fleeing felons" (322).

¹⁶⁸ Breckenridge, "Civilians on Police Use-Of-Force Review Boards."

B. CASE STUDIES

1. Seattle Police Department

a. *The Consent Decree*

In December 2010, the American Civil Liberties Union (ACLU) of the State of Washington, along with thirty-four other community organizations, wrote a letter to the Special Litigation Section of the Civil Rights Division of the Department of Justice, citing multiple highly publicized incidents of alleged excessive force by SPD officers, and requesting an investigation into an apparent pattern of police misconduct.¹⁶⁹ In March 2011, the Department of Justice’s Civil Rights Division, in partnership with the United States Attorney’s Office for the Western District of Washington, initiated a formal investigation of SPD, focusing on “whether SPD engaged in a pattern-or-practice of unconstitutional policing through (1) the use of excessive force; or (2) discriminatory policing.”¹⁷⁰

The eight-month investigation, which included a review of all use of force reports for the preceding two-year period, found that SPD officers had engaged in a pattern or practice of civil rights violations in the form of excessive and unnecessary force.¹⁷¹

¹⁶⁹ American Civil Liberties Union of Washington, “Request to Investigate Pattern or Practice of Misconduct by Seattle Police Department,” December 3, 2010, https://www.seattle.gov/Documents/Departments/Council/Members/Harrell/DOJ/2012-01aclu_ltr120310.pdf.

¹⁷⁰ Department of Justice, *Investigation of the Seattle Police Department* (Washington, DC: Department of Justice, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf. In an unusual twist, the U.S. Attorney, Jenny Durkan, later served as Mayor of Seattle from 2017 to 2021.

¹⁷¹ Department of Justice, *Investigation of the Seattle Police Department*, 4. In 1994, Congress granted the Department of Justice (DOJ) the authority to seek injunctive relief against local police agencies with a pattern or practice of constitutional violations. Pattern-and-practice cases are commonly known as “Section 14141 cases” after the original location of the authority section (42 U.S.C. § 14141). Section 14141 is a two-sentence statute:

§ 14141. Cause of action [re-codified at 34 U.S.C. § 12601]

(a) Unlawful conduct

It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that

Stopping short of finding a pattern or practice of discriminatory policing, the DOJ also noted “serious concerns” about the disparate impact of SPD’s policing practices.¹⁷² The DOJ’s investigation found “systemic deficiencies” in SPD’s existing EI system.¹⁷³ Describing the system as “broken,” the DOJ recommended numerous changes to the performance indicators and threshold levels, including adjusting the threshold levels to “identify at least 3–5% of the line officer population” as candidates for targeted supervisory intervention.¹⁷⁴ The investigation also found that SPD’s use of force review process, in which supervisors forwarded their reports of investigation through their chain of command, amounted to a “mere formality, almost a rubber stamp” of the supervisors’ assessments.¹⁷⁵

Pursuant to Section 14141, the DOJ threatened litigation if the City of Seattle failed to come to terms on “a written, court-enforceable agreement that sets forth remedial measures to be taken within a fixed period of time.”¹⁷⁶ After months of negotiations, the DOJ and the City of Seattle reached an agreement—commonly known as the Consent Decree—that codified a set of structural reforms designed to remedy the problems

deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Civil action by Attorney General

Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

¹⁷² Department of Justice, *Investigation of the Seattle Police Department*, 6.

¹⁷³ Department of Justice, *Investigation of the Seattle Police Department*, 22.

¹⁷⁴ Department of Justice, *Investigation of the Seattle Police Department*, 22.

¹⁷⁵ Department of Justice, *Investigation of the Seattle Police Department*, 19. As evidence of this “inadequate secondary review,” the DOJ cited the fact that “of the approximately 1,230 use of force reports reviewed ... only *five* use of force packets were referred at any level for further review, which translates to approximately 0.4% of the packets” (21-22).

¹⁷⁶ Department of Justice, *Investigation of the Seattle Police Department*, 40.

identified during DOJ’s investigation.¹⁷⁷ The reforms included, *inter alia*, the creation of a Community Police Commission, significant revisions to SPD’s force policies (including use of force, force-reporting, and weapons-specific policies), revisions to SPD’s detention and arrest policy, enhanced Crisis Intervention Training (CIT), and bias-free policing training.¹⁷⁸

b. SPD’s EIS Evolution

As part of this set of reforms, the Consent Decree directs that SPD’s EI system should “continue to be used for risk management purposes and not for disciplinary purposes.”¹⁷⁹ While the Consent Decree mentions SPD’s existing EI system only glancingly (covering it in only seven paragraphs as compared to the sixty-one paragraphs discussing use of force), this is partially due to the fact that, in the time period between the findings letter and the final Consent Decree, SPD had already revised its existing system in response to the DOJ’s initial recommendations.¹⁸⁰ Nevertheless, the Seattle Police Monitor (SPM), upon appointment by the federal court, assessed the condition of the updated EI system, documented numerous deficiencies, and recommended wholesale changes.¹⁸¹ These changes included the collection of additional performance data, which required the creation of new technology systems to capture this data.

Seattle’s Information Technology Department (ITD) initially claimed it had the in-house capacity to collect and analyze the necessary data. It was soon apparent, however,

¹⁷⁷ United States v. City of Seattle (2:12-cv-01282, W.D. Wash.), Settlement Agreement, July 27, 2012. (Hereinafter, “Consent Decree.”) Available at: https://www.seattle.gov/documents/Departments/Police/Compliance/Consent_Decree.pdf. All of the associated Seattle Police Monitor reports are available at Public Access to Court Electronic Records (PACER), which houses electronic federal court records: <https://pacer.uscourts.gov/>. When available, an additional link to the reports is provided, either to the Civil Rights Litigation Clearinghouse or to the City of Seattle website.

¹⁷⁸ Consent Decree.

¹⁷⁹ Consent Decree, 49.

¹⁸⁰ The Consent Decree covers the EI system in paragraphs 157–163 and use of force in paragraphs 69–129.

¹⁸¹ Seattle Police Monitor, *First Semiannual Report*, 2013, <https://clearinghouse.net/doc/74892/>. “The ability to manage the risk of misconduct from the first line supervisor to the Chief of Police depends as a practical matter on the breadth, depth, and flexibility of integrated relationship databases which permit detailed inquiries and analysis of such risks” (17). The monitor gave SPD until mid-2014 to have the automated system up and running (18).

that ITD was not up to the task.¹⁸² Ultimately, the SPM insisted that SPD turn to outside vendors to develop a “Business Intelligence System” that would allow data “to be retained, sorted, and mined for research, insight, and a more comprehensive picture of officer performance, department-wide practices, and both systemic and officer-specific trends.”¹⁸³ Despite utilizing stopgap solutions, which included the purchase of an off-the-shelf software product employed by many other agencies, it was not until the end of 2014 that SPD successfully managed to collect all of the performance data comprising the “indicator criteria” tracked by its refurbished EIS.¹⁸⁴

As these preliminary data problems were resolved, SPD consulted with academic researchers and set about embedding the database in a more encompassing accountability business process. This larger process eventually included the addition of an EI Coordinator to review all supervisory assessments of officer performance, and the creation of a Performance Review Committee tasked with meeting monthly to assess whether supervisors and the chain of command are held accountable for managing their at-risk employees.¹⁸⁵ Once supervisors had access to reliable performance data, and additional layers of review were in place, the SPM conducted an extensive review of SPD’s “dramatically overhauled” EIS. The SPM’s review focused particular attention on early intervention assessments (EIAs) and the EIA reports completed by supervisors whenever one of their officers is flagged by the system for having reached a performance indicator

¹⁸² Seattle Police Monitor, *Second Semiannual Report*, 2013, <https://clearinghouse.net/doc/74896/>. “The SPD simply does not have the data required to implement the Consent Decree, [nor] to manage the risk of unconstitutional conduct” (1). The SPM also noted, “The lack of timely, trustworthy data is a substantial impediment to progress, efficient management, and effective policing” (7).

¹⁸³ Seattle Police Monitor, *Second Semiannual Report*, 2013, 7.

¹⁸⁴ Seattle Police Monitor, *Memorandum Submitting Revised Early Intervention Policy*, 2015, <https://clearinghouse.net/doc/81078/>.

¹⁸⁵ Seattle Police Monitor, *Third Semiannual Report*, 2014. These additional layers of review were in alignment with the SPM’s observation that one of the primary goals of a properly functioning EI system is “to improve the performance of supervisors by providing them with reliable performance data and requiring them to proactively develop their officers” (76). See also: Seattle Police Monitor, *Eighth Systemic Assessment: Early Intervention System (EIS)*, at 6: “the Committee is to ... assess whether Lieutenants and Captains are adequately holding their Sergeants accountable for supervision of officers under their command; and whether executives are holding Captains responsible for managing the risk of police misconduct in their units.”

criteria threshold.¹⁸⁶ The SPM noted that EIA reports showed an unfortunate propensity to examine only “surface level indicators of success,” such as whether an incident is in compliance with policy, and failed to delve into below-the-surface issues such as tactics and decision making.¹⁸⁷ The SPM had previously expressed concern that such superficial, check-the-box assessments may indicate a view of EIS “as an obligatory or onerous bureaucratic process.”¹⁸⁸ The supervisors may have been reacting to the imprecision of the refurbished EIS, which had a high false-positive rate and penalized highly productive officers.¹⁸⁹ However, supervisors also lacked ready access to the data that would inform “comparisons to similarly situated officers.”¹⁹⁰ EIA reports also tended to omit any discussion of the officer’s “general welfare” and “overall well-being.”¹⁹¹ Attributing these omissions to a paucity of reliable information about officers’ relative exposure to stressors, SPD staff looked to remedy this by building a robust data platform.

With technical assistance from the monitoring team, and in partnership with researchers at the Washington State University and the University of Chicago Crime Lab, SPD ultimately developed its internal capacity and methodically built a research team at the forefront of big data analytics, machine learning, and data transparency.¹⁹² Working with a vendor, the SPD research team created a data analytics platform (DAP) that combines different datasets and deploys algorithms to produce actionable insights. Among

¹⁸⁶ Seattle Police Monitor, *Eighth Systematic Assessment: Early Intervention System (EIS)*, 2017, 11. An example of a key performance indicator threshold: “Reaching the top 5% of officers who have used force investigated at Type II or Type III within 6 months” (6).

¹⁸⁷ Seattle Police Monitor, 14.

¹⁸⁸ Seattle Police Monitor, *Fifth Semiannual Report*, 2015, 8.

¹⁸⁹ Seattle Police Department, *City of Seattle’s August 2022 Quarterly Accountability Update*, 2022, 5.

¹⁹⁰ Seattle Police Monitor, *Eighth Systematic Assessment: Early Intervention System (EIS)*, 14.

¹⁹¹ Seattle Police Monitor, 17.

¹⁹² Rebecca Boatright, Christopher Fisher, and Loren Atherley, “Lessons Learned from a Decade of Reform and a Season of Protest: An Enterprise Risk Management Approach to Officer Wellness & Early Intervention,” *Criminology, Criminal Justice, Law & Society* 22, no. 2 (August 1, 2021): 50–59. In 2017, SPD’s Performance Analytics & Research Section “began experimenting with open-source predictive processes developed in Python and R. These processes sit atop descriptive data in the DAP to produce insights (abstractions) consumable as data elements for further statistical processing (e.g., quality scores generated from Natural Language Processing of police reports)” (56-57).

other innovations, the DAP permits modulations in the unit of analysis, enabling SPD's EIS to analyze data at a squad level (to assess a supervisor) and at a platoon level (to assess a section commander). The DAP dashboards were designed to synthesize data into visualizations that afford real-time snapshots of officer activity.¹⁹³

Meanwhile, Washington State University's assessment of SPD's EIS found that the system was not properly differentiating problematic behavior from non-problem behavior, and thus that the thresholds used to flag at-risk officers were not functioning effectively.¹⁹⁴ Therefore, SPD began looking to state of the art research on the use of machine learning algorithms to design a new EIS. In 2020, in collaboration with academic researchers and an outside vendor, SPD's research team developed a prototype EIS based on machine learning.¹⁹⁵ The research team tested the predictive performance of statistical machine learning models trained to identify officers most at-risk of a particular kind of adverse event (viz., a future sustained complaint).¹⁹⁶ The models generated data-driven predicted risk scores, which had a high rate of precision relative to a system that randomly selects officers for intervention. And compared to SPD's existing EIS, the prototype exhibited greater predictive power (60% precision rate vs. 25%).¹⁹⁷ Building on the lessons learned from the prototype, SPD's Performance Analytics and Research team is currently working with its DAP vendor to develop a next-generation EIS, known as the Officer Accountability and Trust Hub (OATH), by upgrading its data models to include almost 400 individual data points.¹⁹⁸ Recognizing that its supervisors will need innovative interventions to address at-risk officers, SPD has also partnered with the National Network for Safe Communities

¹⁹³ Boatright, Fisher, and Atherley.

¹⁹⁴ Stephen James, Lois James, and Liz Dotson, "Evaluating the Effectiveness of a Police Department's Early Intervention System," *Journal of Experimental Criminology* 17, no. 3 (September 1, 2021): 457–71, <https://doi.org/10.1007/s11292-019-09397-8>.

¹⁹⁵ Boatright, Fisher, and Atherley, "Lessons Learned from a Decade of Reform and a Season of Protest," 55.

¹⁹⁶ Zoe Russek and Dylan Fitzpatrick, *Early Intervention Systems* (Chicago, IL: University of Chicago Crime Lab, 2021), <https://urbanlabs.uchicago.edu/attachments/32d00780dcf1082f6b49c678f2afa838c9105f0c/store/b551dd26ecaa556d96398cc4b4d2ca48ce57165a1c8187b5fc0d0a2f87b0/EIS.pdf>.

¹⁹⁷ Seattle Police Department, *City of Seattle's August 2022 Quarterly Accountability Update*, 5.

¹⁹⁸ Seattle Police Department, 5.

at the John Jay College of Criminal Justice to design interventions modeled on the “focused deterrence” strategy.¹⁹⁹

c. SPD’s Use of Force Review Boards

As SPD ramped up its internal force review process, its force investigators received increasingly rigorous feedback from the relevant review board, and the members of the boards themselves received detailed feedback from the SPM. In less than a decade, iterative feedback from the SPM led SPD from a force review process that was “little more a formality” and provided “no substantive oversight or accountability,”²⁰⁰ to a system of multi-layered review, including a Force Review Board that now conducts “wide-ranging discussions which generate a variety of recommendations for organizational improvement.”²⁰¹

At the beginning of its tenure, the SPM observed that SPD officers often failed to report force—“leaving it subject to no departmental scrutiny.”²⁰² When officers completed use of force reports, the SPM located the reports “on paper stuffed, unreviewed, in file cabinets.”²⁰³ Where the DOJ had criticized the secondary review process as “inadequate,” the SPM questioned whether internal force review mechanisms “existed at all.”²⁰⁴ The absence of objective, thorough review allowed unconstitutional policing to fester. The DOJ’s 2011 investigation concluded that when SPD officers resorted to force, the force was “used in an unconstitutional manner nearly 20% of the time.”²⁰⁵ By 2017, after numerous adjustments to SPD’s internal force review process, the SPM reported its most

¹⁹⁹ See: <https://nnscommunities.org/>.

²⁰⁰ Department of Justice, *Investigation of the Seattle Police Department*, 4. The DOJ attributed the previously inadequate review, in part, “to the onerous responsibility left to the patrol operations bureau commander to review approximately 500 use of force reports each year” (22).

²⁰¹ Seattle Police Monitor, *Use of Force Preliminary Assessment*, 2022, 5.

²⁰² Seattle Police Monitor, *First Systemic Assessment: Force Investigation & Reporting*, 2015, 1, <https://clearinghouse.net/doc/84103/>.

²⁰³ Seattle Police Monitor, *Fourth Semiannual Report*, 2014, 26.

²⁰⁴ Seattle Police Monitor, 26.

²⁰⁵ Department of Justice, *Investigation of the Seattle Police Department*, 4.

recent review found that “officers used force that was consistent with SPD policy more than 99 percent (99.27 percent) of the time.”²⁰⁶

Prior to the issuance of DOJ’s report (but in direct response to issues raised during the preliminary inquiry), SPD had already implemented a Force Review Committee to review significant force incidents. The Committee evolved into an interim Use of Force Review Board (UOFRB), which met on a weekly basis to review Type II (“intermediate”) and Type III (“serious”) force.²⁰⁷ In a signal of the importance of the revamped force review process, the UOFRB was chaired by the Chief of Police.²⁰⁸ The UOFRB soon operated as “SPD’s hub for internal innovation and critical analysis” with respect to force, patrol procedures, and tactics.²⁰⁹ In its initial assessments, the SPM found that the UOFRB was adequately evaluating the quality of force investigations but encouraged board members to engage in more “freewheeling discussion and lively debate.”²¹⁰ The SPM also noted the absence of a tracking system to ensure that all of the UOFRB’s recommendations and deliverables had been appropriately disseminated and completed.²¹¹ To remediate this deficiency, SPD created a new Force Review Unit to coordinate the force review process and to track all follow-up actions on UOFRB recommendations on policy, training, tactics, equipment, and other agency-wide issues. The Force Review Unit also assumed responsibility for quality-assurance checks of lower-level force investigations.²¹²

By 2014, the UOFRB had merged with the Firearms Review Board. The renamed Force Review Board (FRB) assumed responsibility for rigorously reviewing all force, up to and including officer-involved shootings.²¹³ In July 2015, SPD again revised its FRB

²⁰⁶ Seattle Police Monitor, *Ninth Systemic Assessment: Use of Force*, 2017, 8.

