

A CASE STUDY ON POLICE MISCONDUCT IN THE UNITED STATES OF
AMERICA AND AN APPLICABLE MODEL FOR THE
TURKISH NATIONAL POLICE

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This study explores the underlying causes and deterrent control mechanisms of police misconduct in the United States. Outcomes of causes and control mechanisms constitute the basis for an applicable model for the Turkish National Police (TNP).

Why is some police behavior deviate? What are the main determinants of police misconduct? Is police misconduct a result of sociological behavior and subcultural development within police organizations or a psychological behavior as an outcome of officers' personal traits? What are the control mechanisms for police misconduct? What are their strengths and weaknesses? Do they deter or not? Is there a control mechanism that deters better than others? What is the best deterrence model for the TNP?

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TABLE OF CONTENTS

	Page
ACKNOWLEDGMENTS	ii
LIST OF TABLES	v
Chapter	
I. INTRODUCTION.....	1
Methodology.....	7
II. DEFINITIONS AND CONCEPTS.....	15
The Source of Police Power	15
The Problem of Police Misconduct	19
The Characteristics of Police Misconduct.....	21
Underlying Reasons for Police Misconduct	23
Summary.....	35
III. RESPONSES TO THE PROBLEM OF POLICE MISCONDUCT.....	37
Introduction.....	37
Internal Controls	37
Standards and Training	37
Internal Review Boards	45
External Controls	49
42 USC Section 1983	49
Criminal Prosecution	60
The Exclusionary Rule	66
Historical Evolution of the Exclusionary Rule	68
Strengths and Weaknesses of the Exclusionary Rule	75
Civilian Review Boards.....	77
Conclusion to Control Mechanisms	84
IV. A MODEL FOR THE TURKISH NATIONAL POLICE	87
V. DISCUSSIONS AND CONCLUSION.....	101

REFERENCES.....	105
CASES CITED.....	120

LIST OF TABLES

Table	Page
1. Police Accountability Mechanisms	10
2. Police Techniques of Neutralizing Deviance	34
3. The Differences Between a Civil and a Criminal Civil Rights Violation.....	65
4. Landmark Cases	69

CHAPTER I

INTRODUCTION

Comprehensive constitutional and philosophical values are to be addressed consistently by government and it should be largely applicable in the bureaucracy (Garofalo & Geuras, 1999). Protecting the human rights of the people is a duty required of all countries around the world under international law. In order to protect these rights, these countries must have a fair and effective criminal justice system. In particular, the police are the people most directly responsible for protecting human rights. The way the police handle their job is the crucial determinant of status of these states, whether they meet or fail to meet their most important obligation of respecting the human rights of the people in their jurisdictions. They interact with the public on a daily basis. As officers of the state, they alone have the responsibility of enforcing the law. A culture of human rights should be introduced and reinforced in every police agency for a better policing practice (Crawshaw, Devlin, & Williamson, 1998).

When a nation such as the United States (US) becomes suspicious of executive power and continually limits the power of the government, it might be thought that the power of the police would be limited as well (Blecker, 1989; Shaw, 1968). However, like every other country, the US allows its police a great deal of power. In fact, they are the only agency authorized by the state to use force (Alpert & MacDonald, 2001). Unfortunately this power, like any other, can be corrupted and abused for political gain.

The conduct of police officers should not only be within the limits of the law, but even exemplary (Champion, 2001). How do police, then, become corrupted?

When governmental power is limited, it is usually due to a fear among the people that that power might be abused (Blecker, 1989). In an attempt to control the behavior of officers, almost all police agencies throughout the world have become highly regulated, bureaucratic, and paramilitary organizations (Weisburd, McElroy, & Hardyman, 1989; Schellenberg, 2000).

Although, misconduct of the police is mostly attributed to police organizations, police deviance is not simply a result of organizational characteristics. It is also a result of the police subculture, an occupation-specific behavioral system characterized by conservatism, cynicism, isolation from society, solidarity, code of silence, racial prejudice, and more (Kampanakis, 2002). When these characteristics become more pervasive, they become more dangerous. The police are entitled to use coercive power to enforce the law. However, a feature of that coercive power is its potential to be misused (Bittner, 1975; Eschholz & Vaughn, 2001). This power to use force in an unlawful way is an enormous disaster for a democratic society where public trust to police is unconditional and the doctrine of police is community service oriented.

Police misconduct is as pervasive in the US as it is in England, Canada, Netherlands, Germany, Austria, France, Russia, and South Africa (Champion, 2001). Despite efforts to combat it, police misconduct is incessant and there is no systematic approach to solve the problem. Allegations of police misconduct, brutality, and harassment have popped up all over the US. The problem is not only nationwide, but it

has become an inherent part of the police institution (Champion, 2001; US Commission on Civil Rights, 2000; Human Rights Watch, 1998). Moreover, poor recruitment practices, poor training, and poor management continue to prevent abusive officers from being sued or disciplined. The misconduct of a number of officers is spoiling entire police departments and ruining an otherwise healthy relationship between the police and the public. Recent reports of police misconduct in the US have brought about greater police accountability and civilian involvement with police administrative and disciplining decisions. These newly involved citizens are calling for more intervention, more investigation of police misconduct and tighter disciplinary measures. They want reform in police agencies (Russell, 1997; Human Rights Watch, 1998).

The history of American policing is a unique cycle of problem and reform. Once society discovers a problem with the way the police operate, the reform soon follows. Americans, according to Skolnick and Fyfe, have a revolutionary spirit that aims to limit the government. American people are opposed to the establishment of a formal police organization as a result of their distrust of formal authority (as cited in Cohen, 1996). However, a free society exists only when laws are enforced and social order is maintained. These aims can only be achieved when a democratic police institution exists (Mutlu, 2000). To even imagine a society without police is ridiculous. Therefore, police conduct must be kept within the limits of the law and the interests of society.

Moreover, police misconduct is no longer simply a local problem. Today, countries have an international image to uphold. The 1991 Rodney King beating by Los Angeles police officers is a good example of how a single police action may negatively

affect the image of a country in the eyes of the world. The United Nations has developed standards of behavior to guide all countries and deter this type of misconduct. In its publications the UN advises officers to comply with international human rights standards (United Nations High Commissioner for Human Rights, 1996).

The above-mentioned arguments make it clear that “police conduct,” or for the purposes of this report, “police misconduct” should be monitored and controlled by an outside party. There should be an ongoing process and continuous effort to prevent police officers of their conduct unbecoming. In order to prevent police from unreasonable conduct, certain standards must be set and legal sanctions must be imposed. Provisions of this sort are found in legal texts that bind every police officer to act in due regard. However, the most important aspect of preventing police misconduct is not having legal provisions. It is more important how effectively the sanctions brought by these provisions are applied to police misconduct cases.

The history of American policing is worth studying for no other reason than to learn from past mistakes. Actually, every constitutional democracy has some kind of regulations to prevent police misconduct. The biggest difference between the countries is in how they have applied their rules and procedures and the ways, in which those regulations have been shaped over time, the degree to which those regulations are effective against police misconduct varies greatly among the countries. It is then very important to determine which remedy is more effective and appropriate to prevent police conduct unbecoming.

It should be accepted that in each and every country, there are problems of police misconduct, and there is no country where their police force has never been accused of depriving the rights of citizens or immune from doing so (Champion, 2001). The difference among different countries is in their responses to these problems, in how effective their remedies are.

This study does not seek to determine the reasons that police act improperly. Rather, I am interested in understanding how to avoid these unconstitutional acts. Luckily, the American democratic system has its own checks and balances to handle constitutional violations. According to one author, the police brutality problem is exaggerated in the US (Puddington, 2001). Moreover, in comparison to other democracies, American democracy is very adaptable to change when the public feels the change is necessary. The system adjusts itself to new situations. However, the problem of American society is its resistance to change when the change comes from covert institutions that are out of popular control. The American policing experience, therefore, is very unique to study in that there are examples of both totalitarian (conservatives) and liberal societies. In other words, the American criminal justice system preserves both autocratic and democratic policies (Zalman, 2000). In spite of some arguments to the contrary (Luna, 2000), American policing has very unique characteristics that are not common to most otherworld police organizations. These three characteristics are “responsiveness to citizen demands,” “public accountability,” and “openness to evaluation” (Bayley, 1998).

Since the misconduct of police is directly and easily related to the overall performance of a government in protecting the basic rights and civil liberties of its citizens, this study aims to provide a clear understanding of the standards used to prevent police misconduct in a modern democracy, the United States. The methods that have been used to prevent police misconduct are the responses of a modern society to rule-breakers. These methods have different strengths and weaknesses in preventing police from abusing their power. There are three types of controls on the police: control thorough the police administration, control thorough the state, and control thorough the institutions of civil society. None of these controls are enough by themselves. Rather they are used together and in conjunction with other solutions (Stone & Ward, 2000). Police abuse of power is, by its very nature, in conflict with the values of a democratic society. This conflict warrants a special scrutiny on the police use of power (Cao & Huang, 2000). A broader body of research is needed to understand how training, policies, procedures, supervision, and discipline can minimize police misconduct and promote proper police behavior.

This study is intended to offer that body of research by providing an overview of the methods that have been used in the US to regulate police discretion and limit abuses of power. These methods are promulgated by legislation, by regulation, or by court decision (Swanson, Territo, & Taylor, 2001). After studying the methods used to limit police misconduct, they will be evaluated in an attempt to show how they may be applied to the Turkish National Police.

Methodology

This thesis aims to unearth the best deterrents of police misconduct. To this end, police misconduct will be defined. Secondly, the nature of police misconduct will be briefly evaluated. In particular, the author will attempt to discover whether police misconduct is pervasive throughout police organizations, or a very marginal occurrence that can be attributed to a few officers within these organizations and underlying causes of police misconduct. As a third step, the remedies that have been taken to deter police misconduct will be considered, noting especially whether they were imposed from inside the organization or outside the organization. The fourth step of this research will be to determine the success of these remedies in deterring police misconduct. Finally, the study will end with a discussion of the suitability and applicability of these remedies to the Turkish National Police Organization. The author will attempt to propose a model to improve control mechanisms of police misconduct of the Turkish National Police.

The underlying assumption of this study is existence of a connection between the number police misconduct cases and suitability of control mechanisms to deter police misconduct. Because of the nature of the hypothesis, case study method has been applied to reveal the police misconduct-unsuitable control mechanisms connection in this thesis. In fact, without picturing this connection, one cannot build this study. American experience on control mechanisms of police misconduct will be reviewed as a case study.

Currently there are three mechanisms that have been put in place to control police misconduct, whether this misconduct consists of the excessive use of force or the abuse of the authority of police:

Criminal Law: Police use of force should not exceed the limits of law in a way that constitutes a crime against the state.

Civil Liability: Police use of force should not illegally harm a person. When police misconduct harms a person, that person, or his or her heirs, may seek monetary compensation.

Fear of Scandal: An officer's conduct should not embarrass the police agency (Klockars, 1996).

As useful as Klockars' controls may be, there are actually much more complicated forces at work to control the behavior of police. Police departments are highly paramilitaristic organizations where solidarity and group cohesion is extremely important. As a requirement of this organization, internal discipline is extremely formalized and outside interference is barred to a degree to make the police environment suit the job. As mentioned earlier, police misconduct is more an organizational deviance than an individual one (Reiner, 1998). From this point of view, classifying the forces that control police misconduct as either internal or external controls enables the observer to better understand the phenomenon. It should be accepted that controls that target the whole police organization are more effective than controls that target individual police officers. Once the target becomes the police organization, all levels of the police organization, from top to bottom, respond to the problem. This full-scale approach is more effective and more widely accepted. However, as Kappeler, Sluder, and Alpert mention, it is equally important to understand both the structural and organizational

explanations of police misconduct and how the character of individual police officer is shaped in process of being a police officer (Kappeler, Sluder, & Alpert, 1998)

Some scholars like Janet B.L. Chan classify police controls under “accountability” heading. This classification includes responsibility to the government, which has political and democratic control subheadings, restraint of police misconduct through fiscal measures, efficiency, performance and the cutting back of the public sector (Chan, 1999, p. 255), In addition to above mentioned civil and criminal litigation, disciplinary actions, and civilian oversight are different control mechanisms of police behavior. Combining all control mechanisms of police behavior avail the observer to see the complete picture of the phenomenon. However, the purpose of this study is to evaluate the control mechanisms that are identical in almost every community. In most societies, fiscal restraint is a sanction that has never been applied when police misconduct occurs.

“Police Accountability Mechanisms” classification of Stone and Wards will be the main source of the author’s classification. Stone and Wards list three controls that deter police misconduct: internal or departmental control; state or governmental control; and social control, or control by civil society (See Table1) (Stone & Wards, 2000). However Stone and Wards’ state control and social control will be categorized as external measures. As a result, control mechanisms of police misconduct will be studied from a standpoint that whether they are internal control mechanisms or external control mechanisms.

Table 1. *Police Accountability Mechanisms*

		Accountability for	
		Public safety (reducing crime, violence, disorder, and fear)	Police behavior (reducing corruption, brutality, and other misconduct)
Accountability to	Internal control	training, line commanders, crime statistics reporting, reward structure	training, line supervisors, rules, ethics codes, integrity units, administrative discipline, peer pressure
	State control	operational direction by elected political officials, budget authorities, prosecutors	ombudservices, legislative committees, criminal liability, civil liability, exclusionary rules of evidence
	Social control	neighborhood safety councils, community-based organizations, media, policing research and policy institutes	civilian complaint review, external auditors, media, human rights monitors, <i>policing</i> research and policy institutes

Source: Democratic Policing (Stone & Wards, 2000, p.17).

This paper will study these control mechanisms of police misconduct in the following order:

- a. Internal Measures
 - i. Standards and Training
 - ii. Internal Review Boards
- b. External Measures
 - i. 42 USC § 1983 Civil Liability Cases and Other Lawsuits
 - ii. Criminal Prosecution
 - iii. Exclusionary Rule
 - iv. Civilian Review Boards

A general overview of each of these control mechanisms will help the author to create a model control strategy for Turkish National Police. To this end, pros and cons of each mechanism will be studied. Due to the nature of the subject, legal sanctions, departmental policies, the education techniques of police departments, and the administration of civilian review boards will also be assessed with a close look whether they deter police misconduct or not. Overall, this study will primarily consist of library-based research for the purpose of compiling a comprehensive literature review on the subject. Literature will be gathered from different sources; mainly journal articles, scholarly books, the Supreme Court and appeal courts decisions (case law), law reviews, and Commission reports on police misconduct.

Several keywords will be used to research these sources including police misconduct, criminal prosecution, civil liability, internal review boards, civilian review boards, exclusionary rule, police training, and standards in policing.

The articles for this literature review will be gathered from different sources. For example, while some articles will be selected from Internet, some of others will be gathered from academic journals in the area of Criminal Justice, such as *Justice Quarterly*, *Journal of Criminal Law and Criminology*, *Journal of Crime and Justice*, *Journal of Criminal Justice*; and law reviews such as *Iowa Law Review*, *Buffalo Criminal Law Review* and *DePaul Law Review*. All of the resources selected for this study will be of the highest professional and scholarly quality. Some journal articles and commission reports will be obtained from reliable Internet resources. In addition to academic journals and the Internet, some chapters and sections from different books will be examined in

order to gather a greater breadth and depth of information about police misconduct problems and their solutions. Naturally, most of the books will be selected from the areas of constitutional law and policing. Some important cases and their outcomes will be mentioned, such as the Rodney King case in Los Angeles. In the aftermath of Rodney King beating, the Independent Commission on the Los Angeles Police Department (the Christopher Commission) is created by Tom Bradley, the mayor of at the time. This Commission proposed suggestions for reforms (US Commission on Civil Rights, 2000). The results of the Christopher Commission report and other similar reports will be used to formulate a hypothetical control model of police misconduct incidents in Turkey.

The degree of which the rights and civil liberties of US citizens are violated in their encounters with police and suitability of these control mechanisms to deter police misconduct will be studied. After presenting this picture, the “gray areas” will be discussed along with controls to repair any flaws that are discovered. These controls will be looked over for their suitability to deter police misconduct. Comparison of the historical evolution of these remedies along with their weaknesses and strengths will be done. Prior research in journal articles, special commission reports, and Supreme Court decisions will be studied and the ideas that are found within these sources will be supported or refuted by information gathered from scholarly books.

The research mentioned in the articles was collected using various methods of data collection: field research, experimental research, existing records analysis, and secondary data analysis. This study will take into consideration the mutual findings of all

these sources and will try to conclude what methods can be useful to make policing both effective and constitutional.

The subheadings of this report will carry some examples from several areas of concern such as the application of 42 USC Section 14141 (Section 14141) to the police departments of Pittsburgh, Pennsylvania and Steubenville, Ohio, both resulting in consent decrees, a willful agreement between parties under the supervision of a judge, in 1997. These examples will help to determine which source of reform is more effective and useful. The reforms presented here are new approaches to police-citizen encounters and based on new philosophies that aim to help police better serve the community and help the community to accept the police as their guardians.

Cases that receive a large amount of media attention tend to affect the whole country. Their examples will be more highlighted than others. This study is intended to determine the best system for making police accountable to their public. The worst incidents and best successes will be emphasized to see both extremes, making symptoms more visible and treatments more understandable.

Supreme Court decisions serve as cornerstones for real and longstanding solutions to police problems. Cases such as Miranda v. Arizona (1966) fundamentally change the way police operate. These Supreme Court decisions are examples of court-made rules. In the same way, the legislature with its laws such as 42 USC Section 14141, shapes the way executive branch operates. Both court-made rules and legislation on policing problems will be determined as reform impositions from outside the police

organization. Their effectiveness will be a concern in comparing them with the reform initiatives that come from inside the organization.

In conclusion, police misconduct will be analyzed from a multidimensional perspective wherein the rights and liberties of citizens will be of primary concern. However, this concern will never overshadow the police functions in situations where use of power is appropriate and necessary. Having police protection will be considered an inalienable right of citizens. That having been said, this research will make the assumption that the primary duty of the police is to serve the community, rather than act as guardians of the state.

The position of the researcher will be as an impartial observer. The researcher will speak with the words of other experts and researchers. This research aims to combine symptoms and treatments into one large “melting pot,” the end result being a type of policing that is beneficial for both citizens and police from a human rights and civil liberties standpoint.

The policies that police organizations have adapted and the effects of these policies on organizational structure will be examined. The structure of the organization determines the way that the police provide service to their citizens. The ways in which police organizations change their organizational structure, procedure, and processes are critical. However, the focus will not be on an overall organizational change, but on the new philosophies that are intended to better serve the citizens. The primary question here is whether police organizations change their structures and organizational processes based on the concept of constitutional policing.

CHAPTER II

DEFINITIONS and CONCEPTS

The Source of Police Power

The US Constitution is the single most important document affecting the police today. However, the Constitution provides only very general direction to police departments. The Bill of Rights outlines the rights of the citizens that must be protected. After all, it must be remembered that the first police organization in the US did not come into existence until more than a century after the Constitution was written (Swanson et al., 2001).

However, despite the fact that the policing institution has never been mentioned in the Constitution, still it can be inferred from its general provisions and from the Bill of Rights provisions that the basic rights of the people are very important. The government is obliged to secure these rights. The sole reason for adding the Fourth Amendment to the Constitution is to make sure that people are secure in their persons, houses, papers, and effects. The framers of the Constitution recognized the insufficient protection of individual citizens and reorganized the checks and balances on behalf of individuals against potential abuses of new federal government by adopting the Amendments, the Bill of Rights, in 1791 to the Constitution. Three of these amendments, the 4th, 5th, and 6th, are directly related to police activities. The 1st Amendment to the Constitution is very clear that “Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, or petition the Government for a redress of grievances.” So, according to the Constitution, human element of the state comes first. When we understand the purpose of establishing police as to protect and to serve the public, then, the primary objective of policing becomes to respect rights of people and to serve them. Actually, there are two approaches to define constitutions. One is to define them as an institutional organization of political system. The latter defines constitution as a mechanism for the restraint of the power holders in the political system (Wolf-Phillips, 1972; Vila & Morris, 1999).

Policing institution is an arm of executive branch in a government. As a relatively modern one, the US Constitution is a document that restricts government from infringing upon the freedoms of citizens. The governmental power is limited in the point where the freedoms begin. Citizens should be free from government intrusion in their acts. It is very clear that the spirit of the Constitution looks to the guard fundamental rights and privileges of citizens against the government (Janda, Berry, & Goldman, 1995).

Maintaining order is the duty of the police force in the cities and countries of the modern world. However, this duty becomes clouded in times when unnecessarily violent acts are permitted against outsiders or minorities. In modern countries, regulations on the use of physical force often contain contradictory and ambiguous principles, leaving a huge gray area open to the interpretation of executives (Meyer, Brunk, & Wilson, 2001). Since the theoretical background of the American Constitution supports the protection of

all people, those who violate the constitutional rights and privileges of people should be punished more severely than perpetrators of ordinary crimes.

Author Egon Bittner states, “The role of the police is best understood as a mechanism for the distribution of nonnegotiable coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies” (as cited in Kerstetter et al., 1996). According to Bittner, the nature of the police job is nothing but a series of conflict resolved through the use of force. None of the parties in this conflict resolution system are happy, but to some extent, all are forced to sacrifice some rights unwillingly. Police work is not only conflict management, however. The police sometimes apply sanctions, sometimes use force, and sometimes proactively move to prevent crime.

David Cohen sees the police as a unique arm of the government. The police are entitled to use physical force both for and against people in order to protect the public at large. In fact, the only institution that has the power to use physical force to control problems in society is the police force (Cohen, 1996). The police then have not only a very complicated position in society. They have a very problematic position. Franklin states that the “police power of state” is established to secure the common good, the general prosperity, as well as the public safety, health, and moral values. Franklin asserts that this power is nonnegotiable, but should not be used arbitrarily or oppressively. Police should primarily use force only when it serves the greater good (Franklin, 1999).

On the other hand, Michael Conant points out that, constitutional limitations function “to protect the civil rights of persons against abusive actions in any branch of the government.” If civil rights are at stake, then constitutional limitations should be

considered from a civil rights perspective, because “these civil rights are all privileges or immunities of citizens of the United States.” Any statutes that run contrary to this idea will be against the ideological origins of the American government and unconstitutional (Conant, 2001). The civil rights of individuals are superior to whims of governmental legislative bodies. At this heart the American colonists created the American Constitution because their individual rights were being over run by an oppressive monarchy. Indeed, before the Constitution, the Declaration of Independence proclaimed that all men are created equal and are inherently entitled to life, liberty, and the pursuit of happiness (Jefferson, 1776).

According to Goldstein, the police have the awesome ability to disrupt individual freedom. They can invade the privacy of individual very suddenly and directly. To make a free society possible, despite their anomalous position, a democracy must depend upon police to maintain order. The ability of police to use power is the direct result of democratic values and the need to preserve the individuals’ quality of life (Goldstein, 1977).

Alpert and Macdonald (2001) support the idea that the police are distinguished from other professions and from citizens due to their power or authority to use force. The authors mention several research findings related to police use of force. In particular, they cite a study done by the Independent Commission on the Los Angeles Police Department (1991), which found most officers are not involved in illegitimate use of force incidents. The number of police officers who are more likely to use force or who do use force is very small. Moreover, the study found that, surprisingly, individual characteristics do not

predict whether an officer will be more likely to use force. Rather, the characteristics of the police organization are the main determinants of the rates at which officers use force (Alpert & McDonald, 2001).

The police have a very complex role within the society. They are entrusted with a great deal of power to be used both for and against the people they are sworn to serve and protect. The only institution within society that may use force legally to control problematic situations is the police force (Cohen, 1996).

Roberg and Kuykendall explain the principals of democratic policing by comparing policing in democracies to policing in totalitarian governments. Police in totalitarian governments serve the interests of a few rulers. These rulers place the highest value on social order at the expense of individual freedom (Roberg & Kuykendall, 1993). Social order itself, however, is not a bad thing, even in democracies. The key point is to determine how an administration maintains order. In democratic governments, checks and balances are well established and the citizens, at least theoretically, participate in decision-making. Nevertheless, the executive and legislative branches of an organized society are presumed, even in democracies, to be a potential threat to human rights (Cross, 1999).

The Problem of Police Misconduct

Society is the main source of authority for police. The people give the authority to uphold and enforce the law. The misuse of this authority results in police misconduct. For a better understanding of police misconduct, one must first understand what police power is, then how it becomes police misconduct.

The *American Heritage Dictionary* defines police power as, “The inherent authority of a government to impose restrictions on private rights for the sake of public welfare, order, and security” (*American Heritage Dictionary*, 2000). The distinctive characteristic of police power is its ability to restrict the people. When an officer is enforcing the law, he or she is usually in some way placing restrictions on one or more of the citizens.

Misconduct is defined as, “Behavior not conforming to prevailing standards or laws; impropriety. Deliberate wrongdoing, especially by government or military officials” (*American Heritage Dictionary*, 2000). Police misconduct, then, consists of using power of the police in manner that is inconsistent with the law.

Police misconduct is either an unlawful excursion from official duties and responsibilities, or an abuse of official authority that may consist of a broad range of behaviors, including police corruption, police deviance, and excessive force. In other words, police misconduct is an occupational deviance in a form of departure from standards that are an integral part of the police mission. This departure may be an unlawful departure, an immoral departure, or both, and violates one or many criminal laws, departmental rules and regulations, and police ethical standards. Misconduct occurs when officers abuse their discretionary power either by disregarding a lawful obligation or by using their occupational power for personal ends with the pretense of acting under the color of law (Champion, 2001, pp. 1-2; Armstrong and Cinnamon, 1976; Abadinski & Winfree, 1992; Barker & Wells, 1982; Luna, 2000). According to Champion (2001), “police misconduct originates and persists as an abuse of police discretion” (p. 1). “Police

officer misconduct is committing a crime and/or not following police department policy guidelines and regulations in the course of one's officer duties" (p. 3).

For their own use, the FBI defines police misconduct as a less obvious wrongdoing such as striking suspects more than necessary or threatening to harm them if they do not cooperate. The use of excessive force, sexual assault, intentional false arrest, the falsification of evidence, and extortion are the most common types of police misconduct (FBI, 2000).

Police use of force is more distinctive when it is compared with the acts of normal citizens. Police use of force is within the limits of the law when it does not constitute a crime, while the same act when committed by citizens would constitute a crime (Klockars, 1996). The term "use of force" is used to refer to the lawful use of force by police. When police exceed these lawful limits, the term to be used should be "police misconduct", "police brutality", or "police excessive use of force" (Bittner, 1975).

The Characteristics of Police Misconduct

According to *The Dictionary of Criminal Justice*, misconduct while holding public office is "Negligent, improper, dishonorable, or unlawful behavior on the part of an individual holding a position of public trust, which may result in removal from office" (Rush, 2000). However, police misconduct is not only an individual act, but in most instances an organization-wide form of deviance that results in an individual officer's excessive use of force and authority. Police misconduct includes the abuse of discretion, corruption, and the unnecessary use of force (Lundman, 1980).

It is important to consider the specific characteristics of each individual case of police misconduct when attempting to remedy the situation. There are two types of misconduct: Organization-wide and Individualistic. The first type of misconduct is prevalent in all levels of the organization, and deviant patterns of behavior are known to almost everybody in the organization. Organization-wide misconduct is patterned and very frequent (Lundman, 1980).

The second type of misconduct is limited to a few officers in the organization and is not known to exist throughout all levels of the organization. These are scattered deviant occupational behaviors that are hidden from fellow officers. As a result, these behaviors are rare and unpatterned throughout the organization (Lundman, 1980).

Police administration is an extremely important determinant of the nature of misconduct in a police organization. The chief of police is very important whether misconduct in an organization remains marginal or becomes prevalent in all levels. Whether police misconduct occurs among a few officers or organization-wide, it is important to remember that the characteristics of the organization predict whether officers engage in misconduct. However, recent developments diminish the sharpness of the distinction between the “few rotten apples” approach and the organization-wide approach. Like apples in a barrel, a few rotten cops can contaminate a police organization. Their misconduct becomes contagious and sets a bad example. Perry calls these types of contaminated organizations “rotten barrels”, where almost all officers are rotten, but administrators are still arguing that there are only a few. Perry quotes former New York Police Department (NYPD) Commissioner Patrick Murphy after his speech

made on the findings of the Knapp Commission. Murphy states that corrupt police are not born, but made. They need to be examined organizationally. Dealing with only a few rotten apples is not enough to cure the problem (Perry, 2001).

Underlying Reasons for Police Misconduct

Philips and Smith discuss the degree to which police relations with the community are influenced by police use of force. To what degree is the community's opinion influenced by the levels of force (either real or perceived) that the police use? As police use of force found to be reasonable or excessive? Levels of police use of force are vital determinants of the quality of police/community relations (Philips & Smith, 2000).

Milton Mollen, chairman of the Special Commission to Investigate Corruption within the Police Department of the City of New York between 1990 and 1992, asserts awesome authority of police use of power. According to Mollen, police have more power than judges. Being a member of the police force gives an officer social status, a gun, and power to arrest. Abusing this power is the result of "human nature." However, assuming that police abusing authority is a part of human nature does not mean that every officer is corrupt, or that his behavior exceeds the limits of proper conduct. In large police organizations such as the NYPD, it is not unusual to find corrupt officers. In fact, it is expected. Corruption will naturally be present in almost every large-scale organization or occupational stratus. Moreover, most police misconduct cases consist of "a reflex action" that does not constitute an intentional wrongdoing. Most of these improper behaviors are the result of enormous job tension. In spite of all these understandable reasons, the police subculture and its reflection as an "us vs. them"

rhetoric is responsible for most cases of misconduct. In addition, the lack of supervision and accountability mechanisms a great deal to the problem of police misconduct. Another factor that contributes to police misconduct is cosmopolitan character of highly populated cities that provide police officers the opportunity to deviate from proper conduct (Mollen, 1998).

Jacobs and O'Brien (1998) see reflex action as a conventional form of police response. Police violence in communities with high levels of social and economic inequality may occur for several reasons. First, police may use violence reflexively as a response to violence from offenders. Police may also use violence to assert power and authority over groups that they consider to be economically or racially inferior, which is called political threat explanation. Finally, police may have a greater fear for their own safety in these turbulent areas, leading them to more quickly turn to use of force (Jacobs & O'Brien, 1998).

Kappeler and his co-authors view the individual police officer as a product of society. Police officers are selected according to dominant social norms and values, and they are expected to fit those standards. Their character is shaped during selection, through their contact with other officers and the public. In the US and around the world, the police represent the moral standards of the working middle class (Kappeler et al., 1998).

Roberg and Kuykendall (1993) point that the US history is full of tyrannical examples where the majority violated minority rights by discriminating against racial and ethnic minorities. Racial and ethnic discrimination idea of politics makes police to act

outside the limits of their duty. Meyer and his associates found antiauthority violence very common in the United States. The US is one of the most violent nations in the world. Violence is more common among Americans. To demonstrate this point, the death penalty in the US is still in use and is highly supported by the public at large despite the fact that most other industrialized nations have abolished death penalty (Meyer et al., 2001).

To learn more about the degree to which police recruits support the death penalty, a survey was conducted among Boston area police recruits. Their attitudes towards the death penalty were more supportive than any other section of the society. The results of this study indicate how much police view violence to be a legitimate tool to be used against criminals. Without any field experience, the police recruit favors the death penalty more than an average citizen. If recruits are in favor of the death penalty, we can conclude that they are more likely to favor the physical use of force (Mignon & Holmes, 1999).

The biggest factor that influences the degree to which police behave in a constitutional manner is the use of political patronage, or the practicing of hiring and firing individuals based on their political affiliation. The history of political patronage in American policing goes back to the 1700's, when night watch positions were filled with in-party loyal individuals by firing out-party loyal individuals. This custom resulted in the appointment of low caliber people to the police force. These people had minimal professional skill; they earned their position based solely on their political affiliation. Political patronage leads to inefficiency and corruption over time. Moreover, when police

were hired based on their political affiliation, it became difficult for them to resolve conflicts with impartiality. The 1883 Pendleton Act prohibited political patronage and ordered administrators to make governmental appointment decisions according to merit, qualifications, and competence. However, these civil service laws have not been completely successful at preventing patronage in law enforcement (Vaughn, 1997).

In reality, racial minorities are more likely to have negative perceptions of the police. Celebrity cases are more likely to affect public perception than low profile, daily police encounters with citizens. Also, violence is likely to have a more lasting impact on the views of Blacks and Latinos. This is natural; to some extent due to the minority psychology. For the most part, however, this is a result of unfortunate police encounters with citizens (Tuch & Weitzer, 1997).

Cohen defines the vicious causal chain that raises the level of hate between police and society, building a disastrous resentment: “A person manifesting a mistrusting and disrespectful attitude toward the police is more likely to be harassed and arrested. Ultimately, a vicious causal chain forms: abuse of discretion caused by race- and class-based animus which, in turn, causes disrespect and further abuse of discretion and misuse of force.” Police brutality may be the result of any unwarranted police misconduct (Cohen, 1996, p.170).

Phillips and Smith link police violence to the idea of “nation-state.” The state has a monopoly on the legitimate use and exercise of power. “The routines, rituals and practices of everyday policing” are a result of this monopoly. The physical use of unconstitutional power is characterized by the physical harm done to the human body by

the use of force. The non-physical use of unconstitutional power includes strictly verbal abuse and voice commands to the citizens (Phillips & Smith, 2000, p. 493). Kerstetter and his co-authors have reached the same results. Excessive force used by on-duty officers can easily be linked to the fact that the state tries to monopolize the use of force by using police. It has been found that off-duty officers have a higher standard for the use of power than on-duty officers. This finding explains the power to use force (Kestetter et al., 1996).

Swanson, Territo, and Taylor assert that the officers feel a fear of separation from service at the end of their careers because they are losing social status and joining in a society that was seen as an enemy in the past. This perception of hostility is a direct result of the police subculture that encompasses every officer in the organization (Swanson et al., 2001).

Formal organizations are created to meet certain needs of the society and achieve their defined goals. They differ from informal organizations on these points. Informal organizations are established spontaneously to meet the needs of informal groups. Furthermore, the goals in formal organizations may be displaced by informal goals that have arisen overtime. The informal organization which grows in formal organization may reach to a capacity to diminish formal goals of the organization. Especially in police agencies, this informal organization is secret and its goals are mostly carried out by deviant means (Sherman, 1978).

Kappeler and co-authors present a very detailed explanation of reasons behind police misconduct. According to Kappeler and his colleagues, police deviance is a result

of the social conditions of the police and their work environment. Police deviance is not a result of the personal trait of individual police officers. Rather, deviance is the result of the environment created by the police organization, the community itself, and the way the law is made, underscored, and enforced (Kappeler et al., 1998).

Chemerinsky criticized a Board of Inquiry report on the Rampart Scandal of the Los Angeles Police Department (LAPD) in six points. Two of these criticisms were directly related to the police subculture: the problematic nature of the LAPD's internal culture was not addressed in the report and the problems of the LAPD's disciplinary system were underemphasized. Chemerinsky tried to point out one particular element of the police subculture, the "code of silence," which held strong even in a scandalous case investigation (Chemerinsky, 2000).

Bittner states that police officers exhibit a tendency towards silence even amongst themselves. Team members speak to each other solely about the work they do. Other police officers are subjected to a code of silence as well as the community. It is even impossible to find a common code of silence throughout the different teams, rank levels, and departments (Bittner, 1974, p. 238).

Herman Goldstein notes that the code of secrecy among police officers is tighter and more absolute than others. The following factors need to be taken into account:

- (1) The police see themselves as members of a group aligned against common enemies. An attack upon any one of their members is considered an attack on the group.

- (2) Officers are greatly dependent upon one another for help in difficult situations. If an officer wants to count on fellow officers when his own life is endangered, he cannot afford to develop a reputation for “ratting.”
- (3) The police are vulnerable to false allegations. An officer can easily imagine himself accused of wrongdoing in a difficult-to-review incident. He hopes that his defense of fellow officers when so accused will result in their willingness to assist him should their situations be reversed.
- (4) Police officers are as aware as their administrators of the disparity between formal policy and actual practice. The feeling emerges that it is necessary to cover up wrongdoing because practices that have developed that the police believe to be helpful to the public interest will not stand up the scrutiny.
- (5) An officer has no occupational mobility. He must anticipate continuing to work in the same place with the same people. He cannot ordinarily avoid an uncomfortable situation by transferring to another agency. He may even have to work, at some time in the future, under the supervision of an officer whose wrongdoing he observed (Goldstein, 1977. pp.105-106).

Katz defines the “thin blue line” as an imaginary but effective barrier between cops and the public which stems from the necessary and reasonable mistrust police have developed towards their fellow citizens. No cop knows “who among us is the next predator who will try to take his or her life, the life of a partner, or the life of one of our fellow citizens.” To a cop, even routine traffic stops are potentially lethal. In addition to

workplace-induced paranoia, cops are psychologically burdened by frequent exposure to society's greatest evils (Gorham, 1997, p. 2).

There are three approaches that attempt to explain the character of a police officer: The psychological, sociological, and anthropological perspectives. The psychological paradigm explains character as a static core of personality that remains unchanged throughout the life. Some changes in personal attitudes may occur, but the core personality traits never change. Scholars claim that individuals with certain personal traits choose to apply to enter the police profession, while others with different characteristics do not at all (Kappeler et al., 1998).

Alpert and Dunham called psychological approach as *predispositional model* of policing. This model explains that police recruits are more authoritarian than other people. Authoritarian people are more conservative, aggressive, cynical, and rigid. They see the world as black and white. They see people as either good or bad. They see themselves as soldiers of status quo. They are very responsive to superiors and their group, but present hostile attitudes towards outsiders. Officers do not analyze their obedience of their group nor the reasons behind their hostility towards outsiders (Kappeler et al., 1998). These people are *true believers*, as Eric Hoffer explained in his book, *The True Believer: Thoughts on the Nature of Mass Movements* (Hoffer, 1951).

However, social scientists rejected the idea that a person's character is fixed. Social scientists assert that people are social beings, and their characters are shaped through group socialization. This is called the sociological approach. Professionalization is a kind of socialization that teaches individuals to internalize the norms and values of an

occupation. All types of training and work experience affect occupational character. This approach does not reject the idea that the individuals who became police officers are very conservative and homogenous. It rejects the belief that other members of the group do not affect the individual's character. Socialization and the acceptance of group norms take time (Kappeler et al., 1998).

The anthropological explanation of character is also known as the subcultural approach. A group may develop a different culture than other groups. The subculture is different than the general, dominant culture. Members of a subculture are also the members of the general culture. However, they retain unique cultural traits that are not extended to all members of the general culture. The differences that distinguish it from the dominant culture are qualities that define the subculture. The police subculture provides officers a unique role and social status. Some scholars conceptualize the process of becoming familiar with the subculture as *culturalization* (Kappeler et al., 1998).

Inciardi defines the police subculture as “the values and behavior patterns characteristic of experienced police officers.” Subculture, a particular group's normative system, indicates a difference from the dominant culture. Subculture is the result of socialization into a group, which suppresses behavior to adhere to certain rules. These rules are not written. They can only be learned from experienced members of the group (Inciardi, 1999, p. 179).

Murano and Hoffer state that *omerta* rule of organized crime creates a “*Blue Wall*” in the police subculture, which prevents one member from testifying against another member of the organization (Murano & Hoffer, 1991, p. 11). Plaintiffs may face

obstacles due to the “code of silence,” when suing a municipality for an alleged unconstitutional action of a police officer. The code of silence is an unwritten code that prohibits officers from disclosing misconduct by fellow officers or testifying truthfully in a case where a fellow officer might be implicated (Lurie, 2000).

The “us-them” philosophy that police develop towards society may be explained by the police worldview. The worldview represents the understandings of a person or a group different than the general. The police work environment provides glasses through which police see the world. These lenses are provided at the beginning of the selection process, and mature after acceptance to the group. The selection process, including all screening tests, is not necessarily designed to evaluate who does the job better. Rather, they are designed to find people who conform to the job, having the required middle class values as explained by Sykes and Matza (Kappeler et al., 1998).

“Techniques of Neutralization” theory is proposed specifically for delinquent juvenile, but may be used to understand police justification of deviancy. Matza and Sykes proposed their theory to explain how people justify their deviant acts. These justifications are techniques of neutralization that are found in a set of subterranean values (Matza & Sykes, 1961). Matza later reformulated this theory, terming it drift theory. He uses his drift theory to explain that these techniques of neutralizations provide episodic releases from the moral restraints of the society. These neutralization techniques are not rationalizations of deviancy. They rationalize the breaking the bonds with society and the weakening of psychological suppression. Essentially, the people who use neutralizing techniques do not favor deviancy. However, by using these techniques, they

are able to engage in deviancy by rationalizing it with neutralizing techniques (Akers, 2000). By combining these techniques with middle class values, the police officer is equipped with a measuring rod to judge who is criminal and should be controlled by the state (Kappeler et al., 1998).

Champion agrees with Kappeler and his associates that the police commonly rationalize or justify misconduct based on non-legal standards. Champion and Kappeler and his co-authors both used Sykes and Matza's five techniques to explain how police justify misconduct (See Table 2) (Matza & Sykes, 1961; Champion, 2001, p. 55; Kappeler et al., 1998, pp. 113-125).

The nature of the police job makes officers believe that societal order is essential, their job is noble, and the laws that they enforce are fair and necessary. Those who deviate from the norm inherently show disrespect to police authority. Therefore, street justice or a zero- tolerance policy is a rational way to deal with those who break the law (Keppeler et al., 1998). Even the police officers who believe in community policing initiatives view those who do not abide by the law as enemies in the same way that a soldier in the field views his enemies (Greene, 1999). A recent study revealed that 44.6% of officers think that police work creates opportunities for misconduct; while 43% of officers are disagree with that idea (Hunter, 1999, p. 164).

A strong degree of suspicion and cynicism are characteristic of the police subculture. Anthony V. Bouza argues that, for officers, civilians cannot understand how hard it is to deal with the types of people police routinely encounter, including sociopaths, drunks, and gang members (Iris, 1998, pp. 2-3 of 18).

Table 2. *Police Techniques of Neutralizing Deviance*

Sykes and Matza's Neutralization Technique	Verbalization	Techniques in the Police Context
1. Denial of Responsibility	"They made me do it."	Police use of excessive force in arresting a citizen who challenges police authority.
2. Denial of Injury	"No innocent got hurt."	Police use of perjury to justify an illegal search.
3. Denial of Victim	"They deserved it."	Failure of police to uncover drugs during an illegal search of a "known" drug dealer is rationalized because he didn't have drugs "this" time.
4. Condemning the Condemners	"They don't know anything."	Police rejection of legal and department control and sanction of deviant behavior.
5. Appeal to Higher Loyalties	"Protect your own."	Police perjury to protect another officer, destruction of evidence, using punishment for personal justice.

Sources: Sykes, G.M. & D. Matza. (1957). *Techniques of Neutralization. American Sociological Review, 22, 664-670.*

According to Herbert, police accept themselves as the opposites of others. The others are very dangerous and potentially deadly rivals. They are evil and dirty. Police perceive themselves to be the morally upright defenders of society who fight the "bad guys". The police are the thin blue line that separates society not only from law breakers but from evil itself (Herbert, 1997, p. 144). Since, the exclusionary rule allows criminals to go free, police officers must take care of the streets to make them safe for the community (Stuntz, 1997, p. 1).

Summary

Policing is a unique profession, one that is different in many ways from other professions. Police may use their discretionary power to exceed the limits of the law. It is not rare to see examples of the excessive use of power, even in very simple situations. The police subculture, the us versus them rhetoric, the idea of a nation-state, the code of silence, a weak disciplinary system, the social conditions of the police and their working environment, and the paramilitary structure of police agencies are just a few of the factors that lead police officers to assert excessive force in unlawful encounters with citizenry.

Ordinarily, scholars view most police misconduct cases as reflex actions. However, since police represents the governmental authority, there is no justification for their fault. Despite the fact that the individual police officer is a product of the society, police should not respond to violence with violence. Police should be trained and mandated to handle the job professionally. The professionalism mentioned in that chapter consists of both the scientific and artistic aspects of policing. Some scholars think that policing may not be taught scientifically. However, policing is both a science and art. Its minimum educational requirements that are taught in schools are the scientific aspects of policing, the law classes and the Supreme Court rulings. On the other hand, policing is an art. The same laws are enforced among different individuals and groups. Policing is not a profession carried out in a battle field, but it is a profession that is designed to protect and to serve the public.

The biggest problem in policing practices is the disparity between formal policy and actual practice. The thin blue wall is also vulnerable to false allegations. This makes

police officers depend upon each other and develop a unique subculture that supports a code of silence and corruption. While the previous sections of this chapter try to understand why police are sometimes acting out of the limits of the law, it should not be forgotten that they are also the targets of outlaws. The law should protect vulnerable officers from being targeted by outlaws unfairly, while holding unruly officers responsible of their misconduct.

All of the psychological, sociological, and anthropological explanations for police character legitimately explain why the behavior of police officers sometimes deviates from the law. These deviations should be addressed in training and in research. The tendency to justify misconduct with neutralizing techniques should be a topic discussed in training; these new neutralizing techniques should be refuted in a logical manner.

There is no single cause for police misconduct. It is a complex issue that should be studied and addressed using a multidimensional approach.

CHAPTER III

RESPONSES TO THE PROBLEM OF POLICE MISCONDUCT

Introduction

This chapter will address the control mechanisms of police misconduct in the United States of America. This chapter will not cover all the mechanisms mentioned previously, but will cover the most important ones that address the problem. The logic behind the classification of the control mechanisms is mentioned in Table 1 (see page 10). These mechanisms are classified as either internal or external controls of police misconduct.

Internal Controls

Standards and Training

An outsider looking in on police organizations may observe several factors which cause a law to be misinterpreted and implemented in a way that the legislature did not intend. Factors such as organizational standards, codes, values, and subculture determine how laws are implemented. They also are the main determinants of police deviancy that permit and lead officers to act outside the limits of the law. Initial police training is very important to prepare a police recruit, furnishing him with the basic knowledge needed to handle the police job before being trained in the department. If the core values of the police profession are not provided at this initial training phase, there is an imminent danger that rights of the citizens may be violated (Charles, 2000).

Most scholars agree that civil litigation may result from both administrative decision-making and the individual officer's actions. The purpose of education and training is to minimize police-citizen interactions and lawsuits raised against the police. The State of Texas has considerably minimized civil litigation and damages to police agencies by mandating forty hours of leadership and law enforcement management training for police chiefs. This regulation varies by state. In Texas, the Law Enforcement Management Institute, trains police chiefs regularly (Vaughn, Cooper, & del Carmen, 2001). Traditional police training was based on the experiences of officers in the past, their relations with superiors, their relations with partners, and the need to follow the orders of superiors without making any comment or questioning them (Kappeler et al., 1998). Police training is a type of socialization where occupational behavior and the requirements of police work are learned (Skolnick, 1994). A vast number of civil law suits have been filed asserting that police misconduct led to the injury of citizens or their families, forcing departments to look over their police conduct policies and training procedures (Champion, 2001).

Harris saw police training as a tool that could be used for reform. He stated that necessary ideological changes in police organizations can be achieved by changing the way officers are initially trained. Academy training was seen as a tool of solidarity to make consistent the behavior of the officers in the field. This type of education would lessen the vulnerability of officers to the hazards of the job. The police officer would have learned in the academy about the standard procedures that ought to be applied to certain situations (Harris, 1973).

Today, criminal justice experts revised their opinions on the role of the academy. Kappeler called police training the “nuts and bolts” of “how to do” the police job. However, he advocated supplementing traditional academy training with a formal education. Police training should include improving the problem-solving and critical thinking capacities of the officers (Kappeler et al., 1998, p. 221).

The Turkish National Police Academy training has used this approach for years. The main recruiting source used by the Police Academy is the Police College, which is a high school. The Police Academy curriculum includes both education and training classes. Moreover, the Police Academy training of the Turkish National Police continues for four years. The first two years of training cover legal topics ranging from an introduction to law to the Constitution. In the third year, policing classes are mixed with the law classes. In the last year, the classes are decided by the Directorate General of the TNP according to the needs of the organization in specific policing areas. Police Academy education and training very successfully prepares future police managers with analytical thinking skills (Police Academy, 2002).

Education and training together can reform police organizations. The “Professional standards” office replaced “internal affairs.” This was not only a change in the title of the office; it was also a change in the mentality of police organizations. This change came with college-educated police administrators. Thibault sees police deviancy as more than just an organizational problem. The police are also accountable to the public. The professional standards divisions of police agencies investigate the offenses

committed by police officers that are defined as “misconduct” by departmental duty manuals (Thibault, 2001).

The US Commission on Civil Rights suggests that police training includes programs to teach community-sensitive training in changing environments. Effective community relations and the creation of a safe and sound society is a function of good police training. As Fyfe recommends, the priorities of police job should shift from crime fighting to order maintenance. Since officers are more eager and receptive in their initial training, changes in basic training make a big difference in how the police functions (as cited in US Commission on Civil Rights, 2000).

The Civil Rights Commission contends that consent decrees based on 42 USC § 14141 would help police training meet federal standards. The effective side of consent decree is that a city may enter into consent decree without admitting the violations alleged by Justice Department and may increase quality of training without harming the police agency. All examples of consent decrees mandate enhancements in police training. Inadequate training is a danger when an officer has to make an immediate decision in life threatening situations. Adequate training prepares police officers to act properly without creating a danger to him or to society. As Fyfe expresses to the Commission, unrealistic safety concerns of police officers lead them to an aggressive and excessive use of unnecessary force on the citizens. (US Commission on Civil Rights, 2000).

Bayley and Bittner assert that police training should not include tactics developed based on scientific certainty because policing cannot be taught scientifically. Police should be trained to act properly in diverse situations (Bayley & Bittner, 1989).

A recent study revealed that 86 % of officers think that better training would be a good way to regulate police conduct. About 11 % of officers disagree with that idea. A full 95 % of officers agree that clear and effective policies and procedures will be followed (Hunter, 1999, p. 164).

Thibault and his coauthors argue that insufficient training may place communication barriers between police and society, cause unnecessary harm to the public, and foster immorality among officers. Insufficient training may then cause bad publicity and loss of resources due to an increase in civil litigation against the police. The training issue is a large part of the 42 USC §1983 (Section 1983) civil liability suits. According to § 1983, municipalities are open to civil liability suits because of their officers' negligence and intentional wrongdoing. In these civil liability cases, state and municipal governments became civil defendants. Traditional training aims to help improve recruits improve at skills necessary to handle the job, and to socialize the officer with a new series of routines and protocols. Training is very important for managers, because a well-trained officer does the job without causing any problems to superiors or the agency. Inadequate training increases the bureaucratic red tape in an agency, pulling police away from their regular duties. As a result, morale decreases and job frustration among officers increases (Thibault, 2001).

The character of peace officers can be shaped by education. Education is the most important reality of society. No one is born with a formed character. Character can be reformed later in life (Delattre, 1989, p. 7).

Melton mentions the inadequate training of police officers in the NYPD, through the words of the Deputy Commissioner of the NYPD. There is a need to train officers to exercise self-control, using violence only when it is warranted (Melton, 1989, p. 3 of 8).

Herbert states that “to avoid the ad hoc decision making of boss-dependent policing, these more professional officers would be beholden instead to a well-regulated bureaucratic order administered by a powerful chief insulated from city politics” (Herbert, 1997, pp. 59-60).

Goldstein argues that police should hire college-educated employees because college experience will produce a better police officer (p. 286). In addition, a college education could provide a better foundation for a more practical management (Goldstein, 1977, p. 304).

A police agency’s book of written rules is sometimes called by different names, but this book varies little in spirit or in essence. A “duty manual” may also be referred to as an “operations manual,” or “the procedures manual.” It may also be referred to as simply a collection of “rules and regulations,” or “standard operating procedures.” Regardless of what it is called, the duty manual outlines the rules that govern officers while they are on duty and even in their off-duty hours” (Thibault, 2001, p. 125).

A police agency defines its role in the duty manual as well. This definition of roles and rules is essential in two ways. First of all, police officers learn what their roles are and what is expected from them, allowing them to act without hesitation. Second, by making the duty manual available to the public, police give the citizenry the opportunity

to learn about the standards of the police. The duty manual also should include the mission, goals, and priorities of a police agency (CALEA, 1996).

Policing standards are explained in duty manuals. A duty manual should neither be so simple that it leaves too much room for discretion, nor so complicated that it overly bureaucratizes the police agency. Thibault summarizes that the rules in a duty manual should:

1. be kept short so that everyone can read and understand the entire manual in a relatively short time span,
2. be consistent,
3. be reasonable,
4. conform to principles of good management,
5. be humane,
6. be enforceable,
7. be stated in an unambiguous manner,
8. be related to the actual operations of police procedures,
9. not deal with the trivial, and
10. be written in a good English format with a professional tone to the choice of words (Thibault, 2001, pp. 128-129).

Bozeman and Rainey lays the blame for improprieties on everyone and no one in an agency. They give several examples to demonstrate that the insufficiency is not with the personnel, but with the system itself in most cases. However, they say that the people create the systems and people are the systems. The authors compared the public and

private sectors regarding the rules of the organizations. What they found contradicts the common belief. According to them, private sector managers prefer more rules than public sector managers. Neither people in the public sector, nor the government is inherently incompetent. However, incompetence is more a product of the rules and regulations of the organizations, not individual persons (Bozeman & Rainey, 1998).

One Supreme Court case in particular, Monell v. New York Department of Social Services spurred police departments to develop police standards. The Supreme Court held that a human rights violation committed by an employee might be tied to the employer if poor training or a lack of supervision caused the violation. In every area including use of deadly force, police agencies have been improving their policies by incorporating the federal reasonableness standard as well as state mandates. Despite the fact that these standards vary among different police agencies, it is fair to say that the situation is now better than it was in 1980's (US Commission on Civil Rights, 2000).

A recent study has revealed that if a police agency's policy mandates that supervisors report use of force incidents, the rate of use of force by police officers declines. This shows that the organizational structure and duty manuals of police organizations affect officer behavior (Alpert & MacDonald, 2001). There are other restraints that weaken the effectiveness of duty manuals. Buchanan points out the fact that a well-written policy will not help to impose policies if officers do not know the policy or how to apply it. The policy must be clear and comprehensive. Stronger policies make a deterrent effect on police misconduct (Buchanan, 1993).

In conclusion, the policy manuals of police agencies should be clear and concise. More importantly, they should serve as a guide both for officers and the public regarding how to act in certain situations. They should be available and understandable to the public as well. They should outline the standards of policing, defining the rights and obligations of police officers. Police manuals should be used in training programs. Training should be adequate enough to prepare officers for the future tasks.

Internal Review Boards

Internal Review Boards are responsible for receiving, processing, and investigating complaints against police officers. These complaints may be for violations of criminal law or agency policies and procedures. Approaches vary among Internal Affairs divisions (IAD's). Some actively investigate police misconduct and corruption, while others investigate only in response to complaints received (Kappeler et al., 1998).

Inciardi asserts that there are two types of approaches that police may use to assert control over officer behavior: preventive and punitive control. Internal affairs divisions fall under the punitive control approach. The size of IAD's may vary from one officer to an entire division in the agency. IAD's are charged with the investigation of allegations of police misconduct, officer involved shootings, and situations where weapons are discharged (Inciardi, 1999, pp. 247-248).

Reform initiatives within police departments tend to arise after big scandals. At the core of these achievements or ideas, internal affairs units take a unique position. Most scandals are typically seen as the result of weak control over police and weak or biased internal disciplining boards. Most reform efforts focus on internal affairs divisions as a

result of this distrust in most American police agencies. Ineffectiveness and lack of role clarity in disciplining procedures has channeled reform activities, involving outside parties in the process. The public has come to believe that IAD's do not investigate complaints of civilians effectively. The role of IAD's was uncertain to the public. Moreover, unrest is prevalent among officers who have observed unequal applications of IAD's. At the center of these criticisms is the lack of accurate record keeping for disciplining procedures. It is impossible to track officers who are disciplined using these records. It is recommended that IAD's should continue with their mission, modifying their procedures to ensure equitable treatment of officers, keep the public more informed, computerize record keeping, and address how to avoid the pitfall of the code of silence (US Commission on Civil Rights, 2000).

Mellon thinks that the legitimate use of power that police are allowed inspires corruption. People may choose to become officers in search of power. Do police officers use physical force easily or refrain from it unless it is necessary (Mollen, 1998)? The Christopher Commission did a study of the use of excessive force within the LAPD. It found that the excessive use of force was not a product of departmental policy. In fact, small number of officers was using excessive force: 33.2% of abusive power cases were held by 10% of officers. Is the LAPD responsible for this 10 %? The reality is that 44 % of officers who abused citizens were not disciplined by the LAPD (ACLU, 1997).

There is a strongly held belief that most of the brutal police officers are not prosecuted or disciplined. The greatest barrier to prosecution or disciplinary action appears as a "code of silence" among officers. When no one talks, it is very hard to prove

misconduct cases. In most instances, the complainant was an arrestee, and the abuse has to be proven through medical records because there are no visible signs of brutality (Amnesty International, 1996).

A disciplinary procedure may take the form of an unpleasant task at best, and it can create morale problems and lawsuits at worst (Guthrie, 1996). According to Iris, police misconduct complaints of citizens are not handled properly when the police internal affairs unit officers carry out the investigation. Police cannot truly investigate themselves especially if the subject matter is excessive use of power. Only a civilian review board can reach a correct and true decision to hold the police accountable for their misconduct. However, the power to discipline police officers is very crucial to police managers. Disciplining officers is the only administrative tool that can be used to control them (Iris, 1998).

Supervision is very important aspect of policing. Lack of supervision makes police officers totally free in their behaviors. If police officers know that there is zero tolerance, they will behave how they are expected to behave. They should understand that there will be zero tolerance if they use excessive force (Mollen, 1998). The Christopher Commission found, subsequent to its study, that the LAPD had, in effect, condoned officer brutality by being lax in its supervision and inadequately investigating complaints. By placing police officers alone in a patrol car and giving them a very expansive patrol area, the department, in essence, leaves officers unsupervised. Officers can easily maintain “low visibility” and avoid scrutiny from supervisors (Livingston, 1999).

Awareness of the law assures people that their unlawful act or omission will be punished with a certain sanction. They will then be very careful not to violate the rules and regulations. However, the lack of supervision and lack of sanctions for misconduct encourage police officers to use excessive force. It is the responsibility of police leadership and city government leadership to establish internal control that will minimize the use of excessive force and brutality within the department (Mollen, 1998). The bureaucratic structure of police agencies provides very weak control over officer discretion. Police act at the street level and it is sometimes impossible to supervise personnel in the street. Decisions are made on the street, and police managers are often ambiguous about misconduct. Consequently, the decisions officers make on the streets are rarely reviewed by supervisors (Shellenberg, 2000).

There is a potential danger in giving supervisory personnel unlimited responsibility when investigating misconduct in police agencies. However, outside control is imminent if administrators are unwilling to deal with brutality and corruption more aggressively and forthrightly (Goldstein, 1977).

First of all, the police must provide a fair and easygoing system to file the complaints of citizens who feel they have been mistreated. It is essential that all complaints are investigated speedily and that the complainant is kept informed at all times. Accordingly, the officer against whom the complaints are filed should be informed and be given the right to defend himself accordingly (Goldstein, 1977, p. 173).

External Controls

42 USC Section 1983

State and Federal tort laws differ from criminal laws. A tort is a civilly wrongful action that causes an injury to a person or property in violation of a duty imposed by law. Most State tort laws are interpretations of common law by the courts. However, Congress must pass federal tort laws, because the civil wrong should be defined clearly. Section 1983 is a federal tort law that was statutorily created (del Carmen et al., 2001). USC 42, Sections 1981, 1983, and 1985 are the federal civil laws that can be applied to individual police officers and agencies. Section 1983 is the law most frequently used in cases of police misconduct that cause the deprivation of civil rights. This Section is also known as The Civil Rights Act of 1871 (Kappeler et al., 1998).

Section 1983 was a reaction of Congress to the Ku Klux Klan due to the ineffectiveness and weaknesses the states had demonstrated on such crimes. Pursuant to the 14th Amendment, the Congress enacted Section 1983 to remedy civil rights violations in federal courts. This legislation was the result of the distrust to state courts. However, the Supreme Court did not use Section 1983 until 1961 after the Civil War. In Monroe v. Pape (1961:167) the Supreme Court decided to recognize the deprivation of rights under color of state law as a violation of Section 1983, and looked for the specific intent to deprive a person of a federal right. Municipalities were then immune from liability under Section 1983. However, the Court, in Monell v. Department of Social Services of City of New York (1978:658) established a direct liability to municipalities, where the violation

was caused as a result of policy, practice, or custom (Barrineau, 1994; Whitebread & Slobogin, 2001; Taylor, 1999).

USC 42 § 1983 states:

“§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.”

This act was an addition to the Civil Rights Act of 1866 and allowed citizens to sue for civil damages for the deprivation of federally guaranteed rights. There is a massive debate about Section 1983 due to its widespread impact on police officers. This is a civil recourse that allows private parties to sue any official who is acting in an official capacity (Kappeler et al., 1998).

In addition to remedying constitutional violations, Section 1983 is used to override some State laws, when a state law is inadequate, or when it is adequate but inapplicable (Worrall, 2001).

Section 1983 is the statute chosen to sue police officials for two reasons: (1) discovery procedures are more liberal than other suits, and (2) attorney fees can be recovered under this lawsuit (Taylor, 1999; Worrall, 2001; Whitebread & Slobogin, 2000).

Section 1983 allows citizens to sue in civil court for deprivation of their federally guaranteed rights. The plaintiff has to prove two things: The officer was “acting under the color of law,” and the result(s) of the officer’s “act deprived the plaintiff of his rights.” The right that the plaintiff is deprived of should be protected under the US Constitution or any federal law. The “under color of law” requirement includes acts that exceed the lawful authority of the officer’s jurisdiction. The 14th Amendment is the main source used to decide which Constitutional rights are deprived. The right subjected to a 1983 action should be a right protected under the federal Constitution or federal law. A right given under a state law is not protected by Section 1983 (del Carmen et al., 2001; Vaughn & Coomes, 1995; Whitebread & Slobogin, 2000). Some scholars argue that a third element was added to first two elements: “deliberate indifference” of the municipality and its policymakers. “Deliberate indifference” is used here to mean a conscious or reckless disregard of the consequences of one's acts or omissions (Taylor, 1999). Since Section 1983 aims to reach the deep pocket of municipalities rather than the individual officer, a litigant must establish that the governmental agency was “in conscious

disregard,” “deliberately indifferent,” or “shocked the conscience” (Kappeler et al., 1998).

While a sworn officer is acting under the color of State law, if he or she allegedly deprives the 4th Amendment Constitutional rights of a person, that officer can be sued in federal court. The officer can be either a state or municipality employee. Federal officers can be sued under the provisions of Section 1983 with a Bivens Action (Swanson et al., 2001).

The most effective and acceptable part of the 1983 actions is the “municipal fault.” Showing the existence of a “policy or custom” can prove this fault. The plaintiff can sue the municipality on the basis of three different manifestations of negligence:

- 1- A facially illegal policy that is either codified or adopted by the municipality. To hold the municipality responsible there should be clear intent behind this regulation and it should have a causal link to the harm done.
- 2- Tolerance by the local government of an illegal action in the absence of a codified policy when a municipal fault exists. While there is no written regulation, if the municipality is tolerating an illegal action or disregarding a known risk or unknown but obvious risk, than it can be held responsible for “deliberate indifference.”
- 3- “Final policy making authority” analysis. A ruling by a policy-making body that directly orders an act violates an individual’s rights. The plaintiff should prove that the final policy making body ruled the action. It is very hard to hold

responsible city councils where they consist of several members, if they are not in mutual decision to do so (Brown, 1999, footnote 57).

G. Flint Taylor offers suggestions on what to look for to hold a municipality responsible. First, the constitutional violation at issue should be caused by a municipal policy, practice or custom. This municipal policy, practice or custom should not be necessarily written. It can be de facto, or established by a municipal official who is the final policy-maker on the issue at hand. It should be noted that a single unconstitutional act alone is not enough to be defined as a policy, practice, or custom, unless it is linked to the final policy-maker. Liability under Section 1983 is monetary only, due to the fact that a municipality is a juristic person. Practically speaking, it is not possible to imprison a municipality or apply any sanctions to it other than monetary sanctions. A municipality cannot be held responsible for punitive damages (Taylor, 1999).

It is impossible to open a case if an officer's action cannot be proven to be taken under color of law. The "under color of law" requirement limits the use of Section 1983 to a relatively few cases. The US District Court decided in Calhoun v. Doster (1971:736) that the blatantly intimidating actions of state officials are "under color of law" if they infringe upon the federally guaranteed rights of citizens. One another issue is the position of officer between parties. If an officer is taking the side of one party against other, he is acting with police power and his action is under "color of law" (Vaughn & Coomes, 1995).

In Section 1983, Monell claims have an important role. In 1978, the Supreme Court decided in Monell v. Department of Social Services of New York (1978:658) that

the legislature intended Section 1983 to apply to municipalities and other local governmental units (Swanson et al., 2001). Before Monell, the Supreme Court interpreted Section 1983 according to the precedents set by Common Law, where juristic bodies would never commit a wrong, because it was not possible for the Queen to be wrong.

There are three reasons to bring Monell claims under Section 1983. The first is to “reach the municipal deep pocket.” Secondly, the case takes “a direct path to a municipality,” where an officer commits a constitutional violation and cannot be sued because of immunity. Lastly, it is discovered that there is “systemic evidence of deliberate indifference” to police brutality. A Monell claim in a police brutality case may be the only way to take some type of action against the brutal officer who is immune from suit. Monell claims are a tool that can be used to develop systemic evidence of deliberate indifference to police brutality. Actually, they are the only tool that can be used to investigate the attitudes of police officials concerning the disciplinary issues of “repeater” police officers (Taylor, 1999).

There are controversies surrounding Section 1983, mainly having to do with the ambiguities of terms such as “color of law” and “deliberate indifference.” The plaintiff has to prove a failure to discipline, the existence of a “code of silence,” the existence of prior complaints against the officer in question, and how these elements are related to the cause of the injury (Taylor, 1999).

In Screws v. United States (1945:91), the Supreme Court interpreted under “color” of law as under “pretense” of law. According to this, if officers are in pursuit of their personal interests, there is no way to make a Monell claim. If they are undertaking

their official duties and subsequently cause an unconstitutional injury to a private party, then a Monell claim can be made. It has been held by Supreme Court in Monroe v. Pape (1965:365-167) that the misuse of authority by officers should be considered under color of law. Before Monroe, the misconduct of officers was considered to be outside the scope of lawful authority. There was no way to sue juristic bodies due to their officers' unconstitutional acts. Monroe overturned this application and enabled citizens to raise a case against the misconduct of officers.

Moreover, the Supreme Court held in Pitchell v. Callan (1994:548) that the "color of law" test does not require checking whether the officer was recorded in the duty roster. The determining factor is not the duty status of the officer, but the nature of his act. Justices in this case defined an officer to be acting under color of law when he invokes his police powers, discharges duties routinely associated with police work, or uses his authority to trap plaintiffs in compromising positions. More specifically, if officers are uniformed, pull out their guns, identify themselves as police, arrest suspects, make official reports, or provide other indications that they are acting as an officer in an official capacity, that officer is acting under color of law.

Vaughn and Coomes conducted a study examining ninety-six law enforcement cases to decide whether an officer was acting under color of law. They found that officers are acting under color of law when one or more of the following seven conditions are satisfied:

- (1) they identify themselves as officers;
- (2) they perform criminal investigations;

- (3) they file official police documents;
- (4) they make arrests;
- (5) they invoke police powers in or outside their jurisdiction;
- (6) they settle personal vendettas with police power; or
- (7) they display weapons or police equipment (Vaughn & Coomes, 1995, p. 409).

It should be noted that Vaughn and Coomes found it very ironic that a civil court deciding on a Section 1983 case should determine whether an agent/officer was acting under color of law as a first step. The authors suggest that reviewing courts should determine first, whether the act of an officer violated a federally guaranteed right. If they find that a right was violated, then they should decide whether the act was committed under color of law (Vaughn & Coomes, 1995).

There are four common types of Monell claims:

- (1) An affirmative pattern of misconduct and/or municipal indifference to it.
- (2) Cases in which misconduct is a direct result of common practice.
- (3) Cases where the final decision maker is involved in the misconduct.
- (4) Cases where the municipality's failure is systemic, involving inadequate practices of hiring, training, supervising, disciplining, monitoring, counseling, or controlling officers (Taylor, 1999, p. 2 of 13).

Taylor thinks that Monell claims under Section 1983 give citizens the chance to act as a "private attorney general." The claims under Section 1983 target individual officers and are far away from correcting the whole department. However, these claims serve as an indication of the "practice and pattern" that may give way to Section 14141

claims by the Attorney General for or in the name of the United States. It very effectively deters police misconduct and positively affects police policies and practices. Section 14141 is studied in depth in Chapter 4 as a potential model for the Turkish National Police. Additionally, claims made under Section 1983 are very effective in educating the public, showing individuals how to pursue their rights (Taylor, 1999). However, it should be noted that there is a "highly complex body of interpretive law" that has followed Monell (Hamilton, 1999). According to Taylor there are positive and negative aspects of Monell claims under Section 1983. Positively speaking, they:

- a. broaden the scope of admissibility at trial.
- b. facilitate holding supervisors and command officials responsible.
- c. allow litigators to distribute the responsibility between the individual officer and municipality.

On the negative side, Monell claims contribute to:

- a. Increased costs of litigation.
- b. Expanded attorney time.
- c. Increased opposition efforts.
- d. Increased length and complexity of the trial (Taylor, 1999, p. 2 of 13).

Police supervisors and administrators should define when and where police officers are on duty and when and where they are not. In most countries of the world, including the US and Turkey, police officers are deemed on duty without making any shift distinction. Moreover, this is expanded for the Turkish National Police by mentioning that regardless of place and time, the police are on duty twenty-four hours a

day in the limits of the city where they are assigned. White clearly indicates the need to define more clearly the status of officers in their off time. These civil liability cases will lead supervisors and administrators to evaluate the duty situation of police again (White 2000). The best defense to civil liability cases is clear policies and regular training and certification programs (Vaughn & Coomes, 1995).

Del Carmen summarizes the methods officers can use to minimize lawsuits:

1. Know and follow the department's manual or guidelines to ensure a strong claim to a good faith defense.
2. Act within the scope of professional duties.
3. Act in a professional and responsible manner at all times. When faced with a difficult situation, use reason instead of emotion.
4. Know the constitutional rights of the public and respect them.
5. Consult legal counsel or a supervisor when in doubt, and document the advice given.
6. In sensitive cases, document activities, and keep good written records.
7. Establish and maintain good relations with the community.
8. Keep well informed on current issues and trends in civil and criminal liability cases (del Carmen, 2000, p. 439).

Section 1983 has been said to be ineffective at proving police brutality cases. However, it is still an important tool that can be used to discover massive brutality problems (Amnesty International, 1996).

There are several approaches that can be used to defend an agency against a 1983 Action. Two defenses in particular have proven successful. The first of these is the “good faith defense.” The Supreme Court ruled in Harlow v. Fitzgerald (1982; 800) that an officer is not liable in civil matters if he or she acted in good faith. That is he or she did not violate a clearly established statutory or constitutional right that a reasonable person would have been aware of. The good faith defense places some burden on officers and agencies. The officers must learn and know the basic constitutional and federal rights provided to citizens. The agency must update their officers about changes in Supreme Court holdings and update their manuals accordingly.

The second commonly used defense against 1983 actions is “the probable cause defense in Fourth Amendment cases.” If there is probable cause, then the officer is not liable. This defense is used only in Fourth Amendment violations, because the Fourth Amendment requires the police to act with probable cause or with a recognized exception to it (del Carmen 2000, pp. 422-424).

The aim of 1983 lawsuits is to uncover inadequate administrative controls, deficient policies, or customs or practices that are improper or illegal. Section 1983 may be a very effective tool to force departments to change their policies and correct them accordingly (Kappeler et al., 1998).

Ironically, the burden of 1983 Actions is passed on to taxpayers. In New York City alone, from 1987 to 1991, civil cases alleging police misconduct rose 53%, while the money the courts awarded in 1988 was \$7 million, it rose to \$24 million in 1994 (Amnesty International, 1996).

As a conclusion, Section 1983 is a tort litigation that targets both individual police officers and their agencies. It is a monetary remedy for whose civil rights are deprived of unlawfully. The act that deprived persons of their rights should be done under the color of law. Section 1983 has very much debate on it. Its terms are still vague. However, since it tries to reach municipal deep pocket, it may be a pushing force to reform police agencies.

Criminal Prosecution

The statutes enforced by the Civil Rights Division of the United States Department of Justice vary by area, but official misconduct is enforced through 18 USC. § 241 and 18 USC. § 242. Title 18 USC. § 241 is a civil rights conspiracy statute and makes it unlawful for two or more persons to deprive citizens of constitutional rights. This is mostly concerned with 18 USC Section 242.

18 USC. § 242 provides that:

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an

attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.”

A criminal remedy is brought under 18 USC. Section 242. Section 242 imposes a federal penalty to anyone under color of state law who willfully deprives someone of his constitutional rights. This criminal action seems similar to § 1983. Despite the similarity of causes of action, § 242 is different than § 1983, because § 242 is a criminal remedy and pursued stricter than § 1983. However, §242 needs a specific intent to violate a person’s constitutional rights. Since most prosecutors are not willing to prosecute the police, § 242 remains as an ineffective tool. Only very few cases are investigated and prosecuted because of a lack of sufficient resources and the specific intent requirement (Walker, 1992; Whitebread & Slobogin, 2000; US Commission on Civil Rights, 2000; Amnesty International, 1996).

Stone summarizes the prosecutor’s role in its historical context, stating that prosecuting the police is very rare due to several reasons. First of all, it is generally the case that there are insufficient resources to prosecute police misconduct cases. As a corollary of this general lack of resources, the prosecution of police misconduct cases requires a number of well-trained, highly specialized misconduct investigators. In most jurisdictions there are no such personnel. Moreover, even if a police officer is prosecuted, getting a conviction is difficult and very rare (Stone, 1998).

As a rule of thumb, the prosecutor is the chief law enforcement officer. However, this role has never been explored to its full extent. The role of the prosecutor comes into

question when a police operation is likely to result in criminal prosecution. Despite the fact that most activities of the police fall outside criminal prosecution, police and prosecutors develop improving a close working relationship with each other. This close affinity affects the prosecutor's ability to prosecute officers who commit a crime (President's Commission, 1986).

Stone mentions that the police are accountable to their commanders all around the world. In democracies, however, the police should be accountable to some other outside parties as well. The outside controllers may vary, but commonly they include the legislature, the press, associations of citizens, and the law. The difference comes to light when citizens have a right to expect that the police should not only enforce the law, but also respect it. The role of the prosecutor enters into play in that moment if the police do not respect the law. As mentioned earlier, the prosecution of police is very rare and requires highly specialized agent. Most state authorities are not able to handle this task due to their lack of resources. However, the Civil Rights Division of the United States Department of Justice (DOJ) is an exception to that statement. The DOJ has prosecutors permanently assigned to prosecute police misconduct cases. Their experience in police misconduct cases enables them to make the police accountable to the law. However, this division is not the primary body that oversees police misconduct. Their role begins when the first wave of oversight primary oversight mechanisms, such as the city and state prosecutors, fail to hold the police responsible for their misconduct (Stone, 1998).

The Civil Rights division has two main tools to combat police misconduct. These are criminal prosecution and civil litigation. Until the 1994 Violent Crime Control and

Law Enforcement Act, the Division generally used criminal prosecution as a means to combat police misconduct. After this Act was passed, another tool was provided to the Division: “the ability to take civil action against governmental authorities that have unlawful policies or engage in a pattern or practice of conduct that deprives individuals of their rights.” If used, criminal prosecution is very effective remedy against police misconduct. It allows authorities to demonstrate in successful cases that police abusive power is intolerable, especially against minorities (Agathocleous, 1998).

Due to the rarity of criminal prosecution, the ability to take civil action against a pattern or practice of a governmental agency was added as a remedy. However, only twenty out of 9,168 attorneys deal with police misconduct cases and they are not able to prosecute every police misconduct case. The cases that they do handle are selected according to their importance and the number of victims who suffer from violation. Non-egregious cases are not taken care of due to a lack of resources and personnel. Most cases documented on paper as a matter of bureaucratic routine, but do not reach an end (Agathocleous, 1998).

Due to the vast amounts of common law limitations on police misconduct cases at the state level, state prosecution is rare. Most state laws require the existence of the and against cases of police misconduct (Whitebread & Slobogin, 2000).

In addition to these weaknesses, individual misconduct cases cannot eliminate police misconduct at the organizational level because of the abusive subculture of police departments. So, the effect of individual criminal prosecution is very marginal and does not eliminate police abuses at large. As an example, in the 1970’s, the Division tried a

squad team of Philadelphia police who threatened an innocent civilian to confess about the arson related murder of a family. Despite the fact that the Division won its case, the sentence of the court never affected the department as a whole, because Rizzo, the Chief of Police, refused to suspend said officers. He rationalized that the officers were innocent unless the Supreme Court proved their conviction.

Individual cases, then, are not enough bring police departments around to lawful action. The Philadelphia situation led prosecutors of the Division to take other actions. They turned to city and police managers with allegations of failure to train and discipline, stating that they allowed misconduct to occur. The case was taken up in civil court, and the charges were broadened to institution-wide misconduct. This time, the Division was not successful, but they did not stop. They tried to make the legislature allow the Division to litigate governmental bodies in civil lawsuits. The Congress rejected this request two times, in 1980 and in 1991. In 1994, Congress changed its position and allowed the Division to bring civil cases against governmental bodies. Today, the Division still brings criminal prosecutions against individual officers due to its specific and general deterrent effect on police officers. It also helped to restore the public's confidence in the law (Agathocleous, 1998).

The criminal prosecution of police misconduct requires the threat or use of force. Other differences between criminal prosecutions and civil litigation are shown in Table 3 (US DOJ Civil Rights Division, 2002).

Jacobi thinks that as a result of the rarity of prosecutions of police officers, the equal treatment clause requirement is not met. The rarity of prosecution is a result of

either the police code of silence or the close affinity of prosecutors with the police.

Section 242 was enacted as a result of the states' ineffectiveness at pursuing prosecutions for state level police misconduct; however, it seems that Section 242 has also become an ineffective tool (Jacobi, 2000).

Table 3. *The Differences Between a Civil and a Criminal Civil Rights Violation*

	CRIMINAL	CIVIL
Who is charged	Accused person	Usually an organization
Standard of proof	Beyond a reasonable doubt	Preponderance of evidence
Fact finder	Jury	Judge
Victim	Identified individuals	Individuals and/or representatives of a group or class
Remedy sought	Prison, fine, restitution, community service	Correct policies and practices, relief for individuals
Govt's right to appeal	Very limited	Yes

Source: Criminal Section (US DOJ Civil Rights Division, 2002).

In conclusion, the nature and the results of criminal prosecutions have led prosecutors to find supplemental mechanisms to control police misconduct. Despite the fact that the success of civil litigation in the country as a whole has not been proven, the trend is to use civil litigation more frequently and keep criminal prosecution as an option. At least, John Dunne is favoring civil litigation over criminal prosecution while Isabelle Katz Pinzler advises the use of both remedies equally where appropriate. Dunne's rationalization is not to spend resources on both fronts, but to use them effectively. Dunne thinks that more precisely addressing the managers may target the source of police misconduct. Civil litigation is the tool that gives opportunity to make the managers correct their departments (Agathocleous, 1998).

The Exclusionary Rule

The Supreme Court has decided a lot of cases of police misconduct that majority of them were addressing the Fourth Amendment right to be secure against unreasonable searches and seizures of the citizens and their personal effects. As a result of such decisions, the high court articulated exclusionary rule as a standard to exclude any evidence against suspects in court, if this evidence is obtained through illegal means. In 1914, the landmark case of Weeks v. United States was decided and police officers began to observe high standards for conducting searches and seizures. For many law enforcement officers, 1963 decision of Mapp v. Ohio was accusation of effective law enforcement while it was a decision to minimize unconstitutional infringement of law enforcement on human rights of the citizens. The Court expanded these guarantees to Miranda warnings to make the suspects aware of their constitutional rights in Miranda v. Arizona decision in 1966. Years after this decision, in United States v. Dickerson, the Court readdressed the importance of Miranda warnings (Champion, 2001).

The Fourth Amendment to the Constitution protects all US citizens from unlawful searches and seizures. It states:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularity describing the place to be searched and the persons or things to be seized.”

Other privacy rights are judicially derived from this amendment. Stop and frisk guidelines, probable cause requirements, and general exceptions to the warrant requirement are included in these privacy rights. All of these rights are enforced through the use of exclusionary rule, as a remedy against police misconduct (King, 2002).

The exclusionary rule is the mechanism that ensures evidence presented in a court of law will not be obtained in a way that violates the Fourth Amendment rights of a person to be free from unreasonable searches and seizures. The exclusionary rule is a judicially created remedy that, in essence, states that any and all evidence obtained as a result of illegal searches, seizures, and confessions is inadmissible at trial, at least for the purpose of providing direct proof of the suspect's guilt (McWhirter, 1994; Emanuel, 1997).

The Fourth Amendment guarantee is intended to prevent police from violating the rights of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures..." However, the words of the Fourth Amendment do not specify how to enforce these rights. In spite of the guarantee that the Fourth Amendment provides, violations are a daily practice. The Supreme Court, then, created the exclusionary rule so that the prosecutors would essentially be unable to convict their suspects based on illegally obtained evidence (Emanuel, 2002; Fletcher, 1998).

Historical Evolution of the Exclusionary Rule

Until Weeks v. United States in 1914, the Fourth Amendment was essentially unenforceable. A full 123 years after the Bill of Rights was ratified, there was no federally mandated mechanism that deterred police from violating the Fourth

Amendment rights of suspects. As Justice Potter Stewart stated, the exclusionary rule was like roller coaster that was constructed imperfectly while it was speeding on its way (Steward, 1983).

Table 4 (see page 69) shows the important landmark cases regarding the exclusionary rule. In the case of Boyd v. United States (1886:616), the US Supreme Court first ordered the exclusion of evidence. Interestingly, *Boyd* was not a criminal trial. It was an asset forfeiture proceeding against two businessmen who had violated federal import and customs revenue laws. The appeal Boyd's lawyers raised did not challenge the search and seizure procedures used by the government. Rather, they challenged, on the grounds of the Fifth Amendment, whether a man's papers, which he was compelled to produce, could be used against him. The Court held that the compulsory production of papers constituted an unreasonable search and seizure, and that the act of the United States Marshall violated Boyd's the Fourth and Fifth Amendment rights. The court held that the Fourth and Fifth Amendments are intimately related. In essence, the US Marshall's actions compelled Boyd to witness against himself, a Fifth Amendment violation. The 1874 Customs Revenue Act, which mandated the compulsory production of papers, violated the Constitution by requiring an unreasonable search and seizure conflicted directly with the Fourth Amendment (Schlesinger, 1977; Landynski, 1966).

In Weeks v. United States (1914:383) the court's decision revolved solely around the Fourth Amendment. Police conducted a warrantless search Week's home and seized letters, subsequently turning these letters over to a US Marshall. The Supreme Court held

that the letters were seized unlawfully and should have been returned to the owner upon demand. Using these letters as evidence against Weeks constituted prejudicial error. The Supreme Court reasserted the application of the exclusionary rule in federal cases (Schlesinger, 1977). However, the Court also outlined the “silver platter doctrine” which stated that evidence obtained by state and local agents could be used in federal cases

Table 4. *Landmark Cases*

Date	Case	Decision of the Supreme Court
1886	<i>Boyd v. United States</i>	First occasion on which Court ordered illegally seized evidence excluded
1914	<i>Weeks v. United States</i>	Reasserted the exclusionary rule for federal courts
1949	<i>Wolf v. Colorado</i>	Refused to impose the exclusionary rule on states
1961	<i>Mapp v. Ohio</i>	Imposed the exclusionary rule on states
1963	<i>Wong Sun v. United States</i>	Extended the exclusionary rule to include the "fruits" of an illegal search
1965	<i>Linkletter v. United States</i>	Refused to apply <i>Mapp</i> retroactively to cases decided before 1961
1974	<i>United States v. Calandra</i>	Refused to extend the exclusionary rule to grand jury questions based on illegally seized evidence
1976	<i>Wolff v. Rice and Stone v. Powell</i>	Limited the relief available in federal courts for state prisoners who claim search and seizure violations in their state trials

Source: Schlesinger (1977).

regardless of whether the search and seizure procedures conformed to the limitations of the Fourth Amendment. The Fourth Amendment, the Court stated, only restricted the

activities of federal officers, not state officers (Inciardi, 1999). The Court rejected to apply silver platter doctrine in Elkins v. United States (1960:206; Schlesinger, 1977), and totally overruled the doctrine in Mapp v. Ohio by ordering that the exclusionary rule is required in state level also (Whitebread & Slobogin, 2000).

In Wolf v. Colorado (1949:25), the Supreme Court ruled that through the due process clause of the Fourteenth Amendment, federal guarantees apply to state entities. However, the Court declined to specifically comment on how the Fourteenth Amendment applied to the exclusionary rule. Thus, states were not obliged to exclude evidence that was obtained unconstitutionally. Three years after the Wolf decision, the Court held in Rochin v. California (1952:165) that if the methods used to obtain evidence were so objectionable that they “shock the conscience,” then the evidence should be excluded from trial in state courts. In this case, Justice Frankfurter reversed his holding in Wolf insisting that the notion of due process compels states to not obtain evidence by means that offend “a sense of justice.” Nevertheless, the exclusionary rule was not specifically applied to states, unless the methods that were used to obtain evidence were so heinous as to “shock the conscience” of the defendant. With only this very vague and subjective standard to go by, the exclusion of evidence rule in the states was far from decided (Schlesinger, 1977; McWhirter, 1994; Polyviou, 1982).

Finally in 1961, the Supreme Court set a firm standard for the exclusionary rule. In Mapp v. Ohio (1961:643) the Court applied the exclusionary rule to the states effectively expanding upon their decision in Wolf to address the exclusionary rule. The Court chose to sustain Wolf partially reasserting that the Fourth Amendment right to

privacy was extended to states by the Fourteenth Amendment's Due Process Clause (Schlesinger, 1977; McWhirter, 1994). The Mapp decision of the Court brought the state and federal government together applying the same rules of search and seizure and, exclusion to both levels of jurisdiction (Polyviou, 1982; Inciardi, 1999).

In Wong Sun v. United States (1963:471), the Court extended the so-called "fruits of the poisonous tree" doctrine to verbal evidence gathered as a result of an illegal search. The first formulation of the "tainted fruit" doctrine came in Silverthorne Lumber Co. v. United States (1920:385). In this case the Court held that evidence obtained as a result of a bad search and seizure, like a void, warrant would be inadmissible in trial. Moreover, any ancillary evidence that is discovered as a result of the initial illegality in obtaining evidence would make it inadmissible, based on the notion that government should not benefit from the violation of Constitutionally protected rights of citizens. The tainted fruit theory likens evidence that has been obtained illegally from a tree that has been poisoned. If this illegal evidence leads authorities to additional evidence, as offspring of the poisonous tree, it would considered to be tainted fruit.

However, the Court pointed out an exception to exclusionary rule both in Nardone v. United States (1939:338) and "Silverthorne: the independent source doctrine." The government can establish that the evidence obtained came not from illegal activity, but from a source independent of this illegal activity, then the evidence would be admissible. This independent source doctrine led the Court later in Nix v. Williams (1984:431) to formulate the *inevitable discovery doctrine*, as another exception to exclusionary rule. If

the police would have discovered the “tainted fruit” anyway through the course of their other activities, the fruit is admissible.

In Wong Sun v. United States, the Court extended the exclusionary rule to both direct and indirect fruits of illegal governmental conduct (Schlesinger, 1977). However, again an exception to exclusionary rule, “attenuated or dissipated taint” was reframed inspired from the attenuation idea of Frankfurter in Nardone v. United States (1939:338), that a test should be done whether the derivative evidence was a product of initial illegality or it was distinguishable from initial illegality with a factor attenuated the connection. If such a connection has become so attenuated as to dissipate the taint, then, the evidence would have become admissible (Inciardi, 1999; Schlesinger, 1977; Norton, 1998; Whitebread & Slobogin, 2000).

In United States v. Calandra (1974:338), the Court refused to extend the exclusionary rule to grand jury proceedings. The Court cited Linkletter v. Walker (1965:618), which stated that the purpose of the rule was to deter police misconduct rather than to redress the injury to the privacy of the search victim. The Court also asserted that the traditional role of the grand jury would be compromised if the exclusionary rule applied to grand jury proceedings. The role of the grand jury was simply to assess the strength of the prosecution’s case. It would be up to the trial judge to rule on the admissibility of evidence. In Linkletter v. United States, the court refused to retroactively apply the exclusionary rule to criminal cases decided in state courts before 1961 (Schlesinger, 1977). By refusing to apply Mapp retroactivity, the Court essentially asserted once again that the exclusionary rule functions first and foremost to deter police

from conducting illegal search and seizures. The Linkletter Court ruled that the costs of retroactively applying Mapp outweighed the benefits. The Fourth and Fifth Amendment violations against past defendants were outweighed by the cost of letting potentially guilty men free (Kamisar, 1982-1983). Thus “Calandra sends the wrong message to who are conducting searches and seizures of people unlikely to be indicted, but who are somehow relevant an investigation and may be questioned at a grand jury proceeding” (Whitebread & Slobogin, 2000, p. 23).

The “good faith” exception was decided in a pair of cases, the United States v. Leon (1984:897) and Massachusetts v. Shepard (1984:981) cases. In Leon, the Court held that police acting in good faith on a warrant that was subsequently found unsupported by probable cause would not result in the exclusion of the evidence if “neutral and detached” magistrate issues the warrant, even though the magistrate erred. In Shepard, the court held that the warrant issued on an improper form is not excusable and police actions take in good faith will not result in an exception to the exclusionary rule.

The Court has applied the exclusionary rule sometimes as it constitutionally mandated, as with Mapp, and sometimes as a judicial remedy to clarify complicated situations, as with Leon. The Court has never reached an end to this issue. The current trend, however, is to emphasize the deterrent effect of the exclusionary rule on police misconduct as a judicially created remedy. As Kamisar (1982-1983) noted, the United States v. Wallace & Tiernan Company (1949:796) was the first case their initial ruling in this case, the Fourth Amendment does not necessarily command the exclusion of illegally obtained evidence. In Wolf v. Colorado, the Court took a position to accept the

exclusionary rule primarily as a deterrence mechanism, if not solely. The Court adopted the position that the exclusionary rule was a remedial device rather than a right. However, not only the Court changes its ruling over the course of time about the legitimacy of the exclusionary rule, but even particular Justices reversed their decisions. For example, in Wolf v. Colorado, Justice Black declared the exclusionary rule to be a judicially created rule of evidence, which Congress might negate, but not a command of the Fourth Amendment. In Mapp and again in Linkletter, he described exclusion as constitutionally required by the privilege against self-incrimination. He changed his mind in Kaufman v. United States (1969:238) and turned to the view that the “one primary and overriding purpose” of the exclusionary rule was “the deterrence of unconstitutional searches and seizures by the police” (Dripps, 2001).

The rules of exclusion have evolved through the interpretation of the Fourth Amendment by the Supreme Court. As Dripps pointed out, the Court one time asserted that the exclusionary rule was constitutionally mandated [Mapp v. Ohio (1961); Dripps, 2001].

In conclusion, the exclusionary rule issue is not yet settled in the minds of the Supreme Court. It seems that the future of the exclusionary remedy will be more controversial, and will consist of more exceptions.

Strengths and Weaknesses of the Exclusionary Rule

Wahlbeck indicates that the law is very dynamic and is applied to new situations in accordance with the needs of the society. While the Court applies rules, it is bound also

by legal constraints. Legal change in decisions regarding search and seizure are more dynamic and more influenced than other legal issues (Wahlbeck, 1997).

It is natural that there are differences in the application of the exclusionary rule between states and federal courts. The history of the exclusionary rule shows that the issue is far from settled in any of these (Kafka, 2001). Supreme Court decisions regarding search and seizure are more dynamic and subject to change than any other area of the law (Wahlbeck, 1997).

The most important and strongest criticism of the exclusionary rule is that it enables criminals to go free (Hirschel, 1979). In People v. Defore (1926:12), Justice Clark, using Justice Cardozo's words before him, states that the criminal has to go free because the constable has blundered (Segal, 1984).

Despite the massive debate over the exclusionary rule, the exclusionary rule has had a historical duty to accomplish: to set the standards and educate both the public and the government about civil rights. Nevertheless, some scholars are very pessimistic about the exclusionary rule, stating that the exclusionary rule is a sinking liner in the ocean, while scholars are trying to rearrange deck chairs (Amar, 1994). Others, however, state that the rules set forth by the Warren Court have been digested very well, and most police organizations have reorganized to comply with these new ways of "doing business" (Swanson et al., 2001).

Dripps lists his ideas on the deterrence effect of the exclusionary rule, ideas that are parallel to the ideas of Swanson et al.:

- (1) all modern studies find that the rate of successful suppression motions is quite low;
- (2) warrant use skyrocketed after Mapp;
- (3) Police departments instituted or greatly expanded training programs in Fourth Amendment law in response to the exclusionary rule;
- (4) Deliberate efforts by police to avoid exclusion--by compliance with specific court decisions, by pretext arrests, by third party searches to exploit the standing exception, and even by police perjury--show that the police shape their behavior in response to the risk of suppression;
- (5) Police and prosecutors say that they are influenced by the risk of suppression;
- (6) The faith of critics of the rule in the ability to deter criminals is inconsistent with skepticism about deterring the police (Dripps, 2001, p. 14).

On the other hand, critics of the exclusionary rule have powerful objections.

Dripps lists these as well:

- (1) that the rule has the undesirable effect of releasing clearly guilty offenders;
- (2) that the rule does nothing for innocent victims of police excess;
- (3) that the rule's deterrent benefits are, as a factual matter, questionable;
- (4) that, if the rule does deter, it over-deters by causing the police to refrain from borderline but lawful searches;

- (5) that alternative remedies might be made much more effective by such arrangements as liquidated or punitive damages, excluding character evidence about unsavory plaintiffs; and
- (6) that exclusion fosters police perjury, trial court tolerance of police perjury, and appellate court hostility toward substantive Fourth Amendment rights (Dripps, 2001, p. 12).

Jones sees the Calandra decision as a weakening of the exclusionary rule.

Calandra assured the deterrence rationale of the exclusionary rule by excluding it from grand jury proceedings. In opposition to that, the Texas Legislature allows for the judge to instruct the jury if a deficiency exists in evidence. The Supreme Court's reasoning was not to interfere with the historical duty of the grand jury (Jones, 1997).

Both defenders and critics of the exclusionary rule admit to the weak aspects of their ideas. Defenders admit that even if it is justifiable, it is disturbing that the rule lets criminals go free. On the other hand, critics admit remedies other than the exclusionary rule are ineffective (Dripps, 2001). Thus the debate will never end, but will continue with new exceptions to the exclusionary rule.

Civilian Review Boards

Due to the perception that most city, state, and even federal police agencies are ineffective at preventing police misconduct, independent civilian review boards are increasingly utilized in many communities. Previous reform efforts to establish review boards were the result of high tension between minorities and the police. Today, however, civilian review boards are also created due to the belief that IAD's are not

effective. Civilian oversight is seen as most effective tool citizens can use to distinguish between acceptable and unacceptable police conduct in democratic societies. As David Harris stated “accountability is uniquely an American idea...The Declaration of Independence should be seen as a proclamation that accountability will stand in this country and nobody will stand for government without it” (US Commission on Civil Rights, 2000, pp. 7, 8 of 20 of Ch. 4).

According to Kappeler and his coauthors, the need for civilian review boards arose due to extreme secrecy regarding the files of the internal affairs divisions. Police administrations were not allowing the public access to information about police misconduct. Civilian review boards aim to correct this problem by including people other than police personnel in the disciplining process (Kappeler et al., 1998).

When the police fail to hold themselves accountable, they lose the public’s confidence. This is especially true when the actions of errant officers are poorly handled. The discipline boards of police departments are the main bodies responsible for handling police misconduct, and they are largely made up of sworn police officers. Criticisms of these discipline boards object to “the length of time taken to resolve a complaint, the extent to which the complainants are kept informed about their case and the perceived independence of investigation.” Before changes can be made in police disciplining boards, most disputes were reportedly resolved by way of an Informal Resolution (IR). An IR is only applicable when the complainant agrees, in theory. However, in practice, IR’s are used to resolve one third of all complaints, and most of the time against the complainant’s will. This system was actively protecting the actions of rogue officers.

A survey of British citizens, conducted in 1997, has revealed that citizens favor a disciplinary board that is independent of the police administration. The survey also reveals that citizens are concerned that police-run disciplinary boards are likely to respond only to the complaints of the rich and powerful. The complaints of the poor, it was feared, would be cast aside (Waters, 2000).

Through its research Amnesty International has found out that not only are very few officers disciplined, but the sanctions imposed on them tend to be very minor when uniformed police personnel are in charge of discipline. Based on this research, some departments have tried to rectify the situation by incorporating civilians into their disciplinary review boards (Amnesty International, 1996). However, these civilian review boards were no more successful than their predecessors. Most of these boards were not as efficient as police disciplinary boards. In fact, some of these civilian review boards caused individual police officers to lodge more complaints against the department than the citizens lodged against the department. Furthermore, these civilian review boards were found to be more lenient than the review boards manned by uniformed personnel (Kerstetter et al., 1996).

Philips and Smith argue that while celebrity cases are over-represented in the CJ system, the most prevalent types of police violence are under-reported, namely those that occur in non-visible locations and times. The researchers suggest that special concern should be applied to time-space variables when investigating non-lethal, but violent police encounters with citizens (Philips & Smith, 2000).

Changes made in discipline boards and disciplining policies made officers “think twice and play it safe.” Waters in his research suggests that complainants are very valuable to police administrators. They give administrators a sense of how they need to improve their service to the community. To facilitate this and other types of feedback from the community, Waters suggests that police administrators establish a twenty-four hour telephone line. They should also place comment cards in police stations (Waters, 2000). Amnesty International, on the other hand, finds civilian review boards very valuable for providing public accountability in police misconduct investigations (Amnesty International, 1996).

In its “Good Practice Guide,” the Citizens Charter Complaints Task Force outlines several of the qualities of an effective complaint system:

- (1) Should be easily accessible and publicized;
- (2) Should establish a simple process for complainants to follow;
- (3) Should be fair, fast and impartial;
- (4) Should keep people informed of the progress of their complaints;
- (5) Should assure confidentiality of both officers and complainants;
- (6) Should effectively address all aspects of the issue at hand;
- (7) Should redress the grievances appropriately;
- (8) Should help managers improve service (Waters, 2000).

How police respond to complaints is sometimes just as important as the fact that they respond. It is not rare to discover that citizens find the police response to be too mechanical or “canned.” Goldsmith calls this a “forensic legalistic” approach, one that is

neither flexible nor tailored to the individual. A complaint handling system, the states, should be empathetic and responsive to the complainant (Goldsmith, 1991).

According to Reiner, who handles a complaint is not as important as how it is handled. A complaint system that corrects the problem is much more desirable than a system that punishes the individual officer (Waters, 2000).

The US Commission on Civil Rights advocates a structural classification system for civilian review boards. This classification system was created by Sean Hecker, who was inspired by the works of Samuel Walker and Vic E. Bumpus. Hecker proposes four levels or classes of civilian involvement in the review of police misconduct:

- Class One. Review agencies have the greatest discretion.

Nonsworn staff members perform tasks such as receiving complaints, preliminary fact-finding, reviewing investigative reports, and recommending disciplinary procedures. This is the most common type of civilian review among the fifty largest cities in the country.

- Class Two. Class Two civilian review boards are less autonomous than Class One structures. Police officers are responsible for investigating civilian complaints. Civilians, or a committee that contains some percentage of civilians, review the police officers' reports and then provide a recommended outcome to a law enforcement authority. This is the most common form around the country.

- Class Three. Police department personnel investigate and review civilian complaints. The department's internal affairs division then

advises a police department official of its recommended course of action for the complaint. Civilians may be included as members of an appellate board, which reviews appeals of the internal affairs division's decisions. The appellate board can then provide alternate recommendations to the departmental official.

- Class Four. Third-party auditors are responsible for analyzing police departments' complaint review policies and providing suggested changes to these procedures (US Commission on Human Rights, 2000, p. 8 of 20 of ch.4; Hecker, 1997).

Civilian review boards would bring some advantages due to their independent nature and effectiveness. First of all, investigations would be handled more objectively and thoroughly. As a result, more officers would face disciplinary action and the sustained complaints rate would be higher. Police misconduct would be deterred more effectively than it was based on the principals of general and specific deterrence. Civilian review boards would provide a higher level of satisfaction to both the officers and the public (Walker & Kreise, 1997). Although none of these propositions have been proven either effective or ineffective through research, there is a general belief that civilian oversight will bring about desirable results. Namely, civilian oversight will make police misconduct visible to the public eye. It will be used as a tool to oversee the policies of the police, and will bring effective punishment enhancements to the system. In spite of its many criticisms from the police, civilian review is necessary to make police both democratic and effective. Another advantage of civilian review boards is that they give

police organizations the appearance of impartiality, thereby decreasing public criticism (Kappeler et al., 1998).

A recent survey administered to police officers has revealed that police officers do not agree with one another about the effectiveness of civilian review boards. About 41 % of the officers surveyed believed that civilian review boards are beneficial. Another 42 % stated that civilian review boards were not a good thing. The remaining officers had no opinion or remained neutral about the effectiveness of civilian review boards. It is worth noting that police had a substantially higher opinion of IAD's. More than two-thirds of the officers surveyed supported the use of IAD's (Hunter, 1999, p. 164).

The practice of civilian oversight is criticized by many police officers. John Ellement writes in his editorial "Roache Creates Appeals Board" in The Boston Global that creating any kind of civilian board raises arguments, especially if certain civil rights groups and community organizations support such boards. According to Ellement, Donald L. Murray, the head of Boston Patrolmen's Association, felt himself nearly raped and sodomized after the creation of a community appeals board (Iris 1998, p. 3 of 18). The article asserts that police need secrecy. One cannot understand the consequences of policing without being involved with it. Civilian oversight is a reformist idea, one that diminishes police activity by advising soft crime fighting techniques (Ellement, 1992). On the other hand, several researchers point out that many civilian boards act as an advisory board rather than a disciplinary board. They are very weak and are scarce in resources and in personnel. Most importantly, civilian oversight boards have no means to

change police practices. They have neither subpoena nor disciplinary powers (Kappeler et al., 1998; US Commission on Civil Rights, 2000).

Civilian groups have often criticized IAD's for not pursuing police misconduct vigorously enough. This belief led civilians, especially minority groups, to create civilian review boards (Abadinsky & Winfree, 1992, p. 294). For some, civilian review boards are the only effective way to control police misconduct. Furthermore, the federal government should cut funding to police departments who do not have effective accountability systems (Nation, 1999). However, there are some who believe that police are inherently brutal and that civilian review boards are therefore powerless. They serve to cover-up police brutality rather than discipline. These boards have no subpoena power. Their personnel are supposed to be civilians; however, more often than not, they are retired police officers (Boettcher, 2001).

Conclusion to Control Mechanisms

As a conclusion, Section 1983 and especially Monell claims may serve as a deterrent to police misconduct, encouraging police departments to improve their policies and educate the public about police misconduct. Monell claims fill the space that lack of prosecution left (Taylor, 1999). Without federal influence, police would not achieve much in the way of reforms. Section 1983 is a tool that forces departments to make a systemic change in their agencies (Barrineau, 1994; Gilles, 2000). Holding local governments responsible for their involvement in enforcing unconstitutional laws is a step in the right direction (Brown, 1999). Civil liability has become a major concern for

law enforcement officials and local governments. Civil liability is the primary resource the courts can use to control police conduct (Vaughn et al., 2001).

Regular training and certification programs are the best defense against civil liability litigation (Vaughn & Coomes, 1995). Civil litigation is more successful than criminal prosecutions because in criminal cases, the evidence must be beyond a reasonable doubt. In civil cases, only a preponderance of evidence is enough (Amnesty International, 1996). Section 1983 lawsuits alert managers to control their organizations and to correct unreasonable behaviors (Kappeler et al., 1998). However, some scholars point out that pursuing a Section 1983 lawsuit is not so simple due to the high standard of proof (Kean, 1999).

The exclusionary rule has done its job to improve policing standards in the US. However, the debate still goes on regarding its ability to deter police misconduct. This debate will probably not end anytime in the near future. The most important criticism against the exclusionary rule is that it lets criminals go free.

Civilian review boards came into light as a promising mechanism to control police misconduct from outside the agency. However, they have generally been shown to be inefficient and unable to reach their goal in time. Now, most police chiefs consider civilian review boards to be tools to show their accountability to the public. Most of these boards are made up of retired police officers or persons otherwise extremely sympathetic to the police.

USC. 42, Section 14141 is another remedy that is relatively new in controlling police misconduct. It has been in use since 1994, and is considered by many to hold

promise as a way to successfully reform police agencies. However, it is unclear how well Section 14141 actually reform police agencies. Only time will tell. Further research is needed to reach a conclusion. Since measures like Section 14141 are being offered as a new tool to be applied in Turkey, it will be discussed in the following chapter.

CHAPTER IV

A MODEL FOR THE TURKISH NATIONAL POLICE

As was discussed under the “Criminal Prosecution” section of this thesis, the ineffectiveness of criminal prosecution led the Department of Justice (DOJ) Civil Rights Division to find a new and more effective tool to sue police departments. The first attempt by the DOJ to sue an entire police department and key city officials including the mayor, the medical examiner, police commissioner, and fifteen other police administrators came to light in United States v. City of Philadelphia (1980;187) in August 1979. In this case, it was alleged that police officials systematically violated the civil rights of the citizenry. Furthermore, departmental policies and practices deliberately encouraged such abuses. The evidence showed repeated examples of police misconduct performed as a matter of routine. Despite the fact that the DOJ was not successful in that case, it became a model for USC 42, Section 14141 which was passed in 1994. Congress granted power to the DOJ’s Attorney General to actively protect the civil rights of the public when the patterns and practices of governmental agencies, including local police, went beyond the bounds of the Constitution (Agathocleous, 1998).

This new ability to prosecute the pattern or practice of governmental bodies by targeting their policies, training, disciplining, and complaint handling procedures became an effective tool for reforming police agencies. Despite the fact that this tool was used only on a limited number of police departments, the initiatives became important mechanisms for improving policing standards. More importantly, they allowed the

federal government the opportunity to define what was acceptable, giving other police departments the chance to improve their standards without being subjected to a lawsuit (Agathocleous, 1998; Livingston, 1999).

What happens, if a police department's practices or policies are illegal or improper? What happens if the department has not established a fair and effective system for investigating complaints that have been filed against the department or its employees? Before USC. 42, Section 14141, according to provisions of the Civil Rights Act of 1871, police departments had to articulate their policies concerning the protection of the constitutional rights of citizens. They had to formally take steps to prevent patterns of unconstitutional behavior. Police administrators, then, held some culpability for the actions of their officers. They had to formally put in writing what behavior was unacceptable, outline how the department would handle such behavior, and follow through. The aim of this procedure was the result of an idea that the best way to correct the constitutionally errant policies of an organization was to make it the duty of the respective police departments to correct these policies. The pressure on the individual organization becomes very constant. The organizational administrators determine what is right and wrong beforehand so that when an incident occurs, they will know how to respond. Problems are remedied internally, and the judiciary does not have to get involved (Goldstein, 1977).

The Crime Control Act, which was promulgated by Congress in 1994, has brought very effective changes related to this issue. The FBI, on its website, posts

information that is of interest to the public, including this information about the Crime Control Act of 1994:

“Title 42, USC., Section 14141, Pattern and Practice

This civil statute was a provision within the Crime Control Act of 1994 and makes it unlawful for any governmental authority, or 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 deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

Whenever the Attorney General has reasonable cause to believe that a violation 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.

Types of misconduct covered include, among other things:

1. Excessive Force
2. Discriminatory Harassment
3. False Arrest
4. Coercive Sexual Conduct
5. Unlawful Stops, Searches, or Arrests” (FBI, 2000).

Declaratory relief is a statement of the judge that outlines the legal standards that govern the police departments that are subject to lawsuit. Equitable relief is a court order stating that the department has to abide by the rules that are mentioned by declaratory relief (Agathocleous, 1998).

Section 14141 imposes vicarious liability on governmental bodies for the acts of their law enforcement officers. The premier responsibility of all law enforcement agencies is to eliminate their officers' unlawful conduct. Section 14141 creates a mechanism for enforcement for the US Attorney General. When he or she develops reasonable cause to believe that police agencies fail to prevent a pattern or practice of unlawful conduct, he or she has the authority and the responsibility to take action. Section 14141 provides a "cause of action" where agencies that violate the constitutional rights of citizens as a result of the pattern or practice of unlawful conduct can be punished. A cause of action suit can be filed because the agency has failed to prevent the unlawful acts (DOJ, 1999).

As it is written in USC. 42 Section 14141, a "consent decree" is an agreement between a police department and the Department of Justice to establish a set of guidelines that promote a better management, training, supervision, discipline, and complaint procedures. A consent decree can be established after demonstrating that the defendant under US Code 42, Section 14141, namely a municipality, police department or some other party, has engaged in "a pattern or practice of conduct by law enforcement officers...that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the US" The term "pattern or practice" denotes something

more than a one time occurrence or isolated incident. It refers to a pattern of behavior, a common practice, the violation of the rights of individuals as a matter of “standard operating procedure” within a police department (Livingston, 1999, p. 5 of 37).

To sign a consent decree, there are several steps to be completed in advance. After the investigation is made by the FBI, the main investigative body of the Department of Justice, if the US Attorney General has reasonable cause to believe that a violation has occurred, he or she may obtain appropriate equitable and declaratory relief to eliminate the pattern or practice, for or in the name of the United States (FBI, 2000).

Consent decrees have three principal areas, police training, proper receipt and investigation of referrals and complaints, early warning system. The first two principal areas are very clear. The aim of the early warning system is to identify police officers that are repeatedly involved in citizen complaints or other problematic behavior (Livingston, 1999). However, these principal areas are subject to change from case to case due to the different policies, patterns, or practices of police departments.

One purpose of the consent decree is to ensure that all personnel in law enforcement agencies receive a clear and thorough education before being assigned to the job and that they go through in-service training. The aim of education is to instruct police personnel about non-discrimination, the use of force and proper ways to interact with citizens. Also, supervisors are given the duty to supervise in accordance with the aims of education to support personnel in the field (DOJ, 1999).

The Violent Crime Control and Law Enforcement Act of 1994 requires that the US Attorney General collect data about the excessive use of force of law enforcement

officers for research or statistical purposes. Moreover, the act allows the federal government to aggressively seek out and eliminate a pattern or practice of abuses by law enforcement officials in any jurisdiction, including state jurisdictions (Amnesty International, 1996, p. 42 of 51)

The USA Today reported that consent decrees are promising success for future reforms:

“The city must also provide more officers for the department’s Internal Affairs Group to investigate serious uses of police force. Within two years, the department must also set up a sophisticated computer system to track performance of police officers, in order to more quickly identify problems. “Between 1974 and 1997, tiny Steubenville, Ohio, with barely 50 officers, averaged more than two police-brutality lawsuits a year. The situation was so bad at that point, after paying \$850,000 in court judgments and settlements; the city actually lost its police liability insurance.

In Pittsburgh throughout the 1990s, members of the Bureau of Police became notorious for finding disrespectful citizens guilty of “contempt of cop” and throwing them in the cooler overnight on trumped-up charges.

The good news for beleaguered citizens in both cities, and elsewhere, is that a relatively new reform tool —consent decrees signed with the Justice Department in the face of federal civil rights litigation— is achieving notable success.

Steubenville signed one such decree in 1997 and hasn't had a single brutality case filed against it since. Pittsburgh also signed one in 1997 and since then, the city with a reputation for never disciplining a bad cop has found the means to discharge 12" (USA Today, 10/11/2000).

It is still too early to make an assessment about the US Code 42, Section 14141. Its future impact will depend very much how it is enforced, but there are three key points that should be remembered:

- 1- It is certain that the limited number of consent decrees signed between various police departments and the Department of Justice will open a new era to lessen the brutal practices of police officers.
- 2- Consent decrees require that police departments use enhanced training, the proper investigation of complaints regarding police misconduct, and an early warning system.
- 3- Consent decrees support the exclusionary rule, which does not adequately ensure that police managers control the conduct of their officers as they investigate and collect evidence (Livingston, 1999).

Consent decrees are aiming to put new managerial tools into the hands of local officials. This new management technique has to ensure proper training, the proper handling of cases and complaints and a proactive approach towards problematic police officers via an early warning system. Consent decrees include different provisions. This is to account for the reality that every law enforcement agency differs in its responsibility, size, structure, and the community it serves. A law enforcement agency

can avoid a pattern or practice investigation and subsequent lawsuit only if its policies are designed, implemented and enforced. The agency must accept accountability for misconduct incidents and other violations of constitutional rights if it fails to implement effective training and disciplining (Livingston, 1999).

Gilbert G. Gallegos, National President of the Fraternal Order of Police, opposes Section 14141. He asserts that the problem is not individual police officers, but the management of police departments. The policies regarding training, recruitment and enforcement are set by the administrators. The Department of Justice expects the ineffective administrators to implement the decrees, but these administrators themselves are the root of the problem. It should be accepted that law enforcement in the US is local, not federal. Thus, the problems regarding law enforcement should be resolved in local level (Gallegos, 2000).

Gallegos, however, forgets the initial procedure of forcing the police department to sign a consent decree. The illegal pattern or practice of the police department should be evidenced by the complaints which are investigated by the Civil Rights Division of the DOJ. Moreover, the US Attorney General has no obligation to search for “reasonable cause.” Actually, a consent decree is a modest way to improve a brutal and/or corrupt police department by giving them time and chance to accomplish their goals. If the administration takes care of the problems that arise from illegal conduct, then the DOJ is no longer concerned with the department. Section 14141 was passed in the first place due to the inability of local and state police to control their own officers (Agathocleous, 1998).

Jacobi confronts Section 14141 on two fronts. First, Section 14141 applies only to a “pattern or practice” which is very hard to prove. Second, only the Attorney General, not private parties, may invoke it. When prosecutors are reluctant to prosecute police misconduct and add to their enormous workload, it becomes an ineffective tool for controlling police misconduct. However, 42 USC. 14141 promises to serve the very worthy goal of correcting police departments with extreme systemic problems. But it is simply not designed to reach individual cases of extreme police misconduct (Jacobi, 2000).

In light of the concerns mentioned above, it should be decided how to formulate Section 14141 to suit the Turkish National Police. First of all, the Turkish National Police is not a local organization, but a national organization. It serves a whole nation of people. It is a centralized organization, and citizen oversight of police practices is very limited. However, political patronage and political control over the police is very effective. As Mutlu reports, “appointments, promotions, and the honor system are mostly regulated by personal networks, rather than legal rules, at the expense of the democratic institutionalization of policing. Those networks are mostly based on political affiliation.” Nepotism and favoritism goes against legality and disturbs the morality of society. As a result, the essential law enforcement duties of the Turkish National Police become confused (Mutlu, 2000, p. 388). With these considerations in mind, a mechanism to control the Turkish National Police that parallels Section 14141 should be handled by a committee that is immune from political influence. The State Supervisory Council is suitable for this task. However, it will be fruitful to add members to the committee from

universities and from the Turkish National Police. These would be scholarly and professional experts who could help investigate police misconduct cases and suggest reforms. The State Supervisory Council's structure is explained in the 1982 Constitution of the Republic of Turkey, which reads as follows:

“State Supervisory Council

ARTICLE 108. The State Supervisory Council which shall be attached to the Office of the Presidency of the Republic with the purpose of performing and furthering the regular and efficient functioning of the administration and its observance of law, will be empowered to conduct upon the request of the President of the Republic all inquiries, investigations and inspections of all public bodies and organizations, all enterprises in which those public bodies and organizations share more than half of the capital, public professional organizations, employers' associations and labor unions at all levels, and public benefit associations and foundations.

The Armed Forces and all judicial organs are outside the jurisdiction of the State Supervisory Council.

The Members and the Chairman to be designated from among the members of the State Supervisory Council shall be appointed by the President of the Republic from among those with the qualifications set forth in the law.

The functioning of the State Supervisory Council, the term of office of its members, and other matters relating to their status shall be regulated by law”
(Constitution of the Republic of Turkey:Article 108).

The State Supervisory Council is not attached to any political party or body. The President is detached from all parties and above them; so is the Council. The Council may perform this important task with some additional members who are specialized in policing and human rights. This body may suggest and enforce International policing standards from a civil rights perspective. The Counsel should have the power to bring lawsuits against any entity or organization that does not live up to contemporary standards of public service.

The Turkish National Police is a centralized organization. Its policies are made at the Headquarters of the Directorate General. The State Supervisory Council should investigate allegations both at the city level and in general. The general policies should be evaluated to determine whether they violate the constitutional rights and contemporary human rights standards. As it was done in the consent decrees signed by the police departments of Steubenville, Ohio and Pittsburgh, Pennsylvania, the Counsel should jointly enter into consent decrees with the individual police departments to improve their standards. However, training falls exclusively under the responsibility of the Directorate General of the Turkish National Police and Police Academy. The Council should advise these bodies to improve their training standards according to the human rights standards of the contemporary world.

An independent monitor should monitor, review and analyze the implementation of the decree and improvements. A certain amount of time should be given to the organization to improve its standards. After the deadline, the Council should decide whether to sue the organization or certify that the organization met the required

standards. The Turkish judicial system and structure is different than US judicial system. Cases that concern the executive branch are tried in administrative courts. The cases handled in these courts have a uniquely administrative aspect and do not concern any criminal violations mentioned in other penal codes. Consequently, for the court to oversee consent decrees, these matters should be handled in administrative courts. One advantage of these courts is that some of their members are selected from the executive branch. They know how the system works, and how to repair its flaws.

There is not much to say about how to apply Section 14141. It is totally a new concept for the Turkish National Police. There will be a vast amount of opposition to apply a remedy parallel to Section 14141. However, as was the case with civilian review boards in the US, a time will come that the administrators themselves will seek outside interference as a kind certification of compliance with contemporary standards. As Gottlieb, Levy, McAllister, Peck, & Yenisey assert, Turkey has a very unique position, being somewhat in-between civilizations. While Turkey is seeking to be a part of the Western world by integrating with the European Union, she still carries her traditional Turkish culture with her own positive and negative aspects. They say “An essential prerequisite to further integration into Europe, however, is the development of the Turkish legal system and institutions” (Gottlieb et al., 1997).

It is well known that the criticisms about Turkey from its European counterparts are related to human rights issues and subsequently to the Turkish National Police. A version of Section 14141 will help the Turkish National Police to improve its standards and will be an example to other institutions, as well.

Control mechanisms other than Section 14141 currently exist in Turkey and are applied to the Turkish National Police. The Turkish National Police was established in 1845 and has very deep roots that go well back into Turkish history. Its customs and policies change with the times. However, it is well known that there is more resistance to change in matured organizations than in new structures. Section 14141 will be a first step towards a sense of public accountability. The Council will be investigating the organization on many fronts. The investigation will include interviews with citizens. If this proposal is accepted, the public relations of the Turkish National Police will enter into a new era.

Gunduz voices serious concerns about the relationship between the Turkish judicial system and the police. He lists three concerns. First, he is concerned about the lack of a judicial police. Prosecutors should rely on the police in their investigations, but the control of the police is maintained by the Ministry of Internal Affairs. His second concern addresses the inadequate training of police in judicial matters. This may cause problems in investigations. His third concern was in regards to an Act that required the consent of superiors to prosecute law enforcement personnel. This Act is already abolished (Gunduz, 2001). These concerns give a few hints of the new burdens that an oversight mechanism parallel to Section 14141 will bring to the administrators.

Section 14141 is intended to improve policing standards, not to satisfy victims. The aim of this control mechanism is to satisfy the whole society, rather than to address an individual victim. The individual victim's grievances are redressed by way of other means. It is not a secret that Section 14141 will set new burdens on the shoulders of the

administrators. First of all, political patronage will come to an end. Knowledge and training will be the basis for the selection of both administrators and rank and line officers. A fair system would benefit everyone in the Turkish National Police. To create a better future, administrators should carry the responsibility of reforming their own organizations. The reforms should be imposed from outside is not necessarily desired much. A statute similar to Section 14141 would be a good tool to reform the Turkish National Police. The system is not bad, people make it bad. The kind of remedial devices the Turkish National Police has is not as important as how it uses and applies these tools. The aim of this paper is not to say that the other controls are not effective. Actually, all remedies serve to oversee the organizations that societies authorize to use power. By keeping other remedies and adding them to Section 14141, there will be a new push to democratize the system and make the institutions accountable to both the judicial and executive branches. Section 14141 is a good tool to apply.

As a last word, if this proposal is accepted and intended to be applied to the Turkish National Police, the best place to apply a similar remedy would be in metropolitan cities like Istanbul, Ankara, and Izmir, because the examples given in this study are mostly taken from metropolitan cities of the United States. This will enable researchers in Turkey to adequately compare the results. When the number of personnel in these city police directorates is considered, the symptoms of police misconduct incidents will not be marginal. One will be able to find numerous cases to evaluate and new ways to repair flaws will be developed. Using these new methods, all other regions may be reviewed.

CHAPTER V

DISCUSSION AND CONCLUSIONS

In 1979, Herman Goldstein in his seminal article, Improving Policing: A Problem-Oriented Approach, argued that reforms of internal police management would be unsuccessful unless police could effectively handle and address problems in a way the public expects them to be addressed (Goldstein, 1979).

A survey administered to Texas police chiefs revealed that police chiefs list the better screening of applicants, better supervision, better training, early identification of problem officers, and treating people fairly as the best ways to prevent lawsuits (Vaughn et al., 2001). This is uniquely an administrative point of view. Some recent studies have revealed that police officers suggest that gaining support from police officers will help reduce misconduct (Hunter, 1999).

It is very clear that there is no single remedy to curb police misconduct. This research has attempted to discover effective ways to fight police misconduct. Police departments and police officials that allegedly violate the constitutional rights and liberties of citizens need to be investigated to find out the specific causes of the problem. There is no magic remedy to reform police agencies without gaining support from police administrators. In some agencies, there is no doubt that the only thing that prevents police misconduct is consent decrees. From this standpoint, consent decrees, in accordance with the Section 14141, show that the federal authorities are also trying to gain the support of

the administrators of police departments and municipalities. It is prudent to solve this problem in a way that does not ruin the police departments. They must protect and serve the community. As Goldstein states, democratic free society needs to see that rules regulations are enforced and order is maintained. There are many scholars who suggest tying the hands of police in every aspect. They think that every police department that receives a complaint of misconduct is at fault. Common sense, however, suggests just the opposite. There is an expression in the Balkan's that the worst state is better than being without a state. There are a lot of legal procedures that are established after long debates and experiments trying to find a good way to solve problems. This is the essence of "the law."

The law is the only remedy for the most serious problems of society. The knowledge of the law makes people more concerned about the rights they have and the duties they pay. Teaching the legal aspects of every profession to every professional is the only way to keep a well-balanced society, one that needs to be served and protected. Police departments are established for the good of the community. Consequently, there is a need to respect the community. On the other hand, the protectors and servants of the community have a right to seek respect from the community that they dedicate their lives to in the line of duty. At the very least, they ought to be respected for their time that is taken from their families and given to the community. Hence, there is only one-way to make a healthy society: positive criticism.

The remedies discussed in this research other than the consent decree, are remedies that satisfy the victims by punishing the perpetrators. The uniqueness of the

consent decree is its ability to reach the root cause of the problem and make the faulty departments themselves restores it. Consent, either willingly or not, is the correct place to begin. The only thing that remains is to address the problem honestly. It is certain that all the administrators know what problems exist and how to solve them. The only way to break the code of silence is to gain the consent of the administrators, who are a member of the organization.

Disciplinary action will and should be at the core of police organizations due to their paramilitary structure. However, the debate is over the structure of disciplinary boards. The trend favors the civilian review boards, despite the fact that they are found ineffective and weak at controlling police misconduct.

Standards and training are required for every profession without a doubt. However, policing requires these factors to be more clear and effective, because as an enforcing agency, the police have power to abuse. Clear and understandable standards should supplement training. There is no question whether a police agency needs them or not. They are essential in a democratic society.

Section 1983 is a very effective tool, since it aims to reach the deep pocket of municipalities and administrators. City managers and police chiefs are very careful about the burdens of civil litigation as a result of unclear policies, untrained employees, and the policies that may result in unconstitutional patterns or practices. However, its application and interpretation are vague like the exclusionary rule.

Criminal prosecution is the weakest remedy from a general deterrence standpoint. Since it is used neither at the state, nor federal level very effectively, other remedies to

deter police misconduct have replaced it. Actually it is not abolished completely, but its usage is very rare, so its deterrent effect is very marginal.

The exclusionary rule is a control placed upon police that is designed to deter police from unconstitutional practices. The debate over the exclusionary rule is still ongoing, and it may never end. Despite the fact that the exclusionary rule made a big impact on criminal justice practitioners and served its purpose in advance, currently it does not promise to fulfill the tasks established for it.

As a conclusion, if it is properly used, Section 14141 promises success for the future. Its best feature is that it gives city and police managers a chance to reform their agencies without facing the burden of a lawsuit. This is important for one reason; it makes the police reform themselves. They know what the problems are and they may reform them better if they are given the chance. As it was in the Rizzo case, sometimes court rulings are not enough to force managers. However, a jointly entered consent decree is a positive step towards reform in a police department. However, it is not a good thing to support an idea one hundred percent. All remedies serve their purposes to some extent. This paper simply states that Section 14141 ought to be added to other remedies to deter police misconduct.

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