

Above the Law

Police and the Excessive
Use of Force

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Prologue

Whatever Happened to Dragnet?

The television program *Dragnet* was one of the great instruments to give the people of the United States a picture of the policeman as he really is. It was most authentic. We participated in the editing of the scripts and in their filming. If we had any objections on technical grounds our objections were met. This program showed the true portrait of the policeman as a hard-working, selfless man, willing to go out and brave all sorts of hazards and work long hours to protect the community.¹

—William H. Parker, Los Angeles Police Chief,
interview by Donald McDonald, 1962

The videotaped beating of Rodney King destroyed the *Dragnet* vision of the Los Angeles police, and the Simi Valley verdict, followed by the Los Angeles riots, showed us how divided we are as a nation.

America is, culturally speaking, two countries. One is urban, cosmopolitan, and multicultural. It suffers disproportionately from crime, gang violence, poverty, and homelessness. The other is suburban, relatively safe, relatively prosperous, and—most important—unicultural. Like Simi Valley, and the King trial jury, it is predominantly white and middle-class.

The cops charged with assaulting Rodney King committed their crimes in the first America, but they were tried in the second. That they were was a failure of the local prosecutor, for reasons that remain obscure. The district attorney might have been overconfident or might have leaned over backward to be “fair” to the cops. After all, local district attorneys are normally on the side of the cops, which may explain other prosecutorial decisions in the King case, such as not bringing in outside police expert witnesses to interpret the videotape, or not putting King in the witness box. Yet the videotape was so compelling, had the assaulting cops been tried by a multiracial jury anywhere in urban America—in Los Angeles or San

Francisco, in Chicago or Detroit or Houston—they would, we believe, likely have been convicted.

When a jury in Simi Valley acquitted the officers who beat Rodney King, people everywhere were astonished, asking, how could the King trial jurors have reached such a decision? The answer, in part, is that *the jury* is not a narrowly rational fact-finding institution, and was never meant to be. Judges are perfectly capable of hearing evidence and deciding guilt or innocence. Historically, juries were conceived as a check on judges who were thought to be so close to the authorities that ordinary folks would be treated unfairly in the courtroom. The independence of juries is so valued that they are allowed to *nullify* the evidence and fail to convict, when it appears perfectly clear, as in the King trial, that the defendants were guilty. Without King's presence in the courtroom, he remained an abstraction, painted in sinister hues by the astute defenders of four young men who appeared in court every day.

Roger Parloff, a senior reporter for *The American Lawyer* magazine, wrote a powerfully argued, but ultimately unpersuasive, article in the June 1992 issue defending the decision of the Simi Valley jury to acquit. Parloff, who watched the trial on videotape, says that the television-viewing public missed the beginning of the action, when, he says, King did indeed seem to show superhuman strength. That missed part, Parloff asserts, clearly justified the first ten blows.

But what of the remaining forty-six blows? Parloff appreciates how much harder they are to defend, and writes:

Whenever King moves his arm toward his waistband—remember, the officers have not been able to search King—they hit him. When King appears to get back into a push-up position or pulls his knees up under him—the positions from which he has twice before risen to his feet and advanced upon the officers—they hit him.

Parloff does not find this shocking. After all, these are “ordinary-size police officers trying to control a violent, resisting suspect who is the size of a professional football player” and who, Parloff reports, has not been searched for a gun. Parloff bought the defense. King was a speeder and an ex-con, King disobeyed the cops, King *threatened* the cops—those who beat him and those who watched. Like the Simi Valley jury, Parloff could perceive Rodney King as a massively strong and dangerous figure who could seriously harm a platoon of cops. We believe, however, that a jury composed of cops would not be so persuaded, nor were we.

Juries are supposed to be representative of, and the conscience of, the community—the *vicinage*—where the crime occurred. That is why the

Constitution requires not only an impartial jury, but also a jury “of the State and district wherein the crime shall have been committed.” But tragically, when venue is shifted, that does not necessarily happen. In the King trial, the Simi Valley jurors were miles away from the deaths, fires, and property damage that followed their verdict.

It wasn't simply that the jurors were white and Rodney King (and the courtroom prosecutor) was black. Joseph Kelner, a former president of both the American and New York State Trial Lawyers' associations, and the author of an eight-volume work on litigation, analyzed the jury verdict for the *New York Law Journal* (May 26, 1992). Kelner first argues that, since the videotaped beating was played repeatedly on television and discussed widely on radio and in newspapers, a change in venue from Los Angeles was entirely unjustified on grounds that adverse pretrial publicity would jeopardize a fair trial. “The videotape,” he writes, “was broadcast so frequently on national and local television that the change of venue served no purpose other than to provide a fertile field for acquittal before a totally white jury.”

Nor was it solely the “whiteness” of the jury that made the difference. Most of the jurors were conservative people who resided in a conservative county. The prosecutor, Deputy District Attorney Terry L. White, did not use up all of his peremptory challenges during jury selection. The district attorney's office explained to the press that they had had no great hope of obtaining a more favorable panel than that selected, judging from the written statements of 264 potential jurors in the jury pool.

Virtually all the potential jurors expressed positive opinions of police. About 25 percent had relatives or friends who were police officers. Ventura County is home to many law enforcement officers. Only 6 potential jurors were black; only 2 percent of the Ventura County population is black. Four jurors were members of the National Rifle Association. Another was a registered Republican and a former shore patrolman.

The prosecutor's most promising jurors were Anna Whiting, a fifty-four-year-old printer from a working-class street near the Ventura oil fields, and Virginia Loya, a forty-year-old hospital housekeeper and the jury's only Hispanic. Mrs. Loya was interviewed by a number of reporters after the verdict, and said she felt that most of the jurors had already made up their minds when they entered the jury room. “It's like they saw what they wanted to see, like they already had their minds made up.”

Among a public earlier nurtured on *Dragnet*, or even later on its raunchier and more realistic successors, like *Hill Street Blues*, viewers in every part of America had not come to expect anything like the beating of Rodney King. Shocked by what they saw, many asked themselves: Is this what

cops are really like? In the first America, the brutality shown on the King videotape demonstrated the worst nightmare of African-Americans about police violence against blacks. The Simi Valley verdict confirmed black America's deepest suspicions of the criminal justice system. So, especially in the inner cities of the first America, the Rodney King videotape and the Simi Valley verdict shook the confidence of the public in the police and the system of criminal justice. In suburban America, residents and juries, who regard police brutality as "aberrant," are more likely to support the police reflexively.

We illustrate this difference with a true story. A friend, an editor, was called to serve on a New York City jury. Eight jurors were black or Hispanic, four were white. The defendant was a young African-American man accused of a mugging. He had assaulted a woman near Columbus Avenue and 59th Street and had run away with her pocketbook. A white police officer witnessed the assault, bravely chased down and subdued the offender, and testified in Court. There was one other witness, an older woman, who also saw the mugging and recited her testimony with a Chinese accent.