²⁰⁷ Seattle Police Monitor, *Second Semiannual Report*, 20. See also: SPD Policy 8.050: Use of Force Definitions. Retrievable at: <https://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions>.

²⁰⁸ Seattle Police Monitor, *First Semiannual Report*, 7.

²⁰⁹ Seattle Police Monitor, *Second Semiannual Report*, 20.

²¹⁰ Seattle Police Monitor, 22.

²¹¹ Seattle Police Monitor, 29.

²¹² Seattle Police Monitor, *Third Semiannual Report*, 48.

²¹³ Seattle Police Monitor, *Fourth Semiannual Report*, 40.

policy. The Force Review Captain became the standing Chair of the FRB.²¹⁴ The new policy also addressed the growing backlog of cases awaiting review, establishing a “pre-screening” process whereby the Force Review Unit could triage Type II incidents.²¹⁵ While SPD’s force review process in 2009 to 2011 resulted in only 0.04% of force cases for further review, the FRB now scrutinized its cases with such intensity that it referred more than half of the incidents (54%) to the Office of Police Accountability for further investigation of a possible policy violation.²¹⁶

The SPM continued to monitor and provide critiques of the FRB’s discussions, at one point noting that while most deliberations were probing and hewed to the factual record, some deliberations improperly drifted into “conjecture” and “speculation.”²¹⁷ The SPM also noted that while SPD had incorporated a detailed de-escalation requirement into its use of force policy and scenario training, and while FRB discussions increasingly addressed the question of whether officers sufficiently deployed de-escalation techniques, FRB members often neglected to pursue the further question of whether insufficient de-escalation rose to the level of a policy violation.²¹⁸

As FRB discussions became broader in scope and more attentive to issues with ex ante decision making and de-escalation, the discussions generated many specific recommendations for agency-wide improvement. In 2020 and 2021, the FRB generated recommendations in 81% of the incidents under review, including detailed follow-up actions related to tactics, policy, training, and supervision.²¹⁹ Thus the FRB advanced ever closer to the SPM’s aspiration that the ideal, well-functioning board would serve as “the

²¹⁴ See: SPD 8.500-POL-4 Use of Force – Force Review Board, Section 6. Retrieval at: <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force>. See also Section 3: The standing FRB comprises representatives from the Training Section (1), the Patrol Operations Bureau (3), the Audit, Policy and Research Section (1), the Investigations Bureau (1), and an additional representative as needed from any Bureau.

²¹⁵ Seattle Police Monitor, *Use of Force Preliminary Assessment*, 27.

²¹⁶ Seattle Police Monitor, *Second Systemic Assessment: Force Review Board*, 2015, 19, <https://clearinghouse.net/doc/84105/>.

²¹⁷ Seattle Police Monitor, 12–13.

²¹⁸ Seattle Police Monitor, *Fourth Semiannual Report*, 41.

²¹⁹ Seattle Police Monitor, *Use of Force Preliminary Assessment*, 58.

locus of the Department’s continual learning and improvement by overseeing the implementation of lessons learned.”²²⁰

SPD’s increasingly rigorous force review process led to significant reductions in the use of force, with the most serious incidents experiencing the largest decrease.²²¹ Though 2020, with its months of protests, was an outlier year, SPD’s overall use of force decreased by 33% from 2015 to 2019 and by 49% from 2015 to 2021.²²² And the most serious uses of force (Type III) declined 60% from 2014 to 2019–2021.²²³ SPD’s use of electronic control weapons (ECWs) also declined: “SPD reduced its average monthly usage of Tasers some 61% when comparing 2001–2010 data to 2014–2021 data.”²²⁴ Figure 4 illustrates this trend in SPD’s use of force data.

²²⁰ Seattle Police Monitor, *Fourth Semiannual Report*, 9.

²²¹ Longitudinal analyses of force—and cross-agency comparisons of force—face the difficulty that there are many ways of quantifying and tracking use-of-force data. For a single agency, it is always important to clarify whether one is looking at total incidents involving force, total uses of force, total number of officers who used force, or some other metric. Often agencies will use different metrics for different purposes. For comparisons between agencies, researchers find that agencies categorize force in confoundingly incompatible ways, and the same agency may change force categories over time.

²²² Seattle Police Monitor, *Use of Force Preliminary Assessment*, 3. The SPM is careful to note that this downward trend holds up even when compared against (decreases in) officer activity metrics.

²²³ Seattle Police Monitor, 3. For 2019 to 2021, the SPM computed the three-year average for Type III force to mute the impact of the anomalous 2020 protest-related incidents.

²²⁴ Seattle Police Monitor, 3.

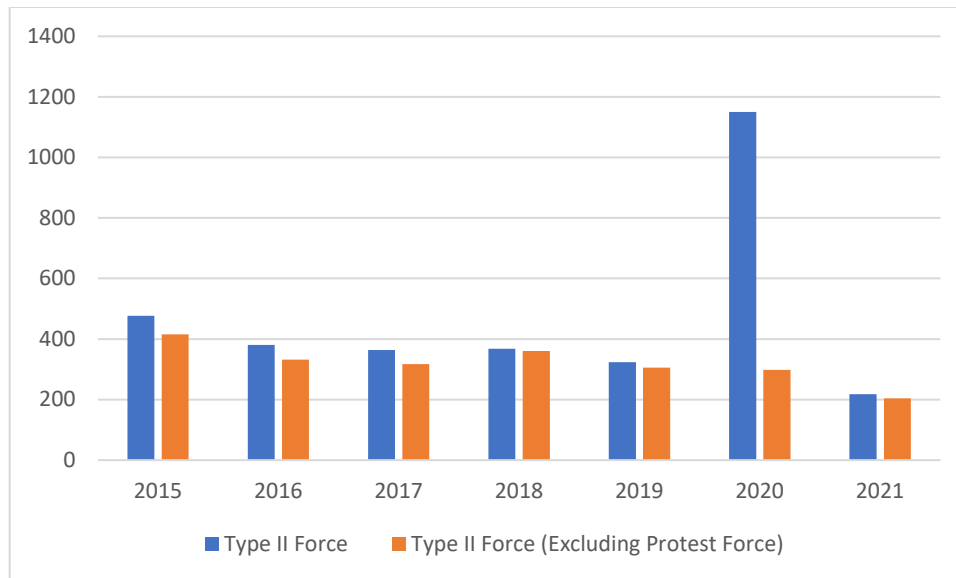


Figure 4. SPD Type II uses of force (2015-2021)²²⁵

2. Oakland Police Department

a. *The Negotiated Settlement Agreement*

Federal court oversight of OPD is sui generis in origin and in longevity.²²⁶ Initiated by the plaintiffs' bar, rather than by the Department of Justice, OPD's version of oversight has outlasted over a dozen police chiefs. In December 2000, attorneys representing 119 plaintiffs filed a series of Section 1983 class action lawsuits against the City of Oakland,

²²⁵ Adapted from Seattle Police Monitor, 38.

²²⁶ Although Oakland's structural reform litigation is unique in its genesis, resulting in the only such agreement without the DOJ as a party, two members of the first independent monitoring team (which served from 2003 to 2009) had previously worked as senior trial attorneys in DOJ's Civil Rights Division. And one subsequently served as a Deputy Chief in the Special Litigation Section (2010 to 2017), where she oversaw investigations into the Chicago Police Department, the New Orleans Police Department, and the Ferguson (Missouri) Police Department.

alleging widespread and systemic civil rights violations by members of OPD.²²⁷ These lawsuits were ultimately consolidated into a single case and assigned to U.S. District Judge Thelton E. Henderson. In January 2003, the plaintiffs’ attorneys and the City of Oakland signed a Negotiated Settlement Agreement (NSA) that codified institutional reforms designed to address systemic issues.²²⁸ The suite of reforms included enhancements to the internal affairs investigation process, use of force investigation and reporting, field supervision, the Field Training Officer (FTO) program, performance appraisals, and the promotion process. In December 2012, disappointed by the lack of progress in the previous decade, Judge Henderson conferred “broad, essentially receiver-like powers in areas related to the negotiated reforms” to a Compliance Director.²²⁹

b. From PIMS to iPAS to PRIME to VISION

The NSA mandated, *inter alia*, that OPD develop an EI system, initially known as the Personnel Information Management System (PIMS), a “computerized relational database for maintaining, integrating and retrieving data necessary for supervision and

²²⁷ The Civil Rights Act of 1871—codified at 42 U.S.C. § 1983—prohibits acts under color of authority that deprive a person of “any rights, privileges, or immunities secured by the Constitution and laws.” At the time of the NSA (circa 2000–2002), many legal scholars believed that the Supreme Court, in *Los Angeles v. Lyons*, 461 U.S. 95 (1983), had foreclosed the use of Section 1983 to address systemic harms. See, e.g., Barbara Armacost, “Organizational Culture and Police Misconduct,” *The George Washington Law Review* 72, no. 3 (2004), 453–546, at 491. Armacost contrasts Section 1983 with Section 14141, which “restored some of the potential for structural reform” of police agencies (527). The U.S. Attorney’s Office declined to involve itself in the accompanying criminal case. In November 2000, the Alameda County District Attorney’s Office brought criminal charges against four OPD officers, known as the “Riders,” leading to the longest criminal trial in California history. For a journalistic history of OPD and the Negotiated Settlement Agreement, see: Ali Winston and Darwin BondGraham, *The Riders Come Out at Night: Brutality, Corruption, and Cover-Up in Oakland* (New York, NY: Atria Books, 2023).

²²⁸ *Allen v. City of Oakland* (3:00-cv-04599, N.D. Cal.), Settlement Agreement RE: Pattern and Practice Claims, Jan. 22, 2003. Available at PACER and at: <https://clearinghouse.net/doc/11193/>. (Hereinafter, “Negotiated Settlement Agreement.”) All of the associated court orders and independent monitoring team reports are available at Public Access to Court Electronic Records (PACER), which houses electronic federal court records: <https://pacer.uscourts.gov/>. When available, an additional link to the reports is provided, either to the Civil Rights Litigation Clearinghouse, or to the City of Oakland website.

²²⁹ *Allen v. City of Oakland*, Order RE: Compliance Director, Dec. 12, 2012, ECF No. 885. Retrieval at: <https://clearinghouse.net/doc/46523/>. The quotation is drawn from a later order: Order Modifying Compliance Oversight Model, Feb. 12, 2014, ECF No. 973. Retrieval at: <https://clearinghouse.net/doc/76363/>. This order consolidated the roles of Independent Monitor and Compliance Director into a single position. The receiver-like powers included “procurement authority for individual expenditures not exceeding \$250,000 and the power to discipline, demote, or remove the Chief of Police.”

management.”²³⁰ The NSA explicitly stated that one of the purposes of PIMS was “to manage the risk of police misconduct.”²³¹ The NSA also required various enhancements to the existing “complaint-tracking and select-indicator” system—e.g., a significant expansion of the existing indicator categories, more than doubling them to twenty.²³² In recognition of the technical difficulties involved in building such a database from scratch, the NSA allotted 635 days for the delivery of a final product.²³³ Although the NSA left most specific threshold determinations to the policy-development phase, it showed itself as a creature of its time in stipulating an intuition-based time-and-numbers approach.²³⁴

Building and enhancing PIMS, given the parlous condition of OPD’s data systems, proved onerous and time-consuming once taken up in earnest. Although the court-appointed independent monitoring team (IMT), in its first quarterly report, acknowledged the “size and complexity” of the PIMS project, the IMT focused its initial efforts on improving OPD’s internal affairs complaint system.²³⁵ Benignly neglected for the first two years of the NSA, PIMS returned as front-burner issue only when OPD issued a request for qualifications (RFQ) in 2005. The complexity of the project soon overwhelmed the software vendor selected during the RFQ process. After purchasing an off-the-shelf system (then used by the Cincinnati Police Department and the Washington, D.C., Metropolitan Police Department), OPD soon learned that the vendor would be unable to deliver on its promises of customization. In the face of these software vendor challenges, in early 2007

²³⁰ Negotiated Settlement Agreement, 27.

²³¹ Negotiated Settlement Agreement, 27.

²³² Pre-NSA, Internal Affairs Division personnel maintained the existing select-indicator system by hand-tabulating the relevant data.

²³³ Negotiated Settlement Agreement, 27.

²³⁴ Negotiated Settlement Agreement, 29. “Notwithstanding any other provisions of the PIMS policy to be developed, the policy shall include, at a minimum, a requirement that any member/employee who receives three (3) or more citizen complaints during a 30-month period ... shall be identified as a subject for PIMS intervention.”

²³⁵ Independent Monitoring Team, *First Quarterly Report of the Independent Monitoring Team*, 2003, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd005015.pdf>.

OPD developed its own database, the Internal Personnel Assessment System (iPAS).²³⁶ By the tenth status report (July 2007), the IMT noted that after a series of delays, OPD had finally succeeded in creating a system “that extracts data from OPD’s disparate databases to report out on all but one of the elements listed in the NSA.”²³⁷

Developing iPAS “in-house” yielded unexpected challenges and opportunities. Thrown back on their own resources, OPD and Oakland ITD staff faced systemic data issues neglected for years. As staff navigated these issues, they sought guidance from other agencies (e.g., the Phoenix Police Department), consulted researchers at the University of California, Berkeley, about methodologies for selecting peer groups and normative thresholds, and reviewed the design of iPAS with an EIS expert who had just completed a nationwide EIS study.²³⁸ They also sought user-experience feedback from supervisors who recommended numerous improvements to the system’s automated data visualizations. Internal familiarity with OPD’s data systems and business processes, advice from researchers and subject matter experts, and ongoing user feedback afforded a level of customizability that would have been difficult to achieve with off-the-shelf software. For example, as OPD and City IT staff developed the iPAS database, it became clear that the absolute time-and-number thresholds (e.g., three complaints in a 30-month period) contemplated by the NSA a priori were not feasible. These thresholds cast too wide a net—generating many false positives—and were replaced by more focused statistical measures to identify officers for review.²³⁹ It also became clear that, given the stochastic nature of the incidents in question, higher metrics may simply indicate higher risk exposure (e.g., executing more high-risk search warrants as part of one’s everyday assignment) rather than

²³⁶ Oakland Police Department, *Negotiated Settlement Agreement Combined Semi-Annual Annual Report July 2006-July 2007*, 9. <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd006408.pdf>

²³⁷ Independent Monitoring Team, *Tenth Status Report*, 2007, 7.

²³⁸ Samuel Walker, Stacy Osnick Milligan, and Anna Berke, “Strategies for Intervening with Officers Through Early Intervention Systems: A Guide for Front-Line Supervisors” (Washington, DC: Police Executive Research Forum, 2006), <https://doi.org/10.1037/e537282006-001>. This COPS-funded PERF guide calls first-line supervisors “the linchpin of EIS” (4). The guide also notes that “the most significant change for supervisors involves working more closely with data, including being able to analyze and interpret the information in the early intervention system database” (43).

²³⁹ Independent Monitoring Team, *Eleventh Status Report*, 2008, 75.

at-risk behavior. EI systems rely on internal benchmarks, so proper selection of a peer group is essential to finding true outliers. “In-house” development pushed OPD staff to experiment with different peer groups to establish appropriate thresholds. But while internal development of a proprietary system allowed repeated refinements to iPAS, data-reliability and data mining issues continued to plague the system.

Over time, supervisor assessments and recommended interventions gained detail and nuance, as supervisors received additional training on data analysis and evidence-based intervention strategies. Supervisor recommendations were reviewed by the chain of command and subject to an additional layer of review by the PAS Activity Review Panel.²⁴⁰ Policy was updated to require that any corrective action by a supervisor—whether counseling, coaching, or training—is documented in the officer’s Supervisory Notes File (SNF), which was incorporated as a separate performance dimension in iPAS.²⁴¹ Policy was also updated to direct commanders to review their division’s PAS data quarterly and submit a detailed analysis of any patterns or trends warranting additional concern.²⁴² Familiarity with this quarterly data analysis process later contributed to the success of more robust risk management meetings. With the advent of routine, bi-weekly body-worn-camera audits, which were layered on top of the required review of all video footage associated with use of force incidents, supervisors and commanders now documented numerous observations (positive and negative) in SNF entries.²⁴³ These

²⁴⁰ Oakland Police Department, *Negotiated Settlement Agreement Combined Semi-Annual Annual Report July 2006-July 2007*, 9.

²⁴¹ Departmental General Order B-22: Supervisory Notes Files. Retrievable from: <https://public.powerdms.com/oakland/tree/documents/42>. This added functionality allowed supervisors to enter their observations—positive and negative—directly into iPAS. These semi-structured data, consisting primarily of detailed narratives, added a crucial qualitative dimension to the system.

²⁴² Departmental General Order D-17: Personnel Assessment System (PAS). Retrievable from OPD’s public-facing document management system: <https://public.powerdms.com/oakland/tree/documents/107>.

²⁴³ Prior to the entry of a negative observation, especially of behavior that would rise to level of a minor Manual of Rules violation, supervisors are required to review prior SNF entries to ascertain whether a pattern of such misconduct exists.

entries built a qualitative dimension on top of iPAS' quantitative time-and-numbers foundation.²⁴⁴

By 2013, the IMT observed that iPAS, always intended as a temporary solution, was antiquated by any reasonable IT standard.²⁴⁵ The IMT recommended the City of Oakland engage a consultant to navigate the development of a replacement for iPAS. Meanwhile, OPD changed its policy to have the PAS Unit conduct a preliminary review of all officers flagged by the iPAS normative thresholds. The purpose of this change was to triage the number of false positives that had been causing a significant burden to field supervisors.²⁴⁶ The PAS Unit started to mine SNF entries for qualitative information (whether patterns of problematic behavior or a series of positive supervisory observations) that would buttress their recommendations for No Action, Supervisory Monitoring, or Supervisory Intervention.

The successor to iPAS—known as the Performance Reporting Information Metrics Environment (PRIME) and finally scheduled for completion by 2016 after a lengthy business process analysis had delayed the RFQ—itself ran into a series of delays and technical challenges. The outside vendor's development and implementation of PRIME was so riddled with issues that, upon its delivery in 2017, OPD and City IT staff were already working on "PRIME 2.0."²⁴⁷ PRIME's numerous deficiencies compelled the PAS Unit to tabulate threshold reports by hand. PRIME's extensive data validation problems (caused by faulty linkages between the disparate databases) also forced OPD to develop

²⁴⁴ Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field*. "EI systems are the data-driven component of a process that proactively helps identify personnel who may be at risk. Any such technology should only be a tool that supplements, and does not replace, a supervisor's own observations and interactions with an employee" (66).

²⁴⁵ Independent Monitoring Team, *Fifteenth Quarterly Report of the Independent Monitor for the Oakland Police Department*, 2013.

²⁴⁶ Independent Monitoring Team, 61.

²⁴⁷ Independent Monitoring Team, *Forty-Ninth Report of the Independent Monitor for the Oakland Police Department*, 2017, 14, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak068241.pdf>.

strategies for data validation and testing, which prompted reflection on how best to report and display the risk-related data it expected supervisors and commanders to review.²⁴⁸

PRIME 2.0, dubbed VISION, would have been difficult to imagine from the vantage point of the 2003 Negotiated Settlement Agreement. Whereas the NSA envisioned an abbreviated experiment with in-car video, the VISION EI system contains links to thousands of body-worn-camera video files that are annotated and viewable on demand. The NSA anticipated supervisors could gain access to the *number* of force incidents an officer was involved in over the past year. VISION offers instant access to the granular details of all force investigations, including all associated documents and audio-visual evidence. In addition to solving the data validation issues that had bedeviled both iPAS and PRIME, VISION also provides ready access to a wide array of human-resource information about each employee, giving visibility into each employee's history of assignments and training, as well as into each employee's history of PAS reviews and interventions.

As VISION was nearing completion, OPD commissioned a technology consulting firm to create fifteen dashboards—data visualizations—that would provide real-time visibility into police activity.²⁴⁹ The dashboards contain standardized reports and customizable queries to allow supervisors and commanders unprecedented access to all PAS dimensions and stop data. Whereas PRIME required manual labor from either the PAS Unit or the supervisor to identify discernible patterns in the performance dimensions, the new dashboards facilitate pattern recognition by, for example, highlighting officers with a relatively high ratio of civilian complaints to detentions or arrests. For supervisors, the dashboards enable real-time situational awareness of officers' performance metrics. For senior commanders, the dashboards also empower exploration of the data using various prefabricated filters. After years of ever-higher expectations that supervisors and

²⁴⁸ Independent Monitoring Team, 14.

²⁴⁹ In a case of technology supply catching up to customer demand, the third-party vendor designed the dashboards using Microsoft Power BI, an enterprise business intelligence software suite, operating on the Azure Government cloud.

commanders should manage risk in part by becoming data analysts, the dashboards provide the tools to make this a reality.²⁵⁰

c. OPD's Incident Review Boards

Whereas the DOJ conducted an eight-month preliminary inquiry into SPD's practices and produced a findings letter, no such detailed description exists of OPD's status quo ante. After 20 years of iterative feedback from two monitoring teams, however, the current review boards bear little resemblance to the makeup, methods of presentation and deliberation, and end products of OPD's pre-NSA incident review boards.²⁵¹ For example, although an early adopter of boards to assess deadly force, OPD did not, prior to the NSA, conduct administrative (i.e., internal affairs) investigations into officer-involved shootings.²⁵² And the percentage of vehicle pursuits scrutinized by OPD's review board rocketed from 2% to 100% once high-speed pursuits became a belated addition to the NSA's purview.

(1) OPD's Force Review Board

The NSA required OPD to enhance its already existing Force Review Board (FRB).²⁵³ The NSA contemplated a Force Review Board whose composition included representatives from the Training Division and the FTO program, as well as the Bureau of

²⁵⁰ Independent Monitoring Team, *First NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department*, 2022, 30–31, <https://cao-94612.s3.amazonaws.com/documents/OPD-Sustainability-Report-1-100322.pdf>.

²⁵¹ To cite just one anecdotal difference, in 2006 the standing FRB would hear 10 to 15 Level 2 investigations in a single sitting. (At the time Level 2 UOF incidents occurred at a rate of approximately 17 per month.) In 2022, there were fewer than two Level 2 incidents per month, and each revolving-membership FRB reviewed a single incident, with presentations, discussion, and deliberation taking up the bulk of a workday.

²⁵² Independent Monitoring Team, *Eleventh Status Report*, 60. In 2001, during the negotiations that led to the NSA, OPD revised the policy governing its Firearms Discharge Review Board, whose voting members comprised all three Deputy Chiefs. See: Negotiated Settlement Agreement, 23. OPD implemented a firearms discharge review board in the early 1970s. See: Milton et al., *Police Use of Deadly Force*. The authors note that OPD's boards in the early 1970s "include not only a rotating group of high officials but also one or two members of the same rank as the officer whose actions are being reviewed. This innovation is designed to add current street perspective and to increase the board's credibility with the rank-and-file" (69).

²⁵³ Negotiated Settlement Agreement, 21.

Field Operations (BFO) Deputy Chief or a designee.²⁵⁴ Although the NSA clearly anticipated this as a standing board (“one member of the [FRB] shall be replaced at least annually”), the high volume of reviews and fluctuating availability of personnel resulted in a board with a de facto rotating voting membership.²⁵⁵ The FRB was charged with reviewing all Level 2 (intermediate) force incidents following the completion of the supervisor’s investigation of the incident.

Several years into the NSA, the IMT found fault with the “wide variance in the quality of the [FRB] reviews conducted.”²⁵⁶ While many reviews were objective and thorough, some were “perfunctory” and failed to address significant training or tactical concerns.²⁵⁷ Furthermore, while the boards regularly identified deficiencies (i.e., lacunae, ambiguities) in policies, procedures, and training, OPD lacked a mechanism to track these concerns. The IMT also pointed out that these concerns were not reliably conveyed to relevant decision makers.²⁵⁸ The boards—especially given their rotating voting membership—were not well designed to identify patterns or trends in risk-related data. To address this gap, OPD created a Risk Impact Unit to track all deliverables and publish quarterly training bulletins with all updates and reminders.²⁵⁹

²⁵⁴ Negotiated Settlement Agreement, 22.

²⁵⁵ Negotiated Settlement Agreement, 22. At the outset of the NSA, the first IMT focused its second-order reviews on OPD’s reviews of officer-involved shootings. See, e.g.: Independent Monitoring Team, *Third Quarterly Report of the Independent Monitor*, 2004, 8, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd005017.pdf>. In a representative critique of a board hearing, the IMT noted: “The Board focused only on the ‘final frame’ of the incident, that is, whether the officer was justified in using deadly force at the moment it was used. For the purpose of identifying training needs, at a minimum, the Board should always analyze the officers’ actions leading up to the ‘final frame.’”

²⁵⁶ Independent Monitoring Team, *Eleventh Status Report*, 53. The IMT attributed this variance to “the lack of a consistent high-level command presence at the FRBs.” At the time, the Bureau of Field Operations Deputy Chief would generally appoint a designee, often a lieutenant, to chair the boards. In response to the IMT’s concern, the Department began requiring the BFO Deputy Chief or a patrol captain to attend the boards.

²⁵⁷ Independent Monitoring Team, *Eleventh Status Report*, 53.

²⁵⁸ Independent Monitoring Team, *Eleventh Status Report*, 54.

²⁵⁹ Oakland Police Department, *Negotiated Settlement Agreement Combined Twelfth & Thirteenth Semi-Annual Report*, 2009, 58, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd006410.pdf>. While the NSA required an “annual review ... to identify any patterns of use of force practices ... that may have policy or training implications” (22), the Training Division began to produce *quarterly* updates on use of force summarizing the training points identified by the FRBs.

In 2014, OPD revised its policy governing FRBs and Executive Force Review Boards (EFRBs).²⁶⁰ The new policy explicitly created a rotating board of voting members, who were drawn from commanders of the rank of Captain or higher. By 2015, the IMT praised the improvements to the FRB process it had observed over the previous two years.²⁶¹ In particular, the IMT lauded the performance of supervisors when presenting their force investigations to the board: “Their knowledge of the cases being presented—including strengths, weaknesses, tactical and safety—is demonstrative of the seriousness they and the Department attach” to use of force.²⁶² Yet the IMT recommended that OPD expand the scope of its force review process “to include a review of whether the use of ... force may have been avoided, and to identify tactics, strategies, and opportunities as events unfolded that may have supported such an outcome.”²⁶³ In other words, the IMT recommended—and Judge Henderson, in a subsequent court order, directed—that OPD critically assess whether options could or should have been considered that may have obviated the use of force.²⁶⁴ OPD ultimately modified its FRB policy to expand the range of topics for deliberation and added language requiring the board to examine “whether any involved Department members’ conduct or actions leading up to the use of force

²⁶⁰ Departmental General Order K-04.1 (Force Review and Executive Force Review Boards). See: <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak047641.pdf>

²⁶¹ Independent Monitoring Team, *Twenty-Second Report of the Independent Monitor for the Oakland Police Department*, 2015, <https://oaklandca.s3.us-west-1.amazonaws.com/oakca1/groups/police/documents/webcontent/oak054058.pdf>. “The conduct of the Boards is professional, but also inquisitive, probing, and unrelenting in its quest for facts and information necessary for making its determination as to whether a use of force was justified. In addition to determining whether the force used was justified, the boards evaluate the event to determine whether there are tactical or training issues to be addressed and/or officers’ activities that may serve as examples of excellence” (6).

²⁶² Independent Monitoring Team, 6.

²⁶³ Independent Monitoring Team, 10. “[W]e suggest the addition of the above-described component to its review process not only strengthens the process, but moreover addresses the lingering question of whether the force, even though legally justified and within policy, was the only and/or best option.”

²⁶⁴ *Allen v. City of Oakland* (3:00-cv-04599, N.D. Cal.), Order RE: Force Review Board and Executive Review Board Policy, Dec. 15, 2015, ECF No. 1076. Retrieval at: <https://clearinghouse.net/doc/99429/>.

aggravated the situation or made a use of force more likely to occur.”²⁶⁵ The revised policy also expanded the list of mandatory presenters to include “[r]elevant Departmental subject matter experts [SMEs] in the use of force, tactical decision making, emergency vehicle operation and pursuits.”²⁶⁶ The idea was that SME testimony was necessary to assist board members in rigorously evaluating officers’ actions leading up to the use of force.

By 2017, the IMT reported a steady decline in Level 2 use of force over the preceding decade (see Figure 5). This decline was attributable “at least in part,” to the iterative, routine work of the FRBs.²⁶⁷ Even more remarkable was the falling-off in officer-involved shootings, which dropped to zero in 2014. The next year, however, saw seven officer-involved shootings. This, in combination with the new policy’s required focus on ex ante decision making, prompted extensive reflective discussion at each of the EFRBs about how the OIS could have been avoided.

²⁶⁵ Independent Monitoring Team, *Twenty-Eighth Report of the Independent Monitor for the Oakland Police Department*, 2016, 14, <https://oaklandca.s3.us-west-1.amazonaws.com/oakcal/groups/police/documents/webcontent/oak056798.pdf>. The new DGO K-04.1 went into effect on December 21, 2015 (10 days after the court order). See: DGO K-04.1, retrievable at: <https://public.powerdms.com/oakland/tree/documents/417>. It requires EFRBs and FRBs to examine “whether any involved Department members’ actions leading up to the use of force created circumstances that lead [sic] to, or contributed to, the use of force ... and the enumeration of other available options that could have or should have been considered” (12-13).

²⁶⁶ See: DGO K-04.1, retrievable at: <https://public.powerdms.com/oakland/tree/documents/417>.

²⁶⁷ Independent Monitoring Team, *Thirty-Ninth Report of the Independent Monitor for the Oakland Police Department*, 2017, 12, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak062935.pdf>.

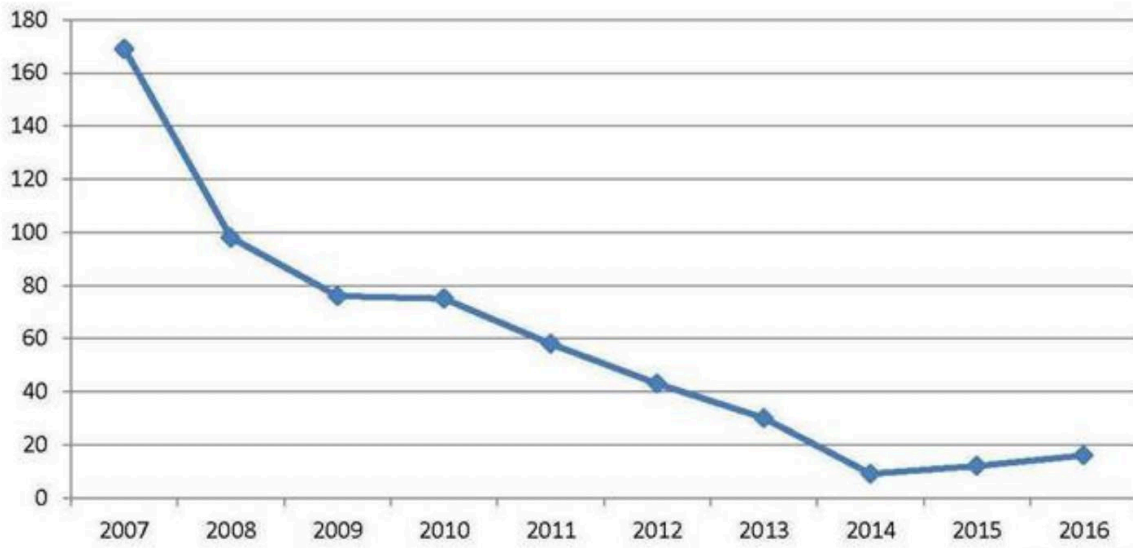


Figure 5. OPD Level 2 use of force incidents (2007-2016)²⁶⁸

A brief discussion of two EFRBs will illustrate their iterative nature—the way that analysis of new experience feeds back into the system—and the role boards play in a learning-oriented approach to reducing risk and improving tactics.²⁶⁹ For both high-profile incidents (one in 2015 and the other in 2018), the EFRBs found the force in compliance, but generated numerous recommendations for agency improvement. In the first incident, the Oakland Fire Department (OFD) responded to an early-morning report of a vehicle

²⁶⁸ Source: Independent Monitoring Team, 13. Level 2 criteria have changed since 2016. In 2016, Level 2 force, as defined by DGO K-04, included:

1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person.

²⁶⁹ California's Senate Bill 1421 (which amended California Penal Code §§ 832.7 and 832.8) mandates the full public release of all OIS-related records. Both discussed EFRB reports, as well as all supporting evidence, have been released to the public.

stopped 50 feet from an intersection.²⁷⁰ Upon arrival OFD found the vehicle idling and still in gear, the driver reclined and unresponsive, and a pistol with an extended magazine on the front passenger seat. OPD personnel arrived, deployed stop sticks under the vehicle's tires, contained the scene, assembled a dedicated arrest team (DAT), gave announcements to no response, and developed an "extraction plan." The extraction plan was implemented 67 minutes after officers initially arrived on scene. During the officers' approach, the suspect appeared to reach for the pistol, ignored several commands, and was shot and killed by the primary cover officer.²⁷¹

In its discussion, the EFRB recognized the situation as analogous to a barricaded suspect, and acknowledged the unusual terrain presented by a vehicle on a public roadway, as well as the possible presence of a medical exigency.²⁷² The EFRB found the extraction plan reasonable, but recommended additional agency-wide DAT training on contingency plans.²⁷³ The board also directed the design of specific scenario-based training to address the challenges posed by suspects barricaded in vehicles.²⁷⁴

After zero OIS incidents in 2016, the lessons of 2015 appeared to have been assimilated. But then an eerily similar incident in 2018 prompted additional reflection. In this second incident, a patrol officer was dispatched to a report of an armed unconscious person between two houses. The officer arrived on scene and verified the suspect was lying supine between two houses, apparently unconscious, armed with a pistol in his right hand. Additional officers arrived, contained the scene, established a DAT, requested the Lenco

²⁷⁰ David DeBolt, "Attorney: Officer Shot Man in Oakland Standoff after He Went for Gun," *Oakland Tribune*, June 9, 2015, ProQuest.

²⁷¹ Oakland Police Department, *Executive Force Review Board Report: Use of Force No. 15F-0230*, 2016, <https://oaklandca.nextrequest.com/documents/15183509>. (Incident Summary can be found at 3–5.)

²⁷² Oakland Police Department, 11.

²⁷³ Oakland Police Department, 31. "Supervisors and commanders are reminded to ensure contingency plans are discussed and shared with the DAT team/officers when deployed (e.g., discussion should include actions to take if desired result cannot be achieved based upon the immediate changing circumstances, anticipation is critical)."

²⁷⁴ Oakland Police Department, 35. "Assemble a training group to organize specific tactical and scene management training for *barricaded suspects inside of a vehicle*. Once designed and approved ... this training is to be taught at command retreats, sergeant and officer CPT [continuing professional training], and the annual 10-hour force options (escalation/de-escalation) training" (emphasis added).

BearCat armored vehicle to respond, and began developing a plan to take the suspect into custody. The BearCat arrived approximately 43 minutes after the officers initially arrived on scene. As the BearCat was maneuvered into position, the engine noise appeared to wake up the suspect whose movements were observed by members of the DAT. For approximately 48 seconds, officers gave the suspect multiple commands. When DAT officers observed what they perceived as the suspect pointing a pistol at them, multiple officers discharged their firearms, killing the suspect.²⁷⁵

During SME testimony, it became clear that although OPD had implemented extensive additional training on applying DAT concepts and on responding to armed unresponsive subjects and had authorized field-level deployments of the BearCat since 2016, these measures had fallen short of preventing a very similar tragedy.²⁷⁶ After the second incident, the applicable mental model had evolved from “barricaded suspect” to “armed unresponsive subject” and the EFRB issued training directives which, although couched in anodyne language, led to innovations in both tactics and policy.²⁷⁷ Ultimately OPD worked with the Oakland Police Commission to construct an unprecedented policy, accompanied by training, on handling armed unresponsive individuals.²⁷⁸ To address

²⁷⁵ Oakland Police Department, *Executive Force Review Board Report: Use of Force No. 18F-0067*, 2019, <https://oaklandca.nextrequest.com/documents/1088211>. (The Incident Summary can be found at 4–6.)

²⁷⁶ Oakland Police Department, 13. “[D]ue to a trend of armed subjects asleep in cars, the firearms staff has run many scenarios with an apparently sleeping armed person in PRO [patrol rifle officer] training as well as in CPT.” In the scenarios, multiple officers “are expected to create and execute a plan to safely take the person into custody.... The purpose of this is to apply the DAT concept—filling roles, communicating, discussing contingencies, and then executing a plan—to a multitude of different scenarios.”

²⁷⁷ Oakland Police Department, 47. “The Training Division will develop additional training for all sworn members on handling incidents with unconscious, armed subjects”; and at 48: “The Training Division will create additional training on DATs for all sworn members, to include roles, responsibilities, contingencies, plain-English commands and communication, and supervisory responsibilities.”

²⁷⁸ Training Bulletin III-P.01 (Armed Unresponsive Persons) is available at: <https://public.powerdms.com/oakland/tree/documents/2258011>. As the Training Bulletin explains: “The unique challenge of these situations is that as the person becomes responsive, they might be disoriented, startled, erratic, or unable or unwilling to cooperate with initial attempts at de-escalation” (2).

concerns about decision making and contingency-planning, they also promulgated a detailed policy on dedicated arrest teams.²⁷⁹

(2) OPD's Vehicle Pursuit Review Board

High-speed vehicle pursuits constitute an inherently high-risk law enforcement activity.²⁸⁰ Yet despite their danger and visibility to the public, vehicle pursuits have received far less academic and judicial attention than use of force. The NSA mentioned vehicle pursuits only once, as one of the twenty select-indicators used to track by the PIMS EI system. Pursuant to California state law, OPD already had a detailed policy governing vehicle pursuits. OPD also had a policy that sent select vehicle pursuits for review by the Departmental Safety Committee.²⁸¹ However, a 2011 review conducted by the OPD's Office of Inspector General found that of the 315 pursuits during the review period, only three went to the Departmental Safety Committee, while two were reviewed by the EFRB, for a total of less than 2% reviewed by a board.²⁸²

The NSA's relative silence on the issue kept pursuits off the radar of the IMT for the better part of a decade.²⁸³ In the December 2012 court order establishing a Compliance Director, Judge Henderson demanded, for the first time, a plan to reduce high-speed

²⁷⁹ Training Bulletin III-P.03 (Dedicated Arrest Teams) is available at: <https://public.powerdms.com/oakland/tree/documents/2258012>.

²⁸⁰ In 2019, California law enforcement agencies reported 8,822 vehicle pursuits to the California Highway Patrol. The pursuits resulted in 28 fatal collisions, which resulted in 35 deaths (14 of those killed were uninvolved third parties). See: California Highway Patrol, *Report to the Legislature Senate Bill 719 Police Pursuits*, 2020, https://www.chp.ca.gov/Documents/Police_Pursuits_SB_719_%202020.pdf.

²⁸¹ Departmental General Order G-04: Departmental Safety. Retrieval at: <https://public.powerdms.com/oakland/tree/documents/147>. This policy was promulgated in 1998 (5 years before the NSA) and has never been rescinded or replaced. The policy establishes a standing committee responsible for reviewing select vehicle pursuits as well as preventable collisions involving City vehicles.

²⁸² Office of Inspector General, *Review of Pursuits*, 2011, 17, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak032214.pdf>. "The purpose of [OIG's] review was to determine if pursuits are properly being managed by the Department and if the policy is consistent with sound risk management and current best industry practices" (3).

²⁸³ At one point during the tenure of the first monitoring team, OPD *loosened* its pursuit-initiation criteria (giving officers carte blanche to chase for essentially any statutory violation) with no demurral from the IMT.

pursuits.²⁸⁴ The Compliance Director’s 2013 Remedial Action Plan laid out a timeline for hiring a subject matter expert, adopting a new vehicle pursuit policy, and training all staff on the new policy by the end of the year.²⁸⁵ OPD adhered to the timeline and implemented a revised, more restrictive vehicle pursuit policy in January 2014. OPD’s new policy for vehicle pursuits explicitly acknowledged the importance of continually weighing risks and required the Departmental Safety Committee to review all vehicle pursuits.²⁸⁶ To further reinforce OPD’s commitment to reducing the risks associated with vehicle pursuits, the Chief of Police assigned the Assistant Chief to chair the standing review board.

Board deliberations came to provide crucial guidance to officers, supervisors, and field commanders about how to weigh the pursuit policy’s nineteen risk factors. The board essentially assumed responsibility for broadcasting the “right and left limits” of the Department’s risk tolerance for high-speed pursuits. Charged with reviewing *all* pursuits, including those with a “good outcome” (e.g., in-custody with no injuries or property damage) but defective balancing of the associated risks (e.g., officers failed to recognize that the suspect vehicle’s reckless driving endangered public safety to the extent that further pursuit was no longer justifiable), the board strove to consistently enforce the same risk tolerance expectations without letting the outcome influence the finding.²⁸⁷ The board also emphasized the importance of pre-takedown planning to reduce, as much as practicable,

²⁸⁴ Allen v. City of Oakland, Order RE: Compliance Director, Dec. 12, 2012, ECF No. 885. Retrieval at: <https://clearinghouse.net/doc/46523/>. “Within 60 days of his or her appointment, the Compliance Director will file a list of benchmarks for the OPD to address, resolve, and *reduce*: ... (4) high-speed pursuits” (5, emphasis added). This component of the order was in response to concerns raised by the plaintiffs’ attorneys during their receivership-motion negotiations with the City of Oakland. See the Parties’ Joint Submission of December 5, 2012, <https://clearinghouse.net/doc/46521/>.

²⁸⁵ Office of the Compliance Director, *Oakland Police Department Benchmarks Plan First Report*, 2013, 14, <https://clearinghouse.net/doc/62540/>.

²⁸⁶ Departmental General Order J-04: Vehicle Pursuits. Retrieval at: <https://public.powerdms.com/oakland/tree/documents/408>. “The decision to engage in a vehicle pursuit to immediately apprehend a fleeing suspect requires a careful weighing of risks to the safety of officers, motorists, bystanders and the general public versus the benefit to public safety” (1). The policy delineates nineteen risk factors, and mandates that “involved officers and monitoring supervisors/commanders shall continually consider the Risk Factors and whether the pursuit should be terminated in order to protect officers and the public from the risks associated with the pursuit” (4). The revised policy was more restrictive in that officers were permitted to chase only for violent forcible crimes or crimes involving the use or possession of a firearm.

²⁸⁷ Some of these pursuits might be thought of as “near misses” or “free lessons,” to adopt the preferred terminology from sentinel event review that we will discuss in the next chapter.

the probability of a vehicle pursuit. The more restrictive policy and enhanced review process had a noticeable effect: Vehicle pursuits plummeted from 148 in 2013 to 43 in 2014.²⁸⁸

C. CONCLUSION

One common thread that runs through case studies is the importance of first-line supervisors to an agency's risk management strategies. Supervisors investigate their officers' risk-related activities, assess compliance with policy and any lessons learned, and then present their investigations to review boards. Supervisors also play a sine-qua-non role in effective EI systems, especially once they have embraced the systems' proactive, non-punitive purpose. For both agencies, fine-tuning their EI systems involved extensive training of, and feedback from, first-line supervisors, with the eventual effect of transforming supervisors into data analysts and risk managers. Repeated refinements also led to an understanding of the importance of providing supervisors with real-time, reliable data displayed by dynamic dashboards. The dashboards were not conjured a priori, but were themselves the product of trial and error, as the agencies experimented with different ways of defining performance criteria, thresholds, and peer groups.

Alongside this commonality, a difference emerged in the agencies' respective understandings of how best to measure the effectiveness of an EI System. Is an EI system judged by its predictive success—by whether it can predict which officers are at-risk of an adverse event?²⁸⁹ Or is its effectiveness measured by how well it supports supervisors in their attempts to monitor their officers' performance and identify those officers in need of additional support, coaching, and mentoring?²⁹⁰ After research showed that even its refurbished EIS was ineffective, a quest for predictive success led SPD to develop a

²⁸⁸ Robert S. Warshaw, *Fourth Progress Report of the Compliance Director for the Oakland Police Department*, 2014, 7, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak052802.pdf>.

²⁸⁹ Walker, Alpert, and Kenney, "Early Warning Systems for Police."

²⁹⁰ Walker, Alpert, and Kenney. "A retrospective, performance-based approach, an [EI] system is *not designed to prospectively predict* officer performance based on officer characteristics" (133, emphasis added). In this vein, Walker et al. criticize an effort by Chicago PD in 1994 (!) to use a neural network as a predictive model. For a summary of this effort, see: Gary Stix, "Bad Apple Picker: Can a Neural Network Help Find Problem Cops?," *Scientific American* 271, no. 6 (1994): 44–46.

research team that has collaborated with academic researchers on a cutting-edge prototype EI system based on machine learning. Early on, however, while SPD focused on adjustments to various technical specifications, some supervisors lost sight of critical issues of officer health and well-being. The case studies show how challenging it is, even for agencies committed to going beyond check-the-box risk management, to design an effective EI system.

Both agencies instantiate a commitment to creating processes that inculcate an agency culture dedicated to continual learning and improvement. In the review of critical (and quotidian) incidents, the cases of Seattle and Oakland exhibited a similar evolution—from an initially myopic focus on whether a particular incident was in compliance with policy, to a commitment to a robust process of multi-layered critical analysis capable of informing risk-conscious improvements to training and policy. Multiple layers of review figured prominently in the development of the EI system and the force review process of both agencies. The case studies also highlight the importance of a demonstrated commitment to the incident review boards from executive command. SPD’s force board was chaired from the beginning by the Chief of Police. OPD’s deadly force review board initially consisted of all three deputy chiefs, and OPD’s pursuit board was chaired by the Assistant Chief once vehicle pursuits entered the ambit of the NSA.

Finally, the case studies illustrate the important and often undervalued role incident reviews boards play in an agency’s self-scrutiny and self-regulation. For agencies whose goal is continuous improvement, review boards serve a crucial learning-oriented function. Each board discussion is a renewed opportunity to scrutinize a concrete application of the agency’s policies, procedures, processes, training, tactics, and equipment, and identify any lessons learned—whether successes or shortfalls—in light of new experience. These insights must then be reliably relayed to decision makers, who can deploy them to improve existing practices. A board is a forum for self-reflection, and it is this continual reflection that enables a learning organization to adapt and innovate in response to dynamic and ever-evolving circumstances.

IV. PROMISING RISK MANAGEMENT STRATEGIES

This chapter explores how the confluence of civilian and federal court oversight has led the Seattle Police Department and the Oakland Police Department to experiment with promising risk management strategies. SPD, criticized from all sides for its handling of the 2020 summer of protests and seeing its response as an organizational failure, opted to participate in a sentinel event review—an empirical, systems-level, community-centered inquiry into the root causes of the failure. OPD, in partnership with academic researchers, created a “Compstat for risk”—monthly meetings designed to provide strategic oversight of the agency’s risk management efforts through intensive and data-driven dialogue between executive and field command. Both experiments are still ongoing, but this chapter discusses, *in medias res*, the significant recommendations and outcome measures to date.

Under constant pressure from community police commissions and independent monitoring teams, SPD and OPD have developed processes to continually scrutinize the fairness and effectiveness of their policies, procedures, and tactics. Both agencies have begun to operate with an ever-more-capacious conception of *risk* and therefore to seek innovative ways of identifying, monitoring, and addressing the adverse events falling under this broader conception. In particular, the agencies’ real-world experience with risk management strategies in heavily scrutinized, high-stakes settings exposed the shortcomings of established strategies and inspired the agencies to partner with academic researchers in an effort to refine and customize their risk management efforts. Both Seattle and Oakland also recently entered the so-called “sustainability period” of their respective oversight agreements, engendering added motivation to implement promising risk management strategies that assist in demonstrating the long-term sustainability of their reform efforts.

A. BACKGROUND

1. Sentinel event reviews

The President’s Task Force on 21st Century Policing recommended that law enforcement agencies implement SERs modeled after forward-looking, non-disciplinary,

multi-stakeholder reviews of organizational errors in other high-risk professions, such as medicine and aviation.²⁹¹ While internal administrative review boards retrospectively view and scrutinize events to determine whether involved individuals acted in accordance with policy, procedure, and training, SERs adopt a prospective view and analyze root causes to mitigate future risk. In a criminal justice context, a SER is a prospective, non-blaming, all-stakeholder/all-rank review of a “sentinel event”—broadly defined as “anything that stakeholders can agree should not happen again,” including adverse events “that are ‘within policy’ but disastrous in terms of community relations.”²⁹²

The National Institute of Justice’s Sentinel Event Initiative, which in 2018 awarded a grant to the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Carey School of Law to conduct a series of experimental SERs in the criminal justice system, seems to have anticipated a focus on wrongful convictions and officer-involved shootings.²⁹³ The Quattrone Center pivoted to fund resource-intensive

²⁹¹ Office of Community Oriented Policing Services, *The President’s Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action* (Washington, DC: Office of Community Oriented Policing Services, 2015), <https://cops.usdoj.gov/RIC/Publications/cops-p341-pub.pdf>. See also: John Hollway, Calvin Lee, and Sean Smoot, “Root Cause Analysis: A Tool to Promote Officer Safety and Reduce Officer Involved Shootings Over Time,” *Villanova Law Review* 62, no. 5 (2017): 883–924. “Industries like aviation and healthcare may not seem immediately analogous to policing. However, if one thinks about policing as a hugely complex, rapidly changing, high-stress environment in which decisions with life-altering consequences must be made instantaneously with imperfect information and zero tolerance for error, the similarities among policing, medicine, and aviation become more apparent” (890).

²⁹² James Doyle, “Learning from Error in the Criminal Justice System: Sentinel Event Reviews,” in *Mending Justice: Sentinel Event Reviews* (Washington, DC: National Institute of Justice, 2014), 4, <https://www.ojp.gov/pdffiles1/nij/247141.pdf>.

²⁹³ Cf. John F. Hollway and Ben Grunwald, “Applying Sentinel Event Reviews to Policing,” *Criminology & Public Policy* 18, no. 3 (2019): 705–30, <https://doi.org/10.1111/1745-9133.12457>. Hollway, the director of the Quattrone Center, has been a leading advocate of SERs in the criminal justice system. He served as the primary facilitator for Seattle’s SER, and previously facilitated an in-custody-death SER for the Tucson Police Department. See: Tucson Sentinel Event Review Board, *Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in Custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez* (Tucson, AZ: Tucson SERB, 2020), https://www.tucsonaz.gov/files/police/SERB/In_Custody_SERB_Final_Report_Sept_2020_Redacted.pdf.

SERs of several law enforcement agencies' responses to the extensive protests in the summer of 2020, including the Seattle Police Department's response.²⁹⁴

The general concept of critical incident review is by no means new to public safety agencies.²⁹⁵ The SER process distinguishes itself by (1) a focus on root cause analysis and (2) the direct involvement of a wide array of stakeholders. At first impression, both features seem well suited to a review of large-scale, multi-day demonstrations in urban centers, which invariably involve a complex array of dynamic police-civilian interactions and emerge from an intensely idiosyncratic local context and history. Given that other oversight bodies were already engaged in the retrospective accountability piece, applying a “no-fault learning” process to SPD's crowd control performance appeared promising.²⁹⁶

2. Compstat for risk

The New York Police Department famously implemented its Compstat program in 1994, leveraging computerized statistics (Compstat) to “put cops on dots,” hold commanders accountable for the management and policing of their precincts, and drive innovative crime-fighting strategies with “relentless follow-up and assessment.”²⁹⁷ OPD, after a decade at the receiving end of a similarly relentless process of monthly feedback from its court-appointed IMT, sought to develop an internal version of this exogenous

²⁹⁴ In addition to Seattle's SER, the Madison (Wisconsin) Police Department (MPD) also commissioned the Quattrone Center to conduct a detailed SER of its response to the summer 2020 protests. See: Quattrone Center, *Madison Police Department Sentinel Event Review (SER) of the Department's Responses to 2020 Protests of Police* (Philadelphia, PA: Quattrone Center, 2021), <https://www.cityofmadison.com/police/documents/SentinelReport20211116.pdf>.

²⁹⁵ Since 2013, the DOJ's Office of Community Oriented Policing Services' Critical Response Technical Assistance program has conducted critical incident reviews upon request. For example, see: Frank Straub et al., *Rescue, Response, and Resilience: A Critical Incident Review of the Orlando Public Safety Response to the Attack on the Pulse Nightclub* (Washington, DC: Office of Community Oriented Policing Services, 2017). The National Police Foundation (now known as the National Policing Institute) has published a guide on how to conduct after-action reviews. The guide contains a useful meta-analysis of 20 such reviews. See: National Police Foundation, *How to Conduct an After Action Review* (Washington, DC: Office of Community Oriented Policing Services, 2020), <https://www.policinginstitute.org/publication/how-to-conduct-an-after-action-review/>.

²⁹⁶ The term “no-fault learning” was coined by Ian Mitroff. See: Ian Mitroff, *Crisis Leadership: Planning for the Unthinkable* (Hoboken, NJ: John Wiley & Sons, Inc., 2004), 90.

²⁹⁷ John A. Eterno, Eli B. Silverman, and Michael M. Berlin, “Police Leadership of Tomorrow: Comprehensive Compstat Performance Management Moving from Stagnation to Innovation,” *Police Practice & Research* 22, no. 1 (2021): 886–902, <https://doi.org/10.1080/15614263.2020.1725273>.

mechanism of continual organizational improvement. Relying on technical assistance from the IMT and a Stanford University research team, OPD designed a monthly accountability forum in which senior command reviewed select recent performance data and then engaged in critical discussion and analysis to understand, and insight into, the behavior behind the risk-relevant data. If successful, these meetings would paint a common operating picture of agency-wide risk, point toward proactive strategies to mitigate that risk, and appraise the progress of ongoing risk-reduction efforts. In essence, OPD strove to create a Compstat for risk.

B. CASE STUDIES

1. Seattle Police Department

a. Historical Background

In 1999, the World Trade Organization (WTO) held its Ministerial Conference in Seattle. Over 50,000 protesters descended on the conference for the “Battle in Seattle,” and the rest is history.²⁹⁸ The Seattle Police Department’s much-maligned response to these protests has been well documented.²⁹⁹ In the immediate aftermath, Seattle’s mayor commissioned an outside consultant to conduct an independent review.³⁰⁰ SPD itself conducted extensive, searching postmortem analysis, and subsequently invested substantial resources to enhance its intelligence-gathering, planning, and operational capacity for

²⁹⁸ Jim Brunner, “50,000 Protesters, Tear Gas — and Madeleine Albright Trapped in Her Hotel: How the 1999 WTO Protests Changed Seattle,” *The Seattle Times*, November 30, 2019, <https://www.seattletimes.com/seattle-news/wto-seattle-protests-20-years-later-do-they-matter/>.

²⁹⁹ For a nuanced description of the sheer complexity of the demonstrations, see: Patrick F. Gillham and Gary T. Marx, “Complexity and Irony in Policing and Protesting: The World Trade Organization in Seattle,” *Social Justice* 27, no. 2 (2000): 212–36. For the perspective of SPD’s then-chief of police, who resigned due to criticisms of SPD’s handling of the protests, see: Norm Stamper, *Breaking Rank: A Top Cop’s Exposé of the Dark Side of American Policing* (New York, NY: Bold Type Books, 2005). Chapter 28, “Snookered in Seattle: The WTO Protests,” contains a remarkably candid account of how SPD command and City leaders engaged in decision-making before and during the conference.

³⁰⁰ Ronald M. McCarthy, Robert J. Loudon, and John Kolman, *An Independent Review of the World Trade Organization Conference Disruptions in Seattle, Washington, November 29 to December 3, 1999: Final Report* (Los Angeles, CA: R.M. McCarthy & Associates, 2000).

large-scale protests.³⁰¹ As a result of this system-oriented intervention, SPD developed strategies and tactics to manage protests and demonstrations that served it well during the ensuing two decades. By 2020, SPD was a recognized national leader in crowd management planning and tactics, and its in-house subject matter experts traveled throughout the country to train other law enforcement agencies.³⁰²

b. Sentinel Event Review of SPD's 2020 Crowd Control Incidents

The City of Seattle's independent Office of Inspector General for Public Safety (OIG) created a 2019 work plan that anticipated conducting sentinel event reviews to study officer-involved shootings.³⁰³ After 2020s summer of protests, OIG changed course and initiated a sentinel event review of SPD's response to the protests.³⁰⁴ This represents one of the first times the SER process has been used to survey rolling "waves" of police activities over multiple months. At the time of writing, Seattle's SER is ongoing. This section will draw some tentative conclusions about the SER process, as documented in the first two reports produced.

As discussed in the Introduction, the murder of George Floyd by a Minneapolis police officer in May of 2020 sparked the largest wave of protests in the United States since the 1960s.³⁰⁵ Many small and midsize law enforcement agencies found themselves faced

³⁰¹ Seattle Police Department, *The Seattle Police Department After Action Report: World Trade Organization Ministerial Conference, Seattle, Washington November 29 – December 3, 1999, 2000*, <http://media.cleveland.com/pdextra/other/Seattle%20PD%20after%20action%20report.pdf>.

³⁰² Jason Wilson, "The New Horsemen: How American Riot Police Embraced the Bicycle," *The Guardian*, June 15, 2017, sec. Cities, <https://www.theguardian.com/cities/2017/jun/15/the-new-horsemen-why-american-riot-police-embraced-the-bicycle>.

³⁰³ Seattle Office of Inspector General for Public Safety, *2019 Annual Work Plan* (Seattle, WA: OIG, 2019), 12, <https://www.seattle.gov/documents/Departments/OIG/Annual/OIG2019WorkPlan040419.pdf>. Seattle created an independent civilian OIG in 2017 as part of its police accountability ordinance and the first inspector general assumed office in 2018.

³⁰⁴ Seattle Police Monitor, *2021 Semi-Annual Report*. The widespread protests during the summer of 2020 also prompted other agencies to utilize the SER process for the first time. OIG's work plan for 2023 has since pivoted back to its original plan of convening an SER panel to review officer-involved shootings of persons in crisis. See: Seattle Office of Inspector General, *2023 OIG Work Plan* (Seattle, WA: OIG, 2022), <https://www.seattle.gov/documents/Departments/OIG/Policy/2023%20OIG%20Work%20Plan.pdf>.

³⁰⁵ For a history of the 1960s "rebellion" against police violence that draws striking parallels between that era and 2020, see: Elizabeth Kai Hinton, *America on Fire: The Untold Story of Police Violence and Black Rebellion Since the 1960s* (New York, NY: Liveright Publishing Corporation, 2021).

with large crowds bearing placards with anti-police slogans. The City of Seattle, however, had every reason to expect that its police department, which had handled thousands of protests over the preceding two decades, would be amply prepared for whatever came its way. After all, for seven of those years, SPD's crowd management policies and practices had been fashioned in a crucible of multiple cycles of critique and technical assistance from an independent monitoring team reporting to the federal court. And SPD's practical experience in handling violent protests, considered second to none, had impelled agencies from around the country to seek its guidance on leading-edge strategies and tactics.³⁰⁶

Yet these strategies and tactics proved no match for the 2020 protests, and, according to the SER panel, may even have “contributed to escalation of civil unrest and violence.”³⁰⁷ SPD's performance fell so short that Merrick Bobb, the first Seattle Police Monitor, wrote and published an open letter on the eve of his departure. In it, he asserted that “SPD is at its nadir,” and fretted that during SPD's response to the waves of protest, “lessons learned and techniques trained under the Consent Decree were lost, or, at least, set aside.”³⁰⁸ Bobb concluded the letter with a blunt summary of his team's assessment of the systemic deficiencies displayed by SPD:

Its performance during the recent demonstrations and protests betrayed a lack of adequate preparation and training, an apparent absence of an overall strategic plan or foreknowledge how to deal with violent interlopers without cutting off legitimate First Amendment activity by peaceful protesters, even if loud and challenging; inadequate subtlety and sophistication about the use of powerful and injurious nonlethal weaponry; a seeming lack at times of sensitivity to the First Amendment role of journalists and the moral and ethical role of medics; a willingness to call something a riot when it might have met some technical definition but was a far cry from a rebellion or

³⁰⁶ Carlton Reid, “Seattle Pioneered Bicycle Riot Control Tactics but Running Over Protestor's Head Not in Manual,” *Forbes*, September 24, 2020, <https://www.forbes.com/sites/carltonreid/2020/09/24/seattle-pioneered-bicycle-riot-control-tactics-but-riding-over-protestors-head-not-in-manual/?sh=4e726d9a638b>. The article notes: “Through a service called Tiger Mountain Tactical, Seattle Police Department bike squad officers have trained police forces around the U.S.”

³⁰⁷ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1* (Seattle, WA: OIG, 2021), 5, <https://www.seattle.gov/documents/Departments/OIG/Policy/OIGSERWave1Report072221.pdf>.

³⁰⁸ Merrick Bobb, “Seattle Consent Decree 2013–2022,” September 8, 2020, 2, <https://s3.documentcloud.org/documents/7204069/Clean-Final-Version-Bobb.pdf>.

stampede or even a melee merely so the SPD could use tear gas, a chemical agent banned for use in warfare after World War I.³⁰⁹

Some high-profile incidents received national media attention. As a result, Seattle's Office of Police Accountability (OPA) catalogued over 19,000 communications from the public alleging police misconduct during the summer protests.³¹⁰ OPA winnowed these down to 145 discrete investigations and created a public-facing dashboard tracking the status of the complaints.³¹¹

Faced with such overwhelming negative feedback from the outgoing Seattle Police Monitor and the community, OIG modified its work plan and embraced sentinel event review as a promising process that could generate a comprehensive root cause analysis of what went wrong, while rebuilding public trust and agency legitimacy. From the beginning of the SER planning process, OIG sought to create a "community-centered process."³¹² After soliciting input from over 100 community organizations, OIG's planning group constructed a jury-sized SER panel consisting of six community members, five SPD members of different ranks, and the Inspector General.³¹³ With the assistance of the co-facilitators (one from the Quattrone Center and two from a consulting company specializing in "peacekeeping circles"), OIG devised selection criteria for the set of incidents to review, and designed a methodology to guide the panel's review, as seen Table 1.

³⁰⁹ Bobb, 11–12.

³¹⁰ City of Seattle, *City of Seattle's Quarterly Accountability Update*, 2021, 9.

³¹¹ City of Seattle, 9. See: <http://seattle.gov/opa/case-data>.

³¹² City of Seattle, 7.

³¹³ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 8. The SER panel comprised two members of SPD's Force Review Board, including the Acting Captain of the Community Response Group, a specialized crowd-management team created in direct response to the 2020 challenges.

Table 1. Principles and Goals of Seattle’s Sentinel Event Review³¹⁴

Principles	Goals
Include SPD and community stakeholders	Focus on community perspectives and concerns; define implementable recommendations for SPD change
No assignation of individual blame	Identify root causes of negative outcomes
Learn from mistakes and best practices in other jurisdictions	Improve systems to reduce or prevent future negative outcomes or harm to the community
Support analysis with data and evidence	Increase legitimacy of government agencies and departments
Take action to correct identified issues	Facilitate community healing and mutual understanding

OIG’s planning group divided Seattle’s multiple months of demonstrations into five “waves.” Wave 1 covered the four-day period (29 May–1 June 2020) that occurred in the immediate aftermath of the George Floyd murder. From this time period, which saw numerous incidents and confrontations throughout downtown Seattle, the planning group selected five “pivotal” or “flash point” incidents to review as sentinel events.³¹⁵ These incidents were identified because they served as inflection points with “undesirable outcomes” while also providing a representative sampling of the first significant period of protests.³¹⁶ Wave 2 covered the subsequent six-day period (2–7 June 2020), and the OIG-convened planning group selected four salient incidents. The planning group focused on incidents occurring on June 6 and June 7, which accounted for 72% of SPD’s use of force and 71% of arrests during Wave 2.³¹⁷ To these four incidents, the SER panel exercised its

³¹⁴ Source: Seattle Office of Inspector General, 2.

³¹⁵ Seattle Office of Inspector General, 3–4.

³¹⁶ Seattle Office of Inspector General, 10.

³¹⁷ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 2: June 2 - 7, 2020* (Seattle, WA: OIG, 2022), 13, <https://www.seattle.gov/documents/Departments/OIG/Sentinel%20Event%20Review/SER%20Wave%20Two%20Draft%20Report%20Final%20Version%20%28V2%29.pdf>.

prerogative to add a fifth case study to review the adverse impact of the protests—and SPD’s response—on the residents of an apartment building next to SPD’s East Precinct (the epicenter of Wave 2).³¹⁸

The SER panel then faced the daunting task of reviewing the massive amount of data assembled by OIG.³¹⁹ Although the SER panel included several SPD members with extensive crowd control experience, OIG also commissioned the assistance of a professor of social psychology with a specialty in the psychology of crowds.³²⁰ The SER panel’s review process was labor-intensive: the panel met for over 80 hours in its first seven months.³²¹ For each sentinel event, the SER panel deliberated about contributing factors, grouped the factors into specific categories, and then constructed a visualization of the contributing circumstances and actions in the form of an Ishikawa diagram, as seen in Figure 6.³²² Guided by an SER expert, the collaborative process involved brainstorming all of the relevant root causes, discussing key relationships and interdependencies among the various causal factors, and designing system improvements to reduce the future incidence of similar adverse events.

³¹⁸ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 2: June 2 - 7, 2020*. “During this period, the entrance to the Sunset Electric [residential apartment] building was behind SPD barricades, and residents of the building experienced substantial hardship, including but not limited to exposure to CS gas and other less-lethal munitions, complications with access to or egress from their residences, unwelcome SPD presence in and around their building, and various other consequences of what one resident described as ‘living in a war zone’” (14).

³¹⁹ The voluminous data included: SPD use-of-force reports, body-worn-camera video, Computer-aided Dispatch (CAD) purge reports, arrest data, internal affairs case summaries, data on lawsuits filed, news media, publicly available video, social media posts, etc. See: Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 10–11.

³²⁰ Clifford Stott, Professor of Social Psychology and Dean of Research at Keele University in the United Kingdom, is known for his contributions to the Elaborated Social Identity Model of crowd behavior (ESIM). See: Clifford Stott and Matthew Radburn, “Understanding Crowd Conflict: Social Context, Psychology and Policing,” *Current Opinion in Psychology*, Social Change (Rallies, Riots and Revolutions), 35 (October 1, 2020): 76–80, <https://doi.org/10.1016/j.copsyc.2020.03.001>. In addition to providing technical assistance on crowd psychology, Stott introduced the SER panel to several international approaches to policing protests.

³²¹ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 1. This estimate does not include the time the panelists spent reviewing the data to prepare for the panel meetings. The 80 hours did include an initial 8-hour session dedicated to “peacemaking”—a process designed to facilitate “a supportive environment” and “open-mindedness”—as well as another 18 hours spent in “peacemaking circle activities” (9).

³²² See: <https://asq.org/quality-resources/fishbone>.

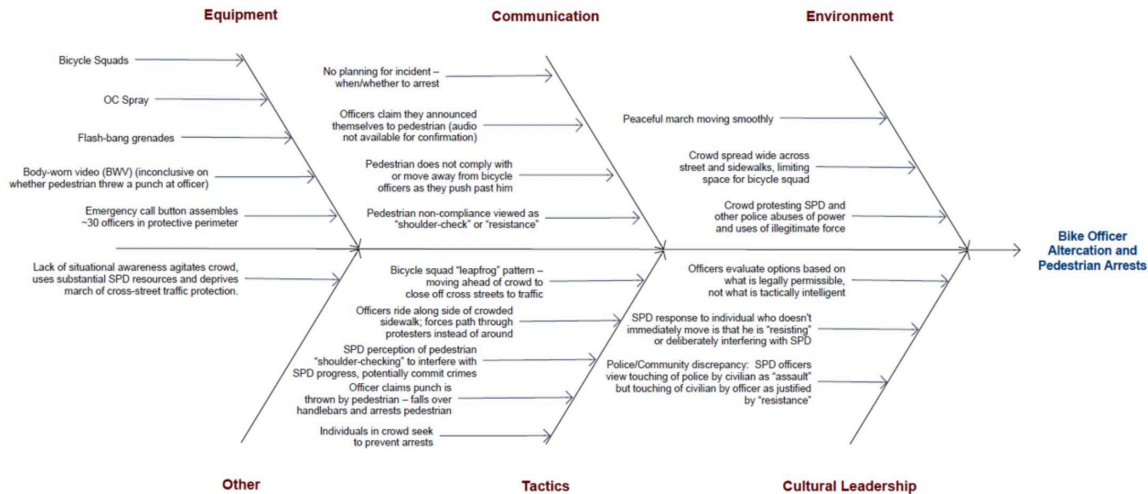


Figure 6. Example Ishikawa diagram³²³

The SER panel’s root cause analysis of the Wave 1 incidents resulted in the identification of 53 overarching and specific contributing factors that conduced to the adverse outcomes, as well as 54 recommendations for improvement directed to SPD and other City departments.³²⁴ Following its review of the Wave 2 incidents, the SER panel made 26 additional recommendations to improve SPD’s policies and procedures.³²⁵ The SER process overlapped with other internal and external reviews. SPD’s official responses to the Wave 1 and Wave 2 reports noted that internal reviews (e.g., the self-critique of Force Review Board), external reviews (e.g., OPA’s complaint investigations), and real-time tracking of the SER process had already led the Department to implement many of the SER panel’s recommendations.³²⁶

The diverse composition of the SER panel, its community-centered approach, and the capacious wingspan of its remit prompted a concerted effort “to identify areas where

³²³ Source: Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 58.

³²⁴ Seattle Office of Inspector General, 16.

³²⁵ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 2: June 2 - 7, 2020*. For Wave 2, the panel stopped counting contributing factors (after identifying more than 80). The panel’s recommendations are summarized in Appendix F on pp. 69–73.

³²⁶ Seattle Office of Inspector General. “Thus, the report may include recommendations that are already in place or are in the process of implementation” (59).

SPD actions did not match community expectations, even when those existing laws permitted those actions.”³²⁷ These areas of misalignment resonate throughout the panel’s recommendations. During the 2020 protests, SPD’s time-tested crowd management strategies and tactics repeatedly fell short of community expectations, sparking distrust and rupturing SPD’s legitimacy among a sizable portion of the population.³²⁸ For example, in a characteristically blunt aside about the causes of an avoidable altercation, the Wave 1 report notes as a contributing factor that “officers evaluate options based on what is legally permissible, not what is tactically intelligent.”³²⁹

The SER process, with its prospective focus on prevention rather than a retrospective focus on accountability, seems well positioned to address this misalignment. When the SPD panelists explained that an officer’s action of placing a knee very close to an arrestee’s neck was justified by existing law and policy, the community panelists pointed out that such an action, although constitutionally permissible and within policy, “does not reflect an acceptable tactic in the eyes of the community” and recommended that SPD modify its policies to better harmonize them with community expectations.³³⁰ For a separate incident, in which a single officer’s spontaneous decision to effect an arrest immediately embroiled several dozen officers in a “counterproductive confrontation with a previously calm crowd,” the panelists agreed that the decision to arrest, although lawful and within policy, “conflicted in every way with the SPD’s stated strategic and tactical goals for the day.”³³¹ Such incidents were especially counterproductive in the context of a protest against police violence. The 2020 protests were motivated by anger and resentment against the police, and the SER panel noted that SPD struggled to adapt its tactics

³²⁷ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 4.

³²⁸ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*. Some SER participants were impacted as they reviewed the material: “Often, actions by SPD officers that were deemed ‘legal’ or within the acceptable bounds of policy by SPD or OPA generated great anger and frustration among Panelists” (18). It is difficult to imagine an equivalent emotional reaction in an analogous healthcare-setting SER while discussing decisions that met the medical standard of care but resulted in a tragic outcome.

³²⁹ Seattle Office of Inspector General, 58.

³³⁰ Seattle Office of Inspector General, 56.

³³¹ Seattle Office of Inspector General, 54.

accordingly. Without providing much detail, the panelists recommended SPD develop “a new strategic framework” to facilitate protests when the institution of policing is the focal point of the demonstration.³³²

The SER panel also showed interest in weighing the true costs and benefits of SPD’s longstanding crowd management tactics. For example, SPD subject matter experts discounted the importance of carrying long batons when policing demonstrations. In fact, during the panel’s deliberations, the SPD panelists averred that carrying the batons “often did more harm than good” and that their utility was limited.³³³ The panel ultimately recommended SPD reconsider the use of long batons in crowd facilitation events. This recommendation received a cautionary and noncommittal response from SPD’s executive staff.³³⁴ The SER process thus surfaced an internal disagreement about a key component of SPD’s standard operating procedure that had previously gone unquestioned. Furthermore, the willingness of the panel to engage in a realistic assessment of the costs and benefits of traditional law enforcement practices offers an instructive example of how the SER process encourages participants to address, publicly and with full transparency, the question of how to balance competing values while seeking to minimize the use of force.

³³² Seattle Office of Inspector General, 24.

³³³ Seattle Office of Inspector General, 37. This discussion yielded Recommendation 24: “Review SPD protocols related to the presence of batons and their use during crowd facilitation events, potentially eliminating their presence at such events unless justified by a specific and compelling public safety purpose” (40).

³³⁴ Adrian Diaz, “RE: Sentinel Event Review Wave 1,” October 4, 2021, <https://www.seattle.gov/documents/Departments/OIG/Sentinel%20Event%20Review/Other/SER%20Wave%201%20-%20SPD%20Response.pdf>. SPD’s response to Recommendation 24 is at 8:

Further discussion needed. While SPD understands the history and optics of officers carrying batons, officers presently have no dedicated space to store batons when deployed, such that they would be easily accessible if needed. Additionally, while SPD has long moved away from using batons as a weapon (as opposed to leveraging their utility as a bar to hold back crowds where necessary), SPD also cautions that a perhaps unintended consequence of recent City Council legislation may be a foreseeable increase in the presence of batons, in those circumstances where law enforcement action is needed to move a crowd. That said, as a key component of recent policy and training revisions is to reduce to the extent feasible the need for fixed lines and to minimize the police presence in a crowd, SPD also submits that the goals of this recommendation may be largely met through reduced officer presence.

The SER process generated productive discussion about international public-order policing techniques applicable, *mutatis mutandis*, to Seattle. The OIG-selected expert on crowd psychology directed the panel’s attention to the “dialogue officer” concept that has recently gained currency in Europe.³³⁵ Dialogue policing, first implemented in Sweden, deploys specially trained officers to communicate and maintain long-term relationships with the organizers of events and demonstrations that have the potential to devolve into violence, conflict, and disorder.³³⁶ Designated dialogue officers provide crucial intelligence-gathering services prior to and during demonstrations, delivering detailed updates to the incident commander and the tactical commander.³³⁷ Researchers have found that the dialogue policing approach to protests leads to “improved command-level decision making” based on a robust and real-time “dynamic risk assessment.”³³⁸ The SER panel recommended that SPD assess whether a version of this approach might improve its response to future crowd management incidents.³³⁹ SPD moved quickly to implement this recommendation, creating a “dialogue unit” called the Public Outreach and Engagement Team (POET).³⁴⁰

³³⁵ Appendix A of the Wave 1 report recapitulates a case study of Sweden’s dialogue police function. See: Her Majesty’s Inspectorate of Constabulary, *Adapting to Protest – Nurturing the British Model of Policing* (London, UK: HMIC, 2009). (Case Study A: Dialogue Policing in Sweden is at 74–77.)

³³⁶ Stefan Holgersson, *Dialogue Police: Experiences, Observations, and Opportunities* (Sweden: The National Police Board, 2010), https://phsblog.at/wp-content/uploads/2016/04/Dialogue_bok100630Webb.pdf.

³³⁷ Sweden’s dialogue officers also engage in post-event communication and participate in after-action reviews.

³³⁸ Hugo Gorringer, Clifford Stott, and Michael Rosie, “Dialogue Police, Decision Making, and the Management of Public Order During Protest Crowd Events,” *Journal of Investigative Psychology & Offender Profiling* 9, no. 2 (June 2012): 111, <https://doi.org/10.1002/jip.1359>. (The article goes on to note that, at the time, the Metropolitan Police were “exploring the use of water cannon” for use in protests (114). At the very least, this raises questions about the importability of various practices and highlights the importance of taking local history and conditions into account.)

³³⁹ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 64.

³⁴⁰ Adrian Diaz, “RE: SER Wave 2 SPD Response,” May 4, 2022, 1, <https://www.seattle.gov/documents/Departments/OIG/Sentinel%20Event%20Review/Other/SER%20Wave%202%20-%20SPD%20Response.pdf>.

The SER panel noted certain drawbacks and “limitations” of using the Incident Command System (ICS) model for crowd management incidents.³⁴¹ The SER panel questioned what it understood as an underlying assumption of ICS command structure—namely, that rank alone should dictate one’s position in the ICS hierarchy. Contra the ICS model, the SER panel advocated for assignments based on “competency for the role” rather than rank.³⁴² The SER panel pointed to the United Kingdom’s protocols, which emphasize that “occupational and operational competence” should guide the selection of commanders for crowd management events.³⁴³ The UK’s Gold (strategic), Silver (tactical), and Bronze (operational) command structure for critical incident management is explicitly based on role rather than grade/rank. The 2020 protests in the U.S. highlighted the importance of qualified and competent command. In several states, this led to legislation. For example, California law now provides that “only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.”³⁴⁴ The legislative history makes clear that the intent was both to ensure command-level direction on the use of CS (tear gas) munitions and to prevent commanders who are not on the scene of a demonstration from exercising directive authority over operational decisions to deploy tear gas.

2. Oakland Police Department

a. Risk Management Meetings

In February 2005, OPD implemented a Management Assessment Program (MAP), comprising bi-weekly meetings of senior commanders to discuss real-time compliance data (including use of force trends, audit results, stop data trends, and training and policy

³⁴¹ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 71.

³⁴² Seattle Office of Inspector General, 71.

³⁴³ National Policing Improvement Agency, *Manual of Guidance on Keeping the Peace* (London, UK: NPIA, 2010), 61, <https://www.statewatch.org/media/documents/news/2012/jan/uk-manual-public-order-2010.pdf>. Furthermore, in the UK, public-order commanders are compelled to submit a “portfolio of evidence” for annual reaccreditation.

³⁴⁴ California Penal Code § 13652(b)(11). Assembly Bill 48 was signed by the Governor on September 30, 2021; it went into effect on January 1, 2022. See: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB48.

compliance).³⁴⁵ MAP meetings became forums in which managers were asked, and encouraged to ask, probing questions about performance and compliance data related to their personnel. This was during the development of the iPAS EI system, and much of the performance data was incomplete, unreliable, or unavailable. Discussions frequently revealed that relevant information was not available either because it had *never* been captured or because it was not *consistently* captured by the extant data systems. The MAP meetings thus drew attention, again and again, to the importance of data collection and data mining to make evidence-based assessments of compliance efforts. Semiannual meetings soon complemented the MAP meetings to evaluate agency-wide PAS data.

In 2013, having addressed most of its recurring data-reliability issues, OPD replaced MAP meetings with monthly risk management meetings (RMMs) to review a “broad set of indicators” including stop data and PAS data broken out by area, squad, and individual officer.³⁴⁶ A Risk Management Unit (RMU) was created to produce summaries, analyses, and visualizations of the data.³⁴⁷ However, the IMT and the newly installed Compliance Director urged OPD to engage a consultant to assist with the analysis of stop data. For years, OPD had resisted the IMT’s entreaties to analyze its stop data for evidence of disparate treatment. OPD contended the NSA requires the *collection* of stop data but does not require the *analysis* of the data.³⁴⁸ The Compliance Director disagreed and

³⁴⁵ Oakland Police Department, *Negotiated Settlement Agreement Seventh Semi-Annual Report*, 10. <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/dowd006407.pdf>

³⁴⁶ Independent Monitoring Team, *Sixteenth Quarterly Report of the Independent Monitor for the Oakland Police Department*, 2014, 68. As the IMT observed, “The system also supports a broader approach to managing risk in which the Department continuously assesses activity and seeks to incorporate those assessments more broadly” (67).

³⁴⁷ Office of the Compliance Director, *Oakland Police Department Benchmarks Plan First Report*, 20.

³⁴⁸ Independent Monitoring Team, *Eleventh Status Report*. “OPD’s efforts have been focused on collecting stop data. Currently, however, OPD does not effectively analyze the stop data its officers painstakingly gather. Although not required by the NSA, if OPD were to analyze stop data and act upon information regarding ‘hit rates,’ etc., more officers, OPD management, and the City, will likely see the value in collecting stop data. More importantly, the efficiency and effectiveness of OPD’s detentions and searches might well improve, benefiting officers and the community alike” (66).

advised he would hire a consultant if necessary.³⁴⁹ By 2014, OPD was collaborating with researchers at Stanford University to conduct a thoroughgoing analysis of OPD’s stop data. Stanford researchers also guided the RMU’s data analysis and production of data visualizations for the monthly RMMs. This collaboration proved effective in sharpening the focus of the RMM discussions—and any follow-up corrective action—on the most important risk metrics.³⁵⁰

The collaboration between Stanford and OPD also led to a widening understanding of the harms identified and addressed by the risk management process. In their analysis of a year’s worth of stop data, the Stanford research team found “real and significant racial disparities in OPD stops, searches, handcuffing, and arrests, even after accounting for crime rates, demographics, and other factors that influence policing activity.”³⁵¹ The team made 50 recommendations for “evidence-based changes in [OPD’s] policies, practices, and procedures.”³⁵² After a decade of assiduously collecting data that reflected racial disparities in traffic stops and stop outcomes, OPD resolved to foreground the issue of disparities in its RMMs. To that end, the RMU began producing a series of slides displaying both snapshots and longitudinal trends in the aggregate stop data. The slides included detailed statistics of all non-dispatched stops, including stop rationales, discretionary searches and recoveries, and stop outcomes (i.e., arrest, citation, warning)—tracking all rates and percentages by race and highlighting any outlying squads and individual officers.

³⁴⁹ Office of the Compliance Director, *Oakland Police Department Benchmarks Plan First Report*. “The Compliance Director will engage a subject matter expert if it is determined that Departmental efforts in this area are insufficient” (10).

³⁵⁰ Independent Monitoring Team, *Twentieth Quarterly Report of the Independent Monitor for the Oakland Police Department*, 2015, 70. “Both the monthly Risk Management Meetings and Semi-Annual PAS meeting are having positive effects, with the reduction in risk-related activities such as uses of force and police pursuits.”

³⁵¹ R. C. Hetey et al., *Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013–2014* (Stanford University, SPARQ: Social Psychological Answers to Real-world Questions, 2016), 12.

³⁵² J. L. Eberhardt, *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.* (Stanford University, SPARQ: Social Psychological Answers to Real-world Questions, 2016), 6. OPD immediately committed to implementing these recommendations and began reporting timelines and progress on implementation to the federal court.

The purpose of the RMM process was to provide strategic oversight of OPD’s risk management efforts through a rigorous and searching dialogue between the Department’s executive team and its division commanders. Once detailed stop data analyses became available, many exchanges focused on how to reduce racial disparities in discretionary stops and search rates. Outlying squads came under scrutiny, and division commanders were asked probing follow-up questions about whether an outlying squad’s enforcement activity was in alignment with command directives. These questions resulted in additional “drill-downs” to the individual officer level, with supervisors tasked with reviewing field interview reports and body-worn-camera video footage to obtain a clearer picture of an officer’s stop- and search-related decision making. After several iterations of this process, the OPD senior command team had obtained a better understanding of the relative number of low-level, equipment-related stops and their contribution to racial disparities.³⁵³

As OPD began to implement the Stanford team’s recommendations, RMM conversations started from the premise that “[r]outine police stops, even when they do not end with a citation or arrest, have a human toll,” and discussed ways to reduce the total number of stops without compromising public safety.³⁵⁴ These conversations evinced a willingness to take a broader view of the risks involved in police activity. Once this “risk-aperture” had been widened—from a narrow focus on the harm of disparate treatment to a more capacious consideration of the harm of routine stops per se—a range of new possible risk treatments emerged. One possible approach considered was to discourage stops for equipment-related violations of the vehicle code and prioritize stops for moving

³⁵³ Independent Monitoring Team, *First NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department*. See the discussion at 28–29 for a useful summary.

³⁵⁴ Rebecca C. Hetey, “Implicit Bias, the Power of Institutions, and How to Reduce Racial Disparities in Policing,” in *Bias in the Law: A Definitive Look at Racial Prejudice in the U.S. Criminal Justice System* (Washington, DC: Lexington Books, 2020), 59. “By aiming to reduce the overall number of stops and prioritizing the *quality* of enforcement activity over sheer quantity, which is in line with an industry move toward ‘precision policing’ that prizes efficiency, law enforcement can reduce the negative impact on people’s lives while simultaneously maintaining public safety” (citation omitted). See also: Harmon, “The Problem of Policing.” In this seminal article, Harmon argues for a new “normative framework”: “Police officers may impose constitutionally permissible harms on individuals and communities that are nonetheless ineffectual in reducing crime, fear, or disorder. Regulation of the police should promote harm-efficient policing—that is, policing that imposes harms only when, all things considered, the benefits for law, order, fear reduction, and officer safety outweigh the costs of those harms” (792). Another way to frame these RMM discussions, then, is as an exploration of the harm-efficiency frontier for police stops.

violations.³⁵⁵ Additional discussion and analysis revealed that many ostensibly equipment-related stops were actually pretextual stops to investigate non-traffic-related criminal activity.³⁵⁶ A further distinction was needed—viz., a distinction between pretextual stops based on actual information about criminal activity and pretextual stops based on nothing more than a hunch. With this distinction in hand, OPD command decided to encourage “intelligence-led stops,” which it defined as stops initiated in light of an officer’s “knowledge that can be linked to an articulable source.”³⁵⁷ To monitor the uptake of this new direction, an additional field was added to stop data forms, and the RMU created additional RMM presentation slides summarizing the percentage of intelligence-led stops by division, squad, and individual officer.

To demonstrate the Department’s commitment to this reorientation, OPD’s executive team held a mandatory all-supervisors meeting and explained the intelligence-led strategy and its overarching intent. In the monthly RMMs, dialogue and Socratic questioning focused on the *quality* rather than the *quantity* of stops, with outlying squads and individual officers highlighted for additional analysis. Commanders and supervisors were tasked with reviewing patterns of stops, searches, and policing outcomes, and assessing alignment with the Department’s enforcement priorities.³⁵⁸ By this iterative process, supervisors came to understand that their respective squads’ performance would be evaluated based on the quality and precision of their stops. Given that OPD supervisors

³⁵⁵ Cf. Mike Dolan Fliss et al., “Re-Prioritizing Traffic Stops to Reduce Motor Vehicle Crash Outcomes and Racial Disparities,” *Injury Epidemiology* 7, no. 1 (January 2020), <https://doi.org/10.1186/s40621-019-0227-6>. See, e.g., Philadelphia’s Driving Equality Law (City of Philadelphia Bill No. 210636), banning police enforcement of eight low-level traffic offenses (equipment and registration violations), which made national news. Evan Simko-Bednarski, Maya Brown, and Emma Tucker, “Mayor Signs Legislation Making Philadelphia the First Major U.S. City to Ban Police from Stopping Drivers for Low-Level Traffic Violations,” *CNN Wire Service*, November 4, 2021, sec. National, ProQuest.

³⁵⁶ For a discussion of the issues surrounding pretextual stops, see: Rushin and Edwards, “An Empirical Assessment of Pretextual Stops and Racial Profiling.”

³⁵⁷ Oakland Police Department, *2019 Annual Stop Data Report*, 2020, 4, <https://cao-94612.s3.amazonaws.com/documents/2019-Stop-Data-Annual-Report-6Oct20-Final-Signed-1.pdf>. In March 2022, the Los Angeles Police Commission used a similar distinction to promulgate a restriction on officer discretion with respect to enforcement of minor vehicle-equipment infractions. See LAPD Department Manual 1/240.06 Policy – Limitation on use of Pretextual Stops.

³⁵⁸ Independent Monitoring Team, *First NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department*, 29.

are tasked with reviewing and approving stop data forms—which contain a detailed explanation of the reason for, and results of, each stop—supervisors’ understanding and buy-in influence the day-to-day proactive decision making of line officers. Daily supervisory feedback based on assessment of the quality of stops quickly had a cumulative effect on OPD’s aggregate stop data.

One of the Stanford team’s recommendations was for OPD to publish an annual Racial Impact Report.³⁵⁹ The annual reports show a significant change to OPD’s non-dispatched stop activity from 2017 to 2022. There was a noticeable increase in the percentage of intelligence-led stops (from 27% in 2017 to 41% in 2022), as well as an 86% decrease in the number of non-intelligence-led discretionary stops of Blacks (from 13,055 in 2017 to 1,832 in 2022).³⁶⁰ As seen in Figure 7, the number of discretionary, non-dispatched stops between 2014 and 2022 saw a peak-to-trough drop of 84% (from 38,019 to 6,142 annual stops) before rebounding slightly in 2022.

³⁵⁹ Oakland Police Department, *Racial Impact Report 2016–2018*, 2019, <https://cao-94612.s3.amazonaws.com/documents/OPD-Racial-Impact-Report-2016-2018-Final-16Apr19.pdf>.

³⁶⁰ See: <https://www.oaklandca.gov/resources/stop-data>.

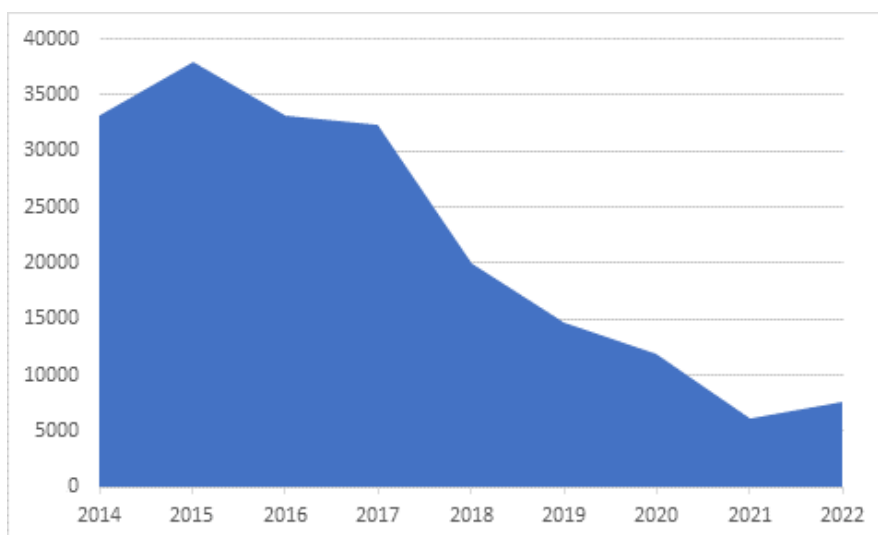


Figure 7. OPD discretionary stops (2014-2022)³⁶¹

The dramatic decrease in discretionary stops occurred as Oakland’s violent crime statistics remained relatively stable, as seen in Figure 8. This suggests, based solely on top-line results, that OPD’s overall traffic stop strategy in 2014–2016 had minimal efficacy in fighting violent crime. From a cost-benefit perspective that considers each stop having a “human toll,” there is at least a *prima facie* case to be made that OPD’s traffic stop regime was doing more harm than good.³⁶²

³⁶¹ Adapted from “Police Data,” Oakland Police Department, accessed March 28, 2023, <https://www.oaklandca.gov/resources/stop-data>.

³⁶² Cf. Alex Chohlas-Wood et al., “Identifying and Measuring Excessive and Discriminatory Policing,” *The University of Chicago Law Review* 89, no. 2 (2022): 441–76. This article analyzes historical data (from 2012 to 2020) tracking the precipitous (nearly 90%) decline in traffic stops by the Metropolitan Nashville Police Department (MNPDP). MNPDP’s data must be viewed with caution, given that its traffic stops in 2012 were an order of magnitude higher per capita when compared to comparable cities, but the results “suggest that MNPDP’s traffic-stop policy had little to no immediate or long-term crime-fighting benefit” (455).

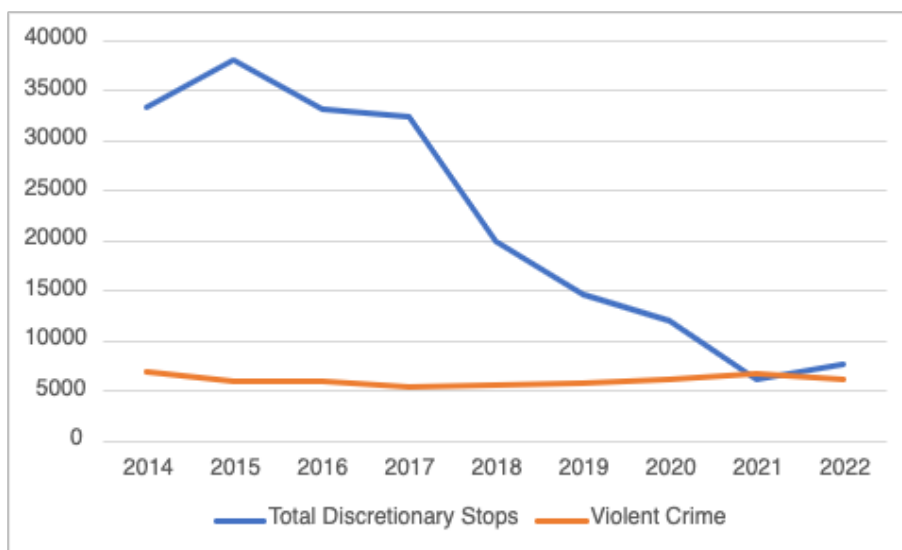


Figure 8. OPD discretionary stops vs. Oakland violent crime (2014-2022)³⁶³

As the monthly RMMs tracked the decrease in discretionary stops and found no corresponding increase in violent crime, discussion turned to more granular evaluations of the fairness and effectiveness of the stops officers continued to make. An analysis of OPD’s aggregate stop data showed that officers’ search decisions resulted in no significant difference in outcome (“hit rate”) by race.³⁶⁴ In other words, although different segments of the population were searched by OPD officers at different rates, the searches yielded “recoveries” (of, e.g., contraband, weapons, and/or evidence) at similar rates.³⁶⁵ Notwithstanding this parity in search outcomes, one of the Stanford recommendations

³⁶³ Adapted from “Police Data,” Oakland Police Department, accessed March 28, 2023, <https://www.oaklandca.gov/topics/police-data>. The decline in stops per capita was not calculated, but it would have been even more dramatic given the 12.8% increase in Oakland’s population between the 2010 census and the 2020 census. The uptick from 2021 to 2022 is attributable to the reconstitution of a Traffic Enforcement Unit in second half of 2022.

³⁶⁴ For discussions of outcome tests for discrimination, see: Sharad Goel, Justin M. Rao, and Ravi Shroff, “Precinct or Prejudice? Understanding Racial Disparities in New York City’s Stop-and-Frisk Policy,” *The Annals of Applied Statistics* 10, no. 1 (2016): 365–94, <https://doi.org/10.1214/15-AOAS897>. See also: Camelia Simoiu, Sam Corbett-Davies, and Sharad Goel, “The Problem of Infra-Marginality in Outcome Tests for Discrimination,” *The Annals of Applied Statistics* 11, no. 3 (2017): 1193–1216. See also: Jack Glaser, *Suspect Race: Causes and Consequences of Racial Profiling* (New York, NY: Oxford University Press, 2015).

³⁶⁵ When the “hit rates” for discretionary searches of different populations are significantly disparate, some researchers have seen this as an indicator that officers may be using different “thresholds” of suspicion in their search decisions.

centered on a reassessment of the harm-efficiency of probation and parole searches.³⁶⁶ In considering this recommendation, RMM discussions revolved repeatedly around discretionary search decisions and how they contributed to search-rate disparities. The RMM debate paralleled a discussion early in the NSA about ways to discourage racial profiling. This earlier discussion led to the enactment of a 2004 policy that restricted officer discretion with respect to consent searches by requiring that officers notify individuals of their right to refuse a consent search.³⁶⁷ Now, after much debate, and equipped with data showing the limited efficacy of *routine* invocation of four-way search clauses, OPD sought to reduce its total number of searches and its search-rate disparities by restricting officer discretion with respect to probation and parole searches.³⁶⁸ The new policy represented an attempt to strike an evidence-based balance between maintaining public safety and reducing the harmful indignity of routinized intrusive searches. Once again, a crucial distinction proved necessary to achieve a reasonable balance—this time, a distinction between non-violent offenses and violent/weapon-possession offenses, with only the former requiring the presence of articulable facts connecting the individual to criminal activity before an officer may invoke a warrantless search condition.

The Stanford research team used computational linguistic techniques to analyze body-worn camera (BWC) videos of routine traffic stops conducted by OPD officers.³⁶⁹

³⁶⁶ Eberhardt, *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.*, 56. “Does the discovery that someone is on probation or parole always trigger a search? If so, the department should query whether this practice helps or hinders community-police relations, individuals’ rehabilitation process, and the protection of the community from crime.”

³⁶⁷ See: Departmental General Order M-19 (Prohibitions Regarding Racial Profiling and Other Bias-based Policing). Retrieval from: <https://public.powerdms.com/oakland/tree/documents/462>.

³⁶⁸ Ali Tadayon, “New Policy Limits When Parolees Can Be Searched Without a Warrant,” *East Bay Times*, July 16, 2019, sec. Local News. See: Departmental General Order R-02 (Searches of Individuals on Probation, Parole, Mandatory Supervision and PRCs (Post-Release Community Supervision)). Retrieval from: <https://public.powerdms.com/oakland/tree/documents/1800988>. A “four-way” search clause is a condition of probation/parole/supervised release authorizing any law enforcement officer to search an individual’s (1) person, (2) vehicle, (3) residence, or (4) property at any time. (Supervised release includes Post Release Community Supervision, pursuant to California Penal Code § 3451.)

³⁶⁹ Voigt et al., “Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect.” This study was the first application of machine learning techniques to BWC footage. The dataset consists of 183 hours of video footage that was captured during 981 stops in April 2014. From this footage, the researchers obtained 36,738 “usable officer utterances” to analyze.

In addition to finding that officers spoke with less respect to Black than to white community members in everyday encounters, the researchers also found that officers were far more likely to mention “probation” and “parole” when talking to Black community members.³⁷⁰ This finding generated a recommendation that OPD consider several questions: “What are legitimate reasons to ask whether someone is on probation parole? When is the right time to ask? What is the right way to ask?”³⁷¹ This recommendation generated extensive RMM discussions about racial disparities in search decisions, as the analysis of the data also showed that 93% of parole and probation searches were of Blacks and Hispanics.³⁷² In the end, OPD answered Stanford’s questions by prohibiting officers from asking about probation/parole status at the initiation of an encounter.³⁷³ This new prohibition was then audited by supervisors during bi-weekly BWC reviews.

For the first few years of OPD’s “Compstat for risk,” preparing presentation slide-decks for RMMs was labor-intensive for the RMU. Yet the presentations gave OPD commanders only episodic updates on their division’s risk profile. In early 2019, as the RMU developed the capacity to automatically generate area-specific tables and graphs, Area-level risk management meetings became possible without further burdening the RMU. The Captain-led Area-level meetings now involve lieutenants and first-line supervisors in the risk management process.³⁷⁴ These meetings afford a more fine-grained assessment of individual officers’ performance measures, as well as a qualitative discussion of any underlying issues revealed by investigations into complaints, uses of force, pursuits, etc. The Area-level meetings also frequently lay the groundwork for management referrals of individual personnel to the PAS Unit for a more detailed review

³⁷⁰ Eberhardt, *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.*, 17.

³⁷¹ Eberhardt, 56.

³⁷² Eberhardt, 56.

³⁷³ DGO R-02, at 2: “Inquiring about an individual’s Supervised Release, at the beginning of an interaction without proper justification is unjust.... Officers shall not immediately inquire whether an individual is on Supervised Release unless there is an Immediate Threat to Officer safety or the safety of others” (citation omitted).

³⁷⁴ Independent Monitoring Team, *Sixty-Second Report of the Independent Monitor for the Oakland Police Department*, 2019, 12. “The [Area] meetings largely mirrored the Department meetings, but provided opportunity for more detailed and extended review with the supervisors.”

and possible selection for additional supervisory monitoring or intervention.³⁷⁵ Thus, the Area-level meetings facilitate the integration of the RMM process and EI system.

C. CONCLUSION

The Seattle Police Department, with its multiple layers of internal and external review (including the Force Review Unit, the Force Review Board, the Office of Police Accountability, the Office of Inspector General for Public Safety, the Community Police Commission, and the Seattle Police Monitor), offers a kind of natural experiment to test whether an additional review process like sentinel event review has anything unique to contribute. Is the SER process generative? Does SER's root cause analysis, with a focus on contributing factors, generate recommendations that differ from the other types of review?

Although the Seattle SER panel's recommendations may not have been revolutionary—many, if not most, overlapped with recommendations from other layers of review—the panel did surface some internal SPD disagreements about tactics and strategy that were unlikely to arise (at least publicly) in other contexts. The panel also displayed an uncommon openness to the public-order methodology employed by SPD's international counterparts. Furthermore, the SER process itself is a unique and welcome contribution to the goal of aligning a law enforcement agency's practice with its community's expectations. The transparency of the community-centered SER process—facilitated by its non-blaming, prospective approach—amplifies public confidence that the agency cares about improving the system going forward.

Seattle's community-centered SER process also demonstrated a flexible approach to the *selection* of sentinel events. The diverse planning group, which includes stakeholders from the community, SPD, and police accountability organizations, cast a wide net in its incident-selection process. In prioritizing between a series of eventful months, the planning group looked for representative examples of both “high-impact/low frequency” and “low impact/high frequency” incidents. The selection of the lived experience of the Sunset

³⁷⁵ Independent Monitoring Team, *First NSA Sustainability Period Report of the Independent Monitor for the Oakland Police Department*, 29.

Electric apartment building denizens (who felt they were “living in a war zone”) as its own sentinel event is indicative of diverse stakeholders applying diverse selection criteria.

OPD’s monthly risk management meetings have proved a versatile and flexible forum for generating insights into the full spectrum of police activities that impact public trust and legitimacy. As the risk management process has evolved, different categories of risk-related data have moved from the periphery to the center of the agency’s focus. The forum has hosted wide-ranging debates about how to implement an intelligence-led policing strategy, how to reduce racial disparities in search rates, whether and how to restrict officer discretion in conducting warrantless searches of individuals on probation or parole, and how to best monitor and manage the risks of high-speed pursuits. The RMMs are productive in that they led to concrete changes to OPD’s strategy, tactics, and policies. And the RMMs are an effective mechanism for iteratively assessing the impact of these changes, producing insights into the behavior underlying the risk-oriented data, and generating additional recommendations for change.

Even as OPD entered the so-called “sustainability period” of the NSA in June 2022, the IMT continued to monitor RMMs and Area-level meetings. The IMT also continued to advocate for an expansion in the risk-related data under review.³⁷⁶ With the aim of expanding the scope of the data subjected to RMM analysis, OPD has pursued additional collaboration with researchers from Stanford. While OPD implemented the Stanford recommendations, Stanford’s SPARQ research team enhanced its machine learning models to adjudge the procedural justice of police-citizen encounters at scale.³⁷⁷ Having found the large-scale analysis of BWC video promising, OPD’s Research and Planning Section has

³⁷⁶ Independent Monitoring Team, *Seventy-Ninth Report of the Independent Monitor for the Oakland Police Department*, 2022, 14, <https://cao-94612.s3.amazonaws.com/documents/OPD-79-Report.pdf>. “[T]he Risk Management Meetings ... focus almost exclusively on force, complaints, stop data, collisions, and pursuits.... Other measures of risk-related behavior are rarely mentioned. Besides the problem of omission, the potential hazards with this are in limiting analysis, and ultimately, in constraining the conceptualization and meaning of risk itself in the Department.”

³⁷⁷ Vinodkumar Prabhakaran et al., “Detecting Institutional Dialog Acts in Police Traffic Stops,” *Transactions of the Association for Computational Linguistics* 6 (2018): 467–81, https://doi.org/10.1162/tacl_a_00031.

begun to explore the use of natural language processing (NLP) algorithms to review OPD's massive database of BWC video.

V. CONCLUSIONS, RECOMMENDATIONS, AND FURTHER RESEARCH

A. CONCLUSIONS

Constitutional impermissibility does not delimit the harms caused by policing, and therefore should not determine the scope of risk management. Yet, as seen in Chapter II, many law enforcement agencies frame their risk management strategies in terms of legal liability. The legal liability paradigm fosters a narrow and instrumentalist perspective on the types of risks that are monitored and mitigated, deflecting attention from adverse events and problematic practices that pose significant risks to an agency's reputation and legitimacy. The liability frame also tends to ignore the risks posed by policing strategies that inflict constitutionally permissible harms on particularly vulnerable individuals and groups less likely to have recourse to the legal system. But as agencies seek to move beyond the legal liability paradigm, and struggle to comply with new data collection mandates, they encounter challenges in analyzing risk-related data and equipping managers to make data-informed decisions.³⁷⁸ The case studies covered in this thesis show that law enforcement agencies can meet these challenges—especially in partnership with academic researchers—and forge robust iterative review processes that support continual organizational learning and improvement.

A comprehensive risk management process necessitates a proactive, recursive program that, as the above case studies suggest, mimics certain features of an ongoing consent decree. Just as monitored agencies adjust and adapt in response to feedback and constructive criticism from an independent monitoring team, so a robust risk management process aims for continual improvement by collecting and analyzing risk-related data to surface insights and inform strategic decision making. Both agencies found that a

³⁷⁸ Hetey et al., *Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013–2014*. See, e.g., the authors' discussion of California's Racial and Identity Profiling Act (RIPA): "[A] new California assembly bill (AB 953) will require law enforcement agencies across the state to collect the sort of stop data we have analyzed here. Yet to date, many law enforcement agencies are not sure how to use their data to make change, as they lack a common model for addressing racial disparities in a productive way. Here we offer a model of how policing agencies can use data to solve problems, instead of using data to attack or deny" (12).

commitment to police reform amounts to a commitment to risk management, which in turn is a commitment to seeing themselves as “learning institutions—that is, as places that collect and use high-quality data based on the goals and values they share with their communities.”³⁷⁹

The incident review case studies in Chapter III exhibited a strikingly parallel evolution. From an initially myopic focus on whether an incident was “in policy,” both the Seattle Police Department and the Oakland Police Department gradually developed a robust process of multi-layered critical review capable of informing risk-conscious improvements to tactics, training, equipment, and policy. Their respective incident review boards continued to enlarge the scope of their inquiries to encompass an assessment of officers’ precipitating tactics and decisions and any additional factors that contributed to the incident in question. The boards thus came to instantiate a process of dynamic self-scrutiny, animated by an overarching aim to learn whatever lessons each incident had to teach.

As befits a risk management tool that, however pervasive, has languished in an incipient stage of development, the early intervention systems diverged as they adapted to their respective information technology environments. Oakland, which struggled from the start with technical challenges, turned to its frontline supervisors to enter semi-structured information into the system and to produce detailed qualitative assessments of their officers’ performance. Seattle, blessed from the beginning with a more propitious technology landscape, developed a sophisticated data analytics platform (DAP) and built a prototype early intervention system based on machine learning models. This approach yielded some success, encouraging Seattle to partner with its DAP vendor to create a next-generation early intervention system. Open-source machine learning algorithms have yielded promising results to date. Their promise—and open-source availability—should function as an incentive for laggard law enforcement agencies to upgrade their data collection systems.

³⁷⁹ Eberhardt, *Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif.*, 40.

Sentinel event reviews in the criminal justice context involve law enforcement practitioners, criminal justice researchers, and community members in an all-stakeholder review to discuss the acceptable risks of police activities—as it were “pulse-checking” a community’s risk appetite when it comes to high-risk decisions like the use of less-lethal weapons in crowd control incidents. SERs provide much-needed space for a community to address future systemic risk without delay rather than waiting for ensuing litigation to reach a settlement. In law enforcement agencies, there will, of course, always be accountability processes in place to assign blame for wrongdoing. The case study covered in Chapter IV found that SERs introduce a transparent, non-blaming conversation about ways to bring a law enforcement agency into alignment with community expectations, in part by examining how to avoid or minimize the imposition of constitutionally permissible harms on a community.

The peacemaking process, which played a prominent role in facilitating the Seattle SER panel’s first dozen meetings, appears to have been a critical element in creating an environment conducive to effective collaboration. Given its fraught history, police use of coercive force (especially in First Amendment settings) raises challenging issues that are emotionally charged and “inherently divisive.”³⁸⁰ Unlike the fields of aviation and manufacturing, policing involves activities—and provokes reactive emotions—that are significantly more normatively complex.³⁸¹ The principle of “do not assign blame,” which

³⁸⁰ Seattle Office of Inspector General, *Sentinel Event Review of Police Response to 2020 Protests in Seattle Wave 1: Downtown Protests May 29 - June 1*, 9.

³⁸¹ Despite this important difference, legal scholars have tended to focus on similarities rather than differences. See, e.g.: Joanna C. Schwartz, “Systems Failures in Policing,” *Suffolk University Law Review* 51, no. 4 (2018): 534–63. After noting that “police officers, doctors, and airplane pilots may seem to have little in common,” she then points out a key similarity:

[P]olice officers, health care professionals, and pilots share one critical workplace imperative: All three must make split-second, life or death decisions under conditions of uncertainty. In those split seconds, each must process a dizzying amount of information. They must perceive available facts about the emergent situation. They must recall what rules of behavior should apply. They must weigh the risks and benefits of available alternatives. And they must coordinate with others on their team. Cognitive psychologists have shown that people are particularly likely to err when making these types of complex, high-speed, high-stress, high-stakes decisions” (545).

requires SER participants to set aside judgments of individual liability, are particularly difficult to apply during discussions of errors or misjudgments committed by armed agents of the state. The co-facilitators thus found the peacemaking circle framework essential in building trust between panel members from different backgrounds and in maintaining a non-blaming atmosphere. Given the adversarial nature of the criminal justice system in the United States, an all-stakeholder SER will ineluctably include different stakeholders who are considered “natural adversaries” in their day jobs.³⁸² Thus, a peacemaking circle framework, or something similar, may constitute a key element of a successful and productive criminal justice SER process.

Chapter IV found that the Oakland Police Department’s Compstat-style monthly risk management meetings, which it uses to provide strategic oversight of agency-wide risk, have been effective in equipping managers to make data-informed decisions. The iterative, holistic approach has led OPD to critically scrutinize the fairness and effectiveness of its enforcement strategies, seeking to maintain public safety while reducing harms caused by unnecessary stops and searches. The meeting format has encouraged productive debates about a range of issues, including how best to implement an intelligence-led policing strategy, how to reduce racial disparities in search rates, whether and how to constrain officer discretion in conducting warrantless searches of individuals on probation or parole, and how best to monitor and mitigate the risks of high-speed pursuits. The meetings have yielded data-driven changes to OPD’s strategy, tactics, and policies. Finally, the case study suggests that the meetings constitute an effective mechanism for iteratively assessing the impact of these changes, producing insights into the behavior underlying the risk-oriented data, and generating additional recommendations for agency-wide improvement.

Here the main analogy is with officers’ split-second decisions to use force in situations that are, in the Supreme Court’s oft-quoted characterization, “tense, uncertain, and rapidly evolving” (*Graham v. Connor*, 490 U.S. 386, at 397 (1989)). It is harder to see the force of the analogy when considering the deliberative decisions that contribute to a wrongful conviction.

³⁸² See: Nancy Ritter, “Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Nonblaming Practice?,” *National Institute of Justice Journal*, December 1, 2015, <https://nij.ojp.gov/topics/articles/testing-concept-and-beyond-can-criminal-justice-system-adopt-nonblaming-practice>.

This section ends with a final note on the limitations of this study. The limitations of the case study method are well known. The case studies presented here have the further limitation that many of the iterative improvements to the agencies' risk management processes occurred at the urging, and under the watchful eye, of an external monitoring team. This can make it difficult to extrapolate to other agencies with no equivalent exogenous influence. To take just one example, the IMT requested that OPD schedule FRBs to coincide with site visits to facilitate the IMT's attendance.³⁸³ The constant second-order review of FRB reviews has become routinized, and it is an open question whether the rigor of OPD's reviews will be sustained in the absence of the IMT. The most methodical study of the durability of an agency's force review process after the departure of the monitoring team found a significant drop-off in the quality of the overall review process and the functioning of the agency's FRB.³⁸⁴

B. RECOMMENDATIONS

1. Law enforcement agencies should consider creating a regular agency-wide command-level Compstat-for-risk meeting to review and discuss a broad set of risk indicators, including uses of force, vehicle pursuits, collisions, complaints, stop data, and other relevant risk-related statistical data. The meetings should aim to develop plans to manage and mitigate the full spectrum of risk associated with police activities. The meetings should aim to continually scrutinize and assess the fairness and effectiveness of the agency's enforcement strategies.
2. Law enforcement agencies with an early intervention system should consider partnering with an academic research institution to review and monitor the predictive validity of their existing system, as well as to

³⁸³ Independent Monitoring Team, *Third Quarterly Report of the Independent Monitor for the Oakland Police Department*, 2010, 43, <https://oaklandca.s3.us-west-1.amazonaws.com/government/o/OPD/a/publicreports/oak024409.pdf>.

³⁸⁴ Bromwich Group LLC, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008–2015* (Washington, DC: Office of the District of Columbia Auditor, 2016), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>.

explore how to improve the system using the latest advances in open-source machine learning models.

3. Law enforcement agencies without incident review boards should consider implementing incident review boards to conduct routine reviews of uses of force, pursuits, and other high-risk incidents.
4. Law enforcement agencies with sufficient resources should consider employing sentinel event review (SER) to conduct root cause analyses of high-profile adverse incidents, especially incidents that were “in policy” but disastrous from a community relations standpoint. Agencies should consider working with an experienced SER facilitator who is familiar with the “peacekeeping circle” or similar framework.
5. Law enforcement agencies should consider developing data-visualization dashboards to equip their frontline supervisors and commanders with real-time risk-related data about their personnel.

C. FURTHER RESEARCH

As law enforcement agencies embrace an ever-more-capacious conception of risk, they will ineluctably encounter a “serious gap in scholarship”—namely, “there has been virtually no attention paid to ... the social costs that particular policing practices potentially can impose.”³⁸⁵ A legal scholar notes that “while scholars and policymakers have improved assessment of the *benefits* of criminal justice interventions both inside and outside of economics, analysis of the *costs* of criminal justice policy continues to be anemic.”³⁸⁶ Cost-benefit analysis of criminal justice interventions raises significant

³⁸⁵ Maria Ponomarenko and Barry Friedman, “Benefit-Cost Analysis of Public Safety: Facing the Methodological Challenge,” *Journal of Benefit Cost Analysis* 8, no. 3 (2017): 305, <https://doi.org/10.1017/bca.2017.28>. This journal issue contains several papers from a conference on applying cost-benefit analysis to policing. The conference was organized by the Policing Project of New York University Law School.

³⁸⁶ Rachel Harmon, “Federal Programs and the Real Costs of Policing,” *NYU Law Review* 90 (2015): 895 (emphases in original), <https://doi.org/10.2139/ssrn.2600606>.

methodological challenges.³⁸⁷ Stanford University’s Computational Policy Lab, however, has made progress over the past few years in developing empirical tests of “unnecessary policing tactics.”³⁸⁸ And Stanford’s Open Policing Project has published a massive dataset of standardized stop data from agencies across the country as well as video tutorials on how to apply statistical tests to the data.³⁸⁹ Nonetheless, more research is needed about how to measure the social costs of specific police tactics. And more research is needed on how to use open data projects to assess the fairness and effectiveness of policing enforcement strategies.

Recent journal symposia have highlighted the benefits of long-term collaborative partnerships between practitioners and academic researchers.³⁹⁰ However, more research is needed about how to optimize these partnerships. Are there optimal ways of codifying the terms of practitioner/researcher relationships that increase their resilience and the likelihood of productive results?

As was discussed in the Literature Review, there has been surprisingly little research on incident review boards. While monitoring teams appear to operate with a working list of best practices, additional research is needed on how to design measurements of effectiveness for a well-functioning board, how boards should deliberate, what criteria should shape board composition, whether standing or rotating board membership is

³⁸⁷ This is not a new topic, but it is newly relevant given debates about certain police tactics doing more harm than good. In the 1990s, cost-benefit analysis figured in debates about the dangers of vehicle pursuits. For example, in 1995, scholars developed a “pursuit trade-off ratio” to determine the cost effectiveness of different types of pursuits. See: Robert E. Crew, Lorie A. Fridell, and Karen Pursell, “Probabilities and Odds in Hot Pursuit: A Benefit-Cost Analysis,” *Journal of Criminal Justice* 23, no. 5 (1995): 417–24, [https://doi.org/10.1016/0047-2352\(95\)00032-L](https://doi.org/10.1016/0047-2352(95)00032-L). And in 1999, two researchers used a seven-year dataset of the 6,773 vehicle pursuits engaged in by Minnesota law enforcement officers at the local, county, and state levels, and analyzed the value of a police pursuit. See: Robert E. Crew and Robert A. Hart, “Assessing the Value of Police Pursuit,” *Policing: An International Journal of Police Strategies & Management* 22, no. 1 (January 1, 1999): 58–74, <https://doi.org/10.1108/13639519910256884>.

³⁸⁸ Chohlas-Wood et al., “Identifying and Measuring Excessive and Discriminatory Policing,” 445. For a more detailed explanation, see: Alex Chohlas-Wood et al., *An Analysis of the Metropolitan Nashville Police Department’s Traffic Stop Practices* (Palo Alto, CA: Stanford Computational Policy Lab, 2018), <https://policylab.stanford.edu/media/nashville-traffic-stops.pdf>.

³⁸⁹ See: <https://openpolicing.stanford.edu/>.

³⁹⁰ Robert E Worden and Sarah J McLean, “Collaborative Practitioner–Researcher Partnerships in Policing: Two Researchers’ Reflections,” *Policing: A Journal of Policy and Practice* 16, no. 3 (September 1, 2022): 329–43, <https://doi.org/10.1093/police/paac036>.

preferable, how the availability of body-worn-camera video has impacted board reviews, how to utilize subject matter experts, and how best to ensure that a board's non-punitive recommendations are implemented.

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