The police officer was a straightforward and articulate witness. His testimony could not be shaken by the able defense attorney. By contrast, the Chinese woman stammered out what she had to say. The defense attorney asked her if she was excited when she witnessed the event. She answered affirmatively.

Was she nervous? "Yes," she answered.

Was she hysterical? "I was definitely hysterical," she replied in her broken English.

The day before, the jurors had seen on television news the videotaped beating of Rodney King. They suspected that the cops who administered the beating would lie about it, and that the officers who observed it would confirm the lie. Some of the jurors, especially the African-American jurors, had disbelieved cops before. Nothing they had seen about the videotaped beating generated much confidence in the validity of police testimony, whether in Manhattan or in Los Angeles. Consequently, they did not believe the New York cop.

Most of the first American jurors, however, credited the woman's testimony despite her acknowledgment that she had been hysterical, and voted to convict the mugger. Had the woman not seen the mugging, and had she not corroborated the policeman's testimony, the mugger would have walked out of the courtroom, free to find other victims. It's not that jurors in the first America are less susceptible to bias than those in the second—its just that they nullify different kinds of evidence. They tend not to be-

lieve cops, especially after they have seen cops brutally beating a black suspect lying on the ground, while others watched.

In the second America, viewers incorporate other biases, racial biases. They saw the videotaped beating of Rodney King and believed the police testimony that King's behavior controlled their response. They thought King got what he deserved. So they did not perceive police brutality in the videotaped beating. Overzealousness, perhaps, but not brutality. When some of the officers testified that King, who suffered multiple injuries and bone fractures after repeated blows, displayed "superhuman strength" and resisted arrest when he first got out of the car, the jurors believed the officers. After all, in the second America people are taught to believe that large black men enjoy superhuman strength. Sergeant Koon testified that King had not responded to a torrential number of blows, leading Koon to fear that he would have to shoot or choke King. Had King been compliant, one of the jurors said later, he would not have been beaten. Koon further explained to the jury that King was "buffed out," that is, muscular and, being black, showed characteristics that Koon read as sure signs that King was an ex-con. Koon decided to go with the option of serious injury and severe pain. The jury understood that the defendants were cops, not criminals, and that Rodney King, the ex-con, was a criminal. They voted accordingly.

The moral of these stories? America is a divided nation, and cops are perched perilously on the divide. The Los Angeles rioters, those who burned buildings, smashed windowpanes, and beat innocent motorists, were mostly angry young black men, the "Boyz 'n the Hood" portrayed in John Singleton's compelling movie about life in south central Los Angeles. None of the young men shown in that movie aspire to industrial jobs. William Julius Wilson explains how the black community in America has been transformed between the Martin Luther King crusade for social justice and the beating of Rodney King:

The most fundamental change is that many poor black neighborhoods today are no longer organized around work. A majority of adults in inner-city ghettos are either unemployed or have dropped out of the labor force. Consequently, their everyday lives are divorced from the rhythm and reality of the American mainstream.²

Work is a positive and benevolent instrument of social control. Not only should work afford people a source of income, a *living wage*; work organizes lives by assigning responsibilities. Industrial workers do *not* hang out on streetcorners. They punch a time clock, raise families, take vacations.

Communities lacking in work rely more heavily on police to maintain public order. Policing such turf is unquestionably tough, hazardous, and

frustrating. One response is to abuse the authority of law to control the “gorillas in the mist,” as one of the Los Angeles cops called those whom he had recently encountered. A better alternative calls for professional training and reasonable restraint. Especially when black, Latino and Asian Americans are increasingly populating United States cities, it is ever more important that the police enjoy the confidence and respect of citizens who populate these inner-city areas throughout the country. When cops use more force than is necessary to carry out their assignment, when they employ excessive force to make an arrest, they undermine confidence in all police and the subsequent capacity of the police to capture criminals and to convict them with police testimony. After all, who, especially in urban America, will believe a cop on the witness stand when cops have a reputation for beating people up, or ridiculing them, or taking bribes—and then covering up the misdeeds? The King videotape enhanced the plausibility of any allegation against police everywhere in urban America.

Generations of thoughtful police—including William H. Parker—have understood how important public esteem is to their work, and how necessary it is for controlling crime, which is what cops are supposed to do. The King videotape and the verdict will make it harder for cops everywhere to do their job, which is to be *officers of the law*. Cops are not supposed to be security guards on the public payroll who, like bouncers in a rough-and-tumble bar, are on hand to mete out punishment as they see fit. Rather, in a free society, especially in the United States, where police derive their authority from law and take an oath to support the Constitution, they are obliged to acknowledge the law’s moral force and to be constrained by it. Any sensible and reflective police officer will understand that when a cop reaches above the law to use more force or coercion than is necessary to subdue a suspect, he or she undermines the very source of police authority.

The lawless exercise of force employed in excess is popularly called police brutality. Like hard-core pornography, we may not be able to define it, but we know it when we see it. And when most of us saw the beating of Rodney King on the widely disseminated videotape, we knew that we were witnessing a significant incident of police brutality. Even a clear majority of residents of Ventura County, where the Rodney G. King beating case was tried, said they not only disagreed with the verdict, but were angered by it, according to a *Los Angeles Times* poll (May 7, 1992) taken a week after the verdict. How these same suburbanites would have cast ballots as jurors remains unknown. History suggests, however, that they may also have voted to acquit.³

The King beating, the Simi Valley acquittal, the subsequent riots, and the federal trial will be defining events in the history of the United States.

Rodney King’s identity will be more than a trivia question, and the issue of police brutality will be a major concern of a broad and interested public for years to come.

Since the King beating, and especially since the Simi Valley acquittal, both police violence and rioting have been endlessly discussed in magazine and newspaper articles, on television and radio news and talk shows, and in legislative hearings. Unfortunately, both the content and the results of this attention show a tendency to oversimplify, rather than to analyze with any depth or meaning.

We two have been doing or studying policing for more years than either of us care to remember—nearly 60 taken together. We each teach graduate and law school seminars on police. We have appeared on TV shows, been quoted in the newspapers, testified before, and worked with legislative and investigative commissions after the King beating and after the astonishing acquittal. Everybody seems to want quick and simply answers and explanations—sound bites. But our experience has taught us that questions about how often police beat people, or where, or why, like the question of why people riot, do not have simple answers. Although we believe that police must be accountable to elected authority, the absence of such lines of reporting does not explain police violence. Experience has shown that brutality and needless violence have occurred in police departments that are administered in line with democratic principles, as well as in those that answer to nobody.

We have heard it argued that police beatings should surprise nobody because the people drawn to police work suffer a compelling need to exert authority over other people. This may be true of some cops in some places, but we have known too many fine, responsible and sensible officers to write the causes of brutality off so easily.

We’ve heard it said that brutality is the white cops’ way of keeping minorities in line. But if this were the only reason for brutality, the white protesters and reporters at the 1968 Chicago Convention would not have been beaten, nor would other white victims who have experienced police brutality in the intervening years. And, of course, both black and white victims have needlessly and painfully felt the ends of nightsticks wielded by African-American officers.

We believe that there are explanations and answers, but that these are complex, and deserve full discussion. Consequently, following our first chapter, where we try to put police brutality in perspective by addressing the issues raised by the Los Angeles Police beating of Rodney King, we have organized this book to address three basic questions about police brutality and other excessive use of force:

What are the occasions for police brutality? (Part I)

How can it be explained? (Part II)

How can it be remedied? (Part III)

In the first of three chapters in Part I, our chapter on "Vigilante Justice," examines and interprets circumstances where police exceed the limits of the law to control a group they feel the law is, or will be, inadequate to contain. The next chapter, "The Third-Degree," delves into the traditional, but no longer prevalent, practice of brutalizing suspects who are being interrogated. This is a success story—there is a marked decline in police brutality in this arena—and we try to understand why. "Public Order Policing," discusses another major occasion for police brutality, where police are faced with controlling instances of such disorder as protests and riots.

If Part I examines the occasions for police brutality, Part II addresses its causes. We find a causal connection in the traditional culture of policing, that is, in the sorts of values and understandings street cops learn as they assume the job in many police departments. This is not to suggest that all cops have the same ideas. But just as bankers develop a special outlook on the world they inhabit, so do cops. The cultural world of the police is explored in Chapter Five, while Chapters Six and Seven develop two aspects of that world especially vital to encouraging excessive force: the idea that cops are like soldiers in wars on crime and drugs (Chapter Six); and the insularity, authoritarianism, and narrow-mindedness of some police administrators and, consequently, the parochialism of some police departments (Chapter Seven).

What can be done? Are there remedies? This is the focus of Part III. In it, we discuss administrative reform of police from both historical and managerial perspectives, and with a substantial appreciation for the limits of managerial police reform (Chapter Eight).

We review and expound in Chapter Nine on how police have and *have not* been made accountable by the courts. In Chapter 10 we examine how accountability can be boosted by the press, civilian review boards and internal management. In Chapter Eleven, our final chapter, we consider new visions of policing such as community-oriented and problem-oriented policing, plus other mechanisms of renewal such as a police cadet corps and *para-police*. And we reflect once more on what we think may be the most important single question in the entire debate over policing in American society, namely, *what makes a good cop a good cop?*

1

The Beating of Rodney King

In many, but not all, Southern communities, Negroes complain indignantly about police brutality. It is part of the policeman's philosophy that Negro criminals or suspects, or any Negro who shows signs of insubordination, should be punished bodily, and that this is a device for keeping the "Negro in his place" generally.

—Gunnar Myrdal,

An American Dilemma, 1941

I'm glad you asked that question [about allegations of police brutality toward minorities], but before I get into it, I might point out that in a study I once made of the factors that militate against public understanding of the police service I said that two of the factors were the criticism of the police by certain minority groups in order to distract attention from the high incidence of criminal activity within those groups and the practice of the press in magnifying police failures and in minimizing their successes or accomplishments.

—William H. Parker, Los Angeles Police Chief,
interviewed by Donald McDonald, 1962

It all started when George Holliday brought home a camcorder, a Sony CCD-F77, on Valentine's Day, 1991. The thirty-three-year-old, recently married former rugby player, general manager of a local office of Rescue Rooter, a national plumbing company, hadn't had time to load it until March 2, the day before one of his employees was scheduled to run in the Los Angeles marathon. After setting his alarm for 6 A.M. so as to arrive in time for the race, Holliday went to bed early and was awakened at 12:50 A.M. by a blast of siren noise and screeching rubber. The racket was coming from Foothill Boulevard, the main thoroughfare of a middle-class, ethnically mixed Los Angeles exurb with a population about 60 percent Latino,

10 percent black, and the rest Asian and white. When Holliday, who is white, pulled the window shade aside, he could scarcely believe what he saw. The powerful spotlight of a police helicopter was shining on a white Hyundai surrounded by a half-dozen police cars. His first thought was, "Hey, let's get the camera!"¹

The videotape Holliday shot showed a large black man down on hands and knees, struggling on the ground, twice impaled with wires from an electronic TASER gun, rising and falling while being repeatedly beaten, blow after blow after blow—dozens of blows, fifty-six in all, about the head, neck, back, kidneys, ankles, legs, feet—by two police officers wielding their 2-foot black metal truncheons like baseball bats. Also visible was a third officer, who was stomping King, and about ten police officers watching the beating along with a number of Holliday's neighbors.

Actually, twenty-three LAPD officers responded to the scene (an interesting number in light of the later claim that the Department is severely understaffed to respond to emergencies). Four officers were directly involved in the use of force; two hovered overhead in a helicopter; ten were on the ground and witnessed some portion of the beating; seven others checked out the scene and left. Four uniformed officers from two other law enforcement agencies—the Highway Patrol and the Los Angeles Unified School District—were also there.

Both Holliday and Paul King, Rodney's brother, tried to report the police abuse. Neither succeeded. When, on Monday morning, Paul King went to the Foothill station to report that his brother had been beaten, the officer at the front desk told him to wait. After waiting and growing impatient, Paul King returned to the desk. Finally, a sergeant came out of the back of the station and proceeded to give Paul King a bureaucratic hard time. The sergeant then left the room for about thirty minutes while Paul King, who had asked about procedures for making a complaint and had told the sergeant about the possibility of a videotape, waited impatiently.

When the sergeant returned, instead of addressing Paul's complaint, he asked whether Paul had ever been in trouble. He told Paul that an investigation was ongoing, and that Rodney was in "big trouble," since he had been caught in a high-speed chase and had put someone's life in danger, possibly a police officer's. The sergeant told Paul King to try to find the video, but at no time did the sergeant fill out a personnel complaint form. Paul King testified to the Christopher Commission that when he left Foothill Station, "I knew I hadn't made a complaint."

Holliday was busy on Sunday, the day he videotaped the beating. As he had planned, he took his videocam to the LA marathon, then to a wedding. On Monday, March 4, he telephoned the Foothill station, intending to offer

his videotape to the police. He told the desk officer that he had witnessed the beating of a motorist by LAPD officers and asked about the motorist's condition. The desk officer told him that "we [the LAPD] do not release information like that." He neither asked questions about what Holliday had seen nor recorded a personnel complaint form as a result of Holliday's call. The officer seemed so uninterested in Holliday's information that Holliday decided to try another tack and called Channel 5 (KTLA) in Los Angeles. The station made arrangements with Holliday to bring the tape in, and it was broadcast Monday evening. CNN gave it national and international exposure, playing it repeatedly until it was seen everywhere in the world, from Tokyo to London to Zaïre. The beating of Rodney King became the lead story for several days on the major networks as well, the most explicit and shocking news footage of police brutality ever to be seen on television.²

In the ninety-second tape, viewers saw with their own eyes how a group of Los Angeles police officers could act out their anger, frustration, fears, and prejudices on the body of a black man who had led them on a high-speed chase. Like films of the police dogs in Selma or the clubs and tear gas of the 1968 Chicago Democratic Convention, the dramatic videotape gave new credibility to allegations of a sort that many people—including police officers—formerly dismissed as unbelievable. The tape was instantly etched in the memory of every American police chief who watched it and who knew that he or she could scarcely disregard its implications.

Shortly after the King beating occurred, Los Angeles Police Chief Daryl Gates condemned it as an "aberration." Actually, the King incident was simply the most visible in a lengthy series of police atrocities involving a police agency that had itself become aberrational. Between 1987 and 1990, 4,400 misconduct complaints were filed against the LAPD. Of these, 41 percent were filed by blacks, who make up only 13 percent of the population. In 1989 Los Angeles paid out \$9.1 million to settle lawsuits alleging police misconduct. In 1990 that figure had risen to \$11.3 million for suits alleging excessive force, wrongful deaths, false arrests, negligence, misconduct, and civil rights violations. The Christopher Commission found that a significant number of LAPD officers "repetitively use excessive force against the public and persistently ignore the written guidelines of the Department regarding force" and that "the failure to control these officers is a management issue that is at the heart of the problem."³ What made the King beating different from those earlier events was not the conduct of the police, but the presence of George Holliday's video camera.

Most of those who lived in the south central sections of Los Angeles, in places like Watts, Inglewood, and Compton, knew this. Although the dam-

age and the looting following the verdict could scarcely be justified by horrified viewers, many of whom were black, the origins of the riots could be traced to the history of tension and trouble between the police and black and Hispanic residents. "For many," *New York Times* reporter Seth Mydans wrote, "the riot was a simple message to the authorities and larger society. Treat us right. We've been pushed too close to the edge." Ervin Mitchell, a design engineer interviewed by Mr. Mydans, explained: "Young blacks and Hispanics have been persecuted, beaten and pulled out of cars because of stereotypes. We're tired of being treated like garbage. We're tired of living in a society that denies us the right to be considered as a human being."⁴

No one felt this oppression more powerfully than Jessie Larez and his family. Their name may be unfamiliar to those who focused on the King verdict and its aftermath, but their experience perfectly illustrates why so many south central residents bore such hostility to the authorities.

In 1986 Los Angeles police obtained a warrant that authorized them to search the Larez home for a gun. The judge who issued the warrant had not included in it a "no-knock" authorization that would have allowed the police to make an unannounced forcible entry. Instead, the Larez warrant required the police to knock and announce their presence and, presumably, prohibited them from forcing their way in unless they were denied admission or waited fruitlessly at the door for a response of any kind. According to a unanimous panel of the United States Court of Appeals for the Ninth Circuit, however, officers from the LAPD's appropriately named "CRASH unit" conducted a "crisis entry" which involved breaking the back windows of the house to create a diversion ostensibly aimed at making a front entry safer.⁶ The police did this at 7:00 A.M. on June 13, 1986, while Larez, his wife, and their seven children and grandchildren slept, some in beds and cribs directly beneath those windows. Once inside, according to the Court of Appeals' September 27, 1991 opinion, CRASH officers

... hurled Jessie across the room, grabbed him by the hair, forced him to lie down on the floor with his knee on Jessie's neck and handcuffed him. Police kicked him and smashed his face into the floor. The officers laughed and sneered: they told him they had him where they wanted him. At one point Officer Holcomb pointed his service revolver at Jessie's head and said to him, "I could blow your fucking head off right here and nobody can prove you did not try to do something." Officer Keller told Jessie, "we finally got you motherfucker." Jessie sustained a broken nose during the incident. His knees required arthroscopic surgery, and neck surgery was recommended to alleviate the headaches which have persisted since the incident.

Police yelled to [Larez's daughter] Diane to "get up here with that fuck-

ing baby." Upon approaching, she was seized by her waist-long hair and arm and thrown face first to the floor where she, too, was handcuffed. Upon lifting her head to instruct a family member to take her baby away, Officer Keller grabbed Diane's hair and banged her head to the floor, demanding that she "put [her] fucking face on the floor."

[Larez's son] Katsumi, who was sleeping in his room attached to the garage at the time of the search, was awoken [sic] when his door was kicked in by police. An officer pointed his gun at Katsumi and shouted, "I'll blow your fucking head off." He was taken to the living room where he and his brother Frank, like Jessie and Diane, were also propped out on the floor and handcuffed. Katsumi was kicked in the head and side by Officer Holcomb.

The police left the Larez home "turned upside down." Pots, pans, and dishes had been taken from their cabinets and thrown to the floor, and various objects kept on the bar, as well as the VCR, had been thrown on the TV room floor. Katsumi's room looked as if a "hurricane [had] whipped through it." [Son] Albertdee saw beds turned over, clothing in heaps on the floor, broken crockery in the kitchen, and broken windows. His bedroom posters had been ripped from the walls, his punching bag had been cut open, and his plants had been dislodged from their pots. Jessie's prized Japanese albums, obtained while he was stationed in Japan [more than thirty years before], were broken by the [police]. Other broken items included a pitcher, a crockpot, a figurine, a dish, a vase, a music box, a lamp, a rice cooker, a coffee pot, wall paneling, a clock, a sliding glass door, picture frames, and a camera lens.

Despite the rigor of their search, the CRASH officers found no gun in the Larez home. No member of the family was charged with any offense related to the gun CRASH allegedly believed was in the house. Still, the police did not leave empty-handed: Jessie was arrested for battery on a police officer, a charge that was dismissed after trial. The police arrest report notes that Jessie, a fifty-five-year-old disabled veteran, was wearing "no shs, blu pajamas," and that he "received M.T. [medical treatment] at Jail Division for a small cut on the bridge of his nose and on the corner of his rt eyebrow, no stitches required."⁷ The report includes no mention of other injuries or damage. Jessie's son Eddie also was arrested on unspecified grounds for violating the terms of his parole. According to the Ninth Circuit:

Jessie lodged a complaint with the LAPD. The department's Internal Affairs division assigned a CRASH detective not involved in the Larez search to investigate the complaint. In a letter signed by Chief Gates, Jessie ultimately was notified that none of the many allegations in his complaint could be sustained.

Outraged, Larez then filed suit against the six CRASH officers, the LAPD, and Chief Gates. When his case came to trial in 1988, one of us gave expert testimony on Larez's behalf. The LAPD investigation of Jessie Larez's complaint, Fyfe testified, was riddled with "a lot of holes," as were two years' worth of citizens' complaint investigations reviewed in connection with an earlier civil rights suit against LAPD. In these LAPD cases, Fyfe said on the witness stand, whitewashes were so frequent that, regardless of the seriousness or nature of complainants' injuries, "something has to be done on film for the department to buy the citizen's story."

The King incident was, of course, electronically memorialized by the amateur cameraman George Holliday and precipitated a national investigation by the Department of Justice and by the U.S. Congress of complaints against police. Within the city of Los Angeles, at least three major investigations were initiated—an internal investigation by the Los Angeles Police Department, another by the Police Commission, and a third by an independent commission formed by the merger of two groups appointed by the mayor and the police chiefs. This last, headed by a Los Angeles attorney and former State Department official, Warren Christopher, wrote of the difference made by the taping of the King incident:

Our Commission owes its existence to the George Holliday videotape of the Rodney King incident. Whether there even would have been a Los Angeles Police Department investigation without the video is doubtful, since the efforts of King's brother, Paul, to file a complaint were frustrated, and the report of the involved officers was falsified. Even if there had been an investigation, our case-by-case review of the handling of 700 complaints indicates that without the Holliday videotape the complaint might have been adjudged to be "not sustained," because the officers' version conflicted with the account by King and his two passengers, who typically would have been viewed as not "independent."⁸

As information accumulated about the Rodney King episode, testimony about what happened became wildly contradictory. Both the Christopher Report and portions of a 314-page LAPD Internal Affairs report show wide differences of opinion about how King acted during the pursuit and after he stepped out of his car. The California Highway Patrol officers who first attempted to stop King for a traffic violation reported that King fled from them at "110 to 115 m.p.h." The Christopher Commission and others have suggested, however that such speeds are about 20 miles per hour faster than can be squeezed out of a Hyundai like King's.⁹

Some of the officers said that King, who suffered multiple injuries and bone fractures after repeated blows, displayed "superhuman strength" and

resisted arrest when he first got out of the car. Sergeant Koon said that King had not responded to a torrential number of blows, leading Koon to fear that he would have to shoot or choke King. That was when he instructed his officers: "Hit his joints, hit his wrists, hit his elbows, hit his knees, hit his ankles," and, Koon told investigators, "that's what they did do, they did exactly as I told them to do and exactly as they're trained." Several of the officers reported that they had undergone baton training that night before going out on patrol. One of them, rookie officer Timothy Wind, according to Officer Rick Distefano, "demonstrated excellent technique and made contact in all the right places on the practice board."

Yet at least two of the bystanding officers saw no need for the vicious beating. Officer Melanie Singer of the California Highway Patrol, for instance, said she believed King was trying to comply with the officer's commands when he was beaten. "King did not aggressively kick or punch the officers," she said. "He was merely trying to get away from the officers."¹⁰ Similarly, Officer Ingrid Larson, who had been out of the Police Academy only five days, said that "King did not appear to be combative, but merely used his arms to block the baton strikes." Paramedics who arrived on the scene also testified that King appeared to be coherent and was not acting violently.

On May 12, 1991, a guest editorial in the *Los Angeles Times* called for the resignation of Chief Daryl Gates. Published more than two months after the incident, this was not the first op-ed piece to call on Gates to resign. What was surprising was the identity of its author, the same Sergeant Stacey C. Koon who had been in charge at the Rodney King beating. Indicted and suspended without pay, Koon said he wrote the commentary to protest Chief Daryl Gates's handling of the incident, in particular his firing of rookie officer Timothy Wind, one of the indicted four. The editorial suggests that the Chief let the officers down, that he felt "justified to abuse the foundations of the organization to save the organization." Koon's essay became national news. Patrick Thistle, an attorney for one of the indicted officers, was asked by *CBS Evening News* (May 12, 1991) to comment on Koon's call for Gates's dismissal. "The LAPD has always stressed that they are a loving, caring family," said Thistle. "I think these officers believe that the family has treated them like they are not a member of the group."

The cops on the scene were responding to a code they believed in and considered to be moral. The code decrees that cops protect other cops, no matter what, and that cops of higher rank back up working street cops—no matter what. From the perspective of the indicted cops, Daryl Gates betrayed the code. Sergeant Koon was, in effect, alleging that Chief Gates

was changing the unwritten rules, and consequently undermining the tradition of the organization.

Police department traditions and the norms police live by are sustained by street incidents. When cops brutally beat prisoners and others who challenge their authority, they must have learned from their fellow officers that such conduct is acceptable and will be protected from the top down; when they do so in public, they must understand that their immunity is virtually ironclad.

Mike Rothmiller, a former LAPD detective, recently told the story of his life in the department to writer Ivan G. Goldman. He describes a department where racism and spying were accepted and often even encouraged. So was lying on police reports:

Again and again Rothmiller watched cops decide for themselves who was guilty, and then weave a spell over the arrest report to make it match their perceptions. Most of the arrest reports he encountered were doctored in some way—facts deleted or invented. It wasn't exactly the frontier justice of a lynch mob, but it wasn't justice either. It was just the way things worked.¹¹

Police chiefs know about these unwritten messages. Brutality is an occupational risk of a profession that rides with danger and is trained and authorized to use force, even deadly force. Chiefs know this, and they know they cannot absolutely control their officers' behavior. Yet the best chiefs avoid any signal that excessive force is excusable or that any group of people is a legitimate target.

When brutality is alleged, good chiefs investigate thoroughly and objectively. When brutality is found, examples are made of those who committed it, those who failed to stop it, and those who covered it up. When brutality remains undiscovered in a well-run police department, it is because a few officers have managed to keep the incident a deep, dark secret. But there is no secretiveness in the Rodney G. King videotape. Officers and citizens alike could and did watch the beating. Officers—including a supervisor and, apparently, a watch commander—could joke about it in computer conversations they knew were being recorded. For these officers, the threat of review and censure by higher authority was nonexistent: after all, their comments memorialized their actions only on their department's electronic records, rather than on a citizen's videotape. In Los Angeles, the indictments and suspensions came as a shock to the involved officers. They expected the Chief to back them up, as he doubtless had done in the past. But the tape made that impossible, and they were grievously disappointed.

The four Los Angeles cops who beat King were indicted by a grand jury on serious felony charges, and appeared to face a bleak future of imprison-

ment until they were acquitted by a Simi Valley jury. Yet a total of twenty-seven law enforcement officers were at the scene that night, including twenty-three Los Angeles Police Department officers. Although all or most were disciplined by their departments, those who watched and did nothing to interfere with the beating were not charged by Los Angeles District Attorney Ira Reiner. "However morally wrong their failure to intercede, in California law there is no criminal statute under which these officers can be indicted," Reiner said at a press conference on May 10, 1991. "No matter how reprehensible their action, or their inaction, no person can be charged with a crime unless they have violated a statute." But the officers were not entirely free of criminal liability. Reiner went on to say that he has referred the case to the U.S. Attorney's office to look into possible violations of federal civil rights statutes. The federal action was not activated until the Simi Valley acquittal, when the President himself expressed astonishment at the verdict and ordered the Justice Department to "proceed apace."

Many activists had demanded that the onlookers be charged and were dissatisfied when they weren't. They expressed reactions ranging from concern to outrage. Ramona Ripston, director of the Southern California chapter of the American Civil Liberties Union, argued that Reiner's announcement was a message to Los Angeles area law enforcement personnel that it is acceptable for police simply to stand by when they see other cops abusing people. "If citizens stand by and see a crime being committed, they are expected to report it," she said. "How can we expect less of our police officers?" John Mack, president of the Los Angeles Urban League, said he was deeply disappointed with Reiner's announced conclusion and commented, "It's a sad day in the history of Los Angeles that some seventeen police officers are going to be able to get away with being accessories to a crime."¹²

Daryl Gates and his Los Angeles Police Department had few defenders after the beating of Rodney King. One notable exception was Paul Walters, who succeeded Raymond Davis, a major innovator of community-oriented policing, as Chief of the nearby Santa Ana Police Department. In a March 11 guest editorial for the *Los Angeles Times*, Walters, who had been a protégé of Davis, wrote in an editorial that surprised Davis and others who had followed Walters's previous career:

The task of leading the Los Angeles Police Department is formidable, but Chief Daryl Gates has been outstanding in the performance of his duties. The department, under Gates, has set for itself a high standard of excellence and is one of the few large police departments not tainted by major corruption. The chief has repeatedly sought to conduct his operations according to the letter of the law.¹³

POLICE AND FORCE

Long before the riot probes and trials and the political conflicts within the city of Los Angeles are ended, police chiefs all over the country, however complacent they may have been about such abuses in the past, will have warned their rank and file that such conduct will not be tolerated. After the King beating, New York's Police Commissioner Lee P. Brown, then also President of the International Association of Chiefs of Police, in concert with a dozen other police chiefs, called on the federal government to develop a system for gathering information on the use of excessive police force. "The problem of excessive force in American policing is real," Commissioner Brown said. "It is, in part, related to the nature of the difficult challenges faced by the police in our urban centers. Regardless of its cause, it cannot be condoned and must be actively countered by concerned professionals."¹⁴

Clearly, more and deeper questions need to be raised about the nature of police violence, its centrality to the role of the police, and its prevalence. Obviously, it is nothing new. Part of the paradox of policing is that police are supposed to use necessary force. As anybody who has ever called a cop knows, police intervention is grounded in a round-the-clock capacity to take decisive action in handling all kinds of emergencies and to employ force where it is needed.

One leading police scholar, Egon Bittner, has even proposed that it makes sense to think of the police "as a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies."¹⁵ The question remains, however, as to how much force is justified and in what situations. Certainly, force is sometimes appropriate—that's why cops carry batons and guns. Police should not be labeled "brutal" simply because they employ forceful measures. Taken alone, a charge of brutality should not be regarded as evidence of guilt. After the Los Angeles riots, such a false charge was made by an ex-convict in Berkeley. The officer who was charged could prove that he was issuing a traffic violation ticket in another part of the city at the time the purported "victim" claimed to have been beaten. Yet the charge set off a protest march by indignant citizens who believed the allegations without hearing all the evidence.

Still, well-founded allegations of brutality following police vehicle pursuits are all too familiar. Florida's terrible Liberty City riot in 1980 had its roots in a fatal police beating at the end of a police chase and subsequent cover-up attempt. Indeed, long before the King incident, one veteran Los Angeles officer told Fyfe that he had never seen a police chase that did not

end with at least a black eye delivered to the subject of the chase. What is it about these events that seem to generate such police rage?

Both authors have had long experience with police. During our years in police cars, we have been at the cop's end of more than thirty high-speed chases. Younger cops, hotshot cops, aggressive cops, relish the exhilaration of these pursuits. People who haven't ridden in patrol cars for a full shift cannot appreciate how tedious policing can be even in the world's most crime-ridden cities. Patrol policing, like military combat and the lives of cowboys, consists mostly of periods of boredom, broken up by interludes of excitement and even of terror. For police, a chase is among the most exciting of all work experiences: the sudden start of a chase is a jolt not unlike that experienced by the dozing fisherman who finds suddenly that he has a big and dangerous fish on the other end of his line.

More than representing excitement, the high-speed chase dramatizes two crucial elements of the policing enterprise: capturing daring criminals and meeting challenges to police authority. Anyone who speeds on a highway or, even worse, on city streets imperils other drivers and pedestrians. Those who speed with the intention of eluding police are, by definition, audacious and dangerous. The escaping driver is often believed to be a felon and—on rare occasions—may turn out to be a person who either has a cache of drugs in his car or has committed a serious crime. When the driver has passengers, as Rodney King had, he is thought to be even more dangerous. Such a driver, when captured, is rarely treated with consideration. He may be pushed, shoved, verbally assaulted, and tightly cuffed.

By now, however, police have learned from both experience and scholarly studies that most motorists who flee from them are not, in fact, threatening offenders. Instead, like King, fleeing motorists typically are troubled young men with bad driving records whose ability to reason has been altered by drugs or alcohol. But regardless of how relatively minor the violations that lead to their flight, fleeing motorists commit a cardinal sin against the police: instead of submitting immediately, they challenge the police and attempt to escape their pursuer's authority. In so doing, in the eyes of police officers accustomed to motorists and other citizens who not only submit immediately to police authority but even check their speedometers in the mere presence of police cars, fleeing motorists become prime candidates for painful lessons at the ends of police nightsticks.

Still, taking all that into account, everyone who watched the LA cops beat and kick Rodney King knew (intuitively, one might say) that the force used was not justified even as a reflexive striking out, that it went far beyond this. As the classical sociologist Emile Durkheim taught, we live in a society of shared moral norms, and we are presumed to know their bound-

aries. Two officers are seen beating a downed suspect with their nightsticks, even though he has already been hit with an electronic stun gun, has been subdued, and is no longer dangerous. Another officer joins in to kick the fallen man.

Los Angeles Mayor Tom Bradley, a former police officer, said he found the beating “shocking and outrageous.” Chief Daryl Gates reviewed the videotape and said that he was “sickened” when he saw it. So did the President of the United States.

After the Simi Valley verdict of acquittal, in a prime-time speech to the nation on May 2, 1992, President Bush said, “What you saw and I saw on the TV video [of the King beating] was revolting. I felt anger. I felt pain. I thought, ‘How can I explain this to my grandchildren?’”

“Viewed from the outside,” he continued, “it is hard to understand how the verdict could possibly square with the video.” In a *USA Today* poll, 86 percent of white Americans and 100 percent of black Americans answered that the King verdict was “wrong.” Decidedly few voices were raised praising the conduct of the LA police in the King incident—in contrast to some of the responses to the flagrantly violent Chicago police conduct during the 1968 Democratic Convention, where the police conduct was said by some to have been provoked.

“THE LAPD MENTALITY”

But if the brutality of Rodney King’s beating was self-evident to everyone who watched it, why weren’t the cops who beat and kicked him sickened? Were they as individuals beyond the pale of the moral understandings expressed by the Mayor, by the President, eventually by Chief Gates himself, and by virtually everyone else who saw the incident? Had they gone berserk? How about the cops who watched? Did they have defective personalities? Hardly. Two or three cops can go berserk. Maybe the cops who administered the beating were especially aggressive and insensitive. But when twenty-three others are watching and not interfering, the incident cannot be considered “aberrant,” as Chief Gates initially suggested.

The incident and its cover-up must be seen in light of the overall philosophy of aggressive policing that began to dominate the LAPD when William Parker became its chief more than forty years earlier. In testimony before the Christopher Commission, Assistant Chief David Dotson said that LAPD clung to a 1950s version of tough policing:

We reward our people—our field people, the people that got us here to this [Commission] meeting—we reward them for what we call hardnosed, proactive police work. We want them to go out and identify criminal activity

and stop it, either before it occurs, or certainly, after it occurs, we want to go out and determine who the criminals were who perpetrated this particular act and get them into jail.

... We expect people to go out and aggressively identify people, and investigate them, and that puts these police officers in the middle between what we evaluate them on and what they are able to do legally.¹⁶

The dominance of this philosophy—in Chief Gates’s terms, “the LAPD mentality”¹⁷—suggests that King’s beating could scarcely have been an isolated incident. More than twenty LAPD officers witnessed King’s beating, which continued for nearly two minutes. Those who administered it assumed that their fellow officers would not report the misconduct and were prepared to lie on their behalf. In this respect, police brutality is like police corruption—there may be some rotten apples, but usually the barrel itself is rotten. Two cops can go berserk, but twenty cops embody a subculture of policing.

The written rule is clear: cops are to use no more force than is necessary to subdue a suspect. Where a departmental subculture condoning brutality prevails, the unwritten rule is: “Teach them a lesson.” Santa Ana’s former police chief, Raymond Davis, who, unlike his successor Paul Walters, was appalled by the King beating, told us that he had once visited the Ramparts Station of the Los Angeles Police Department and saw a sign on the wall that read: “Burglars Beware! Make Sure Your I.D. is Valid So We Will Know Where to Notify Your Next of Kin.” Such expressions of cop humor, he said, send a transparent message about a police department’s values, especially to rookie cops.

The King videotape confirms how these values play out on the street. More important than the beating was the passive witnessing by the other cops and the semi-jocular conversations on the police computer network. Sergeant Stacey C. Koon, who was the supervising officer on the scene of the King beating, reported by computer to the commander of his watch that “U (patrol unit) just had a big time use of force . . . tased and beat the suspect of CHP pursuit, Big Time.” The response from the police station was, “Oh well . . . I’m sure the lizard didn’t deserve it . . . HAHA I’ll let them know OK.”¹⁸ All the officers involved—those who beat, those who watched, and those who talked afterward—had to be confident that their colleagues would remain silent or lie about what really happened and, further, that the Department would believe the officers and reject any citizen’s description.

Four days after the incident, Daryl Gates held a press conference in a stuffy, overheated conference room jammed with seventeen television cameras and more than seventy members of the news media. It was here

that he began his defense of his department and his record as chief by announcing that four officers would face criminal charges, and that the others who watched and did nothing could face administrative punishment.

"I preach—I mean I really preach—to every single person who graduates from the Police Academy about the law and their need for a reverence for the law," Gates said. "What they should have done, if they really loved their brother officers [was to] have stepped in and grabbed them and hauled them back and said, 'Knock it off!' That's what the sergeant should have done [and] that's what every officer there should have done."¹⁹

The news conference was contentious. Many of those present indicated by their questions that they did not believe Gates. Over the years he had made a number of highly publicized remarks, famous among Los Angeles reporters, suggestive of racial insensitivity, if not bias. A few months after Gates became police chief in 1978, he had offended Latinos by saying that some Latino officers were not promoted because they were "lazy." About two years later he drew complaints from women after he described a local television anchor woman as an "Aryan broad." Many Jews were angered when, in 1982, the press obtained an in-house report suggesting that the Soviets were sending criminals disguised as Jewish immigrants to disrupt the 1984 Olympics. Gates again angered Latinos by referring to the killer of a policewoman as a "drunken Salvadoran."²⁰ Nine years earlier, in his most widely publicized intemperate remark, he had said that "some blacks" may be more susceptible than "normal people" to police officers' use of a potentially fatal chokehold (which has since been banned). For this remark, the Police Commission publicly reprimanded Gates, and *Esquire* magazine honored him with one of its "Annual Dubious Achievement" Awards. In 1991 he won a second Dubious Achievement Award for appointing a panel to study reinstating the chokehold in the wake of criticism about the use of batons and the TASER in the King incident. After the King beating, Gates declared that, "in spite of the fact that he's on parole and a convicted robber, I'd be glad to apologize."²¹

Given this background, besides raising questions about the King beating, reporters challenged the Chief about a number of incidents involving officers and blacks over the years—even about the 1979 shooting of Eulia Love, a black woman who was killed by officers after she was said to have been ready to throw a knife at them. Officers had gone to the Love home after she was reported to have struck a gas company employee who was shutting off her service because of an unpaid \$22.09 gas bill.

More recent incidents were also raised. One involved Hall of Fame baseball player Joe Morgan; another, former Lakers basketball star Jamaal

Wilkes. Morgan collected \$540,000 in damages after he complained in federal court that he was roughed up by a police officer who mistook Morgan for a drug courier. Wilkes was pulled over on his way home from work, ordered out of his car, and handcuffed by officers who gave conflicting reasons for having stopped him.

MISTRUST OF THE LOS ANGELES POLICE

The questions at the press conference reflected a broad mistrust of the Los Angeles Police Department and other Southern California law enforcement agencies on the part of minority citizens and their representatives. Gregory J. Boyle, a Jesuit priest and Pastor of Dolores Mission Church in Boyle Heights, wrote in the *Los Angeles Times* that while most citizens were "stunned and uncomprehending" after viewing the tape of Rodney King being beaten by police officers, the members of his parish, a mostly black and Hispanic working-poor community east of downtown Los Angeles, experienced "grim memories of common and unchecked police brutality." Father Boyle criticized Chief Gates and others who interpreted the incident as an isolated event. "Most people of color," he wrote, "can recall such an incident happening to them or to a family member or neighbor."²² That kind of recollection helped precipitate the riots after the Simi Valley acquittal.

But by the time of the trial, everybody who read newspapers and watched television should have known about the racism of the LAPD. The Christopher Commission's investigation affirmed Father Boyle's criticism, and was widely reported. Even within the LAPD, a survey of 960 officers found that about one-quarter of the 650 responding officers agreed that "racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and community."²³ Shortly before Officers Laurence M. Powell and Wind beat Rodney King, they had, it was reported, responded to a domestic disturbance call involving an African-American family. Using their in-car computer terminal, the officers subsequently informed their radio dispatcher that the call was "right out of *Gorillas in the Mist*." The message was returned with a remark that mimicked African-American dialect: "hahaha . . . let me guess who be the parties."

A *Los Angeles Times* poll of March 10, 1991, found that most Los Angeles residents maintained confidence in the department's crime control capacities but distrusted the police. Eighty-six percent said they had seen the oft-televised videotape showing King being beaten and clubbed by uniformed officers. King said that when he pulled his car over, he cooperated

with police instructions, but the cops said he acted menacingly. A majority of those polled believed King. Among black respondents, 78 percent declared belief in King's version, while only 2 percent said they believed the police. Still, and regardless of whether they believed King, 92 percent of all respondents thought the arresting officers had used too much force against King.

Of more interest is the public perception of whether the beating of King was an isolated incident. Sixty-three percent of those surveyed said that brutality was common; 28 percent answered "very common" and 35 percent "fairly common." When broken down by ethnicity, however, the responses did vary considerably. Among Anglos, only 19 percent said it was very common and 39 percent fairly common. Among Latinos, 33 percent said it was very common, while 27 percent regarded it as fairly common. Among blacks, the breakdown was 44 and 36 percent, confirming Father Boyle's report of the perceptions held within the African-American community.

Those perceptions were likely shaped as much by the Los Angeles Sheriff's Department as by the LAPD. In December 1991, the Board of Supervisors of Los Angeles County appointed sixty-seven-year-old, retired Superior Court judge James G. Kolts, a Reagan appointee with a reputation as a law-and-order judge, to review "the policies, practices and procedures of the Sheriff's Department [especially] as they relate to allegations of excessive force, the community sensitivity of deputies and the Department's citizen complaint procedure." The Kolts Report to the Supervisors was released in July 1992, and its findings shone a harsh new light on law enforcement throughout Los Angeles County. "My staff and I," Kolts wrote in the introduction, "found deeply disturbing evidence of excessive force and lax discipline. The LASD has not been able to solve its own problems of excessive force in the past and has not reformed itself with adequate thoroughness and speed." Samuel Pillsbury, a professor at Loyola Law School, suggested in a *Los Angeles Times* Op-Ed column (July 22, 1992) that maybe the "loudest and wildest critics of criminal justice in Los Angeles have been right—or at least more right than we ever imagined."

The practices and communications employed in the so-called war on drugs have reinforced such mistrust. The drug war in Los Angeles focuses on paramilitary operations—sweeps, roundups, and battering rams. As Anthony Bouza, the former Minneapolis Police Chief, noted in a speech following the beating of Rodney King, such measures are "sure to lead to abuses and repression."²⁴ Mistrust and hostility predictably follow upon abuse and repression.

THE BRUTALITY BAR

The aggressive policies of Los Angeles's law enforcement agencies have been accompanied by a rise in complaints. Karol Heppe, executive director of the Los Angeles Police Misconduct Lawyers Referral Service, reported that of the 2,624 complaints she received in 1990, 616 were against Los Angeles police officers, eight of whom were assigned to the Foothill Division, where those who beat King were stationed. In the first two months of 1991, the Lawyers Referral Service received 531 complaints, of which, according to Heppe, 127 were against Los Angeles police officers, seven of whom were assigned to the Foothill Division.²⁵ The nearly \$21 million in settlements and court awards in excessive force cases filed against the Los Angeles Police Department from 1986 through 1990 does not include interest and attorneys' fees, which can be "staggering," according to Gail Diane Cox, who interviewed members of the "brutality bar" for *Los Angeles Magazine*.²⁶

Unlike personal injury cases, where lawyers receive 30 to 40 percent of any award, most brutality cases are filed under the federal Civil Rights Act, which provides that reasonable attorney's fees be awarded to victorious lawyers, regardless of the size of the award to the client. Given this incentive, lawyers have annually filed some 200 to 300 lawsuits against the LAPD since 1986. In 1990, fifty-eight of these went to trial (many were settled out of court), and the city attorney reports winning all but seventeen. Brutality litigation is costly both to the city and to the involved lawyers. When the lawyers lose, they and their firms must absorb the cost. But when they win, they win big, or at least big enough to sustain a practicing "brutality bar."

The Rodney King videotape encouraged brutality bar lawyers to think big. Indeed, Stephen Yagman, the Larez family attorney, welcomed the Ninth Circuit's reversal of the \$175,000 verdict he won against Chief Gates in that case. Noting that the judgment had been reversed on a technicality, Yagman said that he relished the chance to retry the case in this post-King era: "Gates got what he wanted," Yagman said, "He won a reversal because the trial judge let into evidence a damaging newspaper article without allowing the city's lawyer to examine the reporters on what Gates said. Now we get to retry the case with exactly the same evidence—plus the reporters' testimony. Gates got 'The Monkey's Paw.' He won his appeal and made this a million dollar case."²⁷

John Burton, another member of the Los Angeles brutality bar, gained prominence in 1988. As the lead counsel of a team of ten Referral Service lawyers, Burton sued over an incident in which dozens of LAPD officers

ran wild and trashed four apartments in a drug raid. So totally were the apartments damaged, and so extensive the injuries, that the Red Cross had to send aid. In February 1990 Burton and his team won a \$3.4 million judgment, giving his fifty-five clients awards that averaged \$60,000 each. In 1992 Yagman won a settlement in the \$600,000 range for the landlord. Burton is involved in the King case, representing Bryant Allen, one of the two passengers in King's car. Like Yagman and other brutality bar lawyers, Burton has recently been thinking very big about legal fees. According to him, those who run police departments are going to have to make some major changes, "or else we are going to get very rich."

IS BRUTALITY ON THE RISE?

Despite the current publicity given to police brutality, we believe that it has diminished in the past fifty years, even in the past twenty. We need to recall how much worse, how routine, police brutality used to be. Most Americans, even those of middle age, have grown up in an era in which Warren Supreme Court decisions, such as *Miranda v. Arizona*, are taken for granted. But *Miranda* was decided in 1966, not so very long ago.

A number of the cases decided by the U.S. Supreme Court have involved actual or threatened physical brutality or deprivation at the hands of the police. Suspects have been whipped, slapped, threatened, and deprived of food or water. Others have been subjected to extended periods of police interrogation. Psychological coercion used to be common. In one case a police psychiatrist posed as a general practitioner brought in to relieve an acutely painful sinus condition. In another, a policeman who was a close friend of the defendant told him that unless he confessed the policeman would be in deep trouble—would be fired—and that his wife and family would suffer.

Robert Fogelson, a leading historian of American police, observes that the Los Angeles police in the 1930s joined forces with the American Legion to prevent various left-wing and liberal groups, from the John Reed Club to the ACLU, from holding meetings in and around Los Angeles. Similarly, a few years later, when a large and orderly crowd gathered in Harlem to demonstrate against the trial of the Scottsboro Boys, New York City detectives tossed several tear gas canisters to break up the crowd. Still later in the 1930s, a vast but peaceful crowd tried to organize a picket line around a Republic Steel factory. Chicago cops, armed with revolvers, clubs, and tear gas, killed ten and wounded nearly a hundred of the picketers. "Although far from conclusive," Fogelson writes, "the evidence seems

to indicate that the big-city police were probably less repressive in the mid-1960s than in the late 1920s and early 1930s."²⁸

Nevertheless, the commissions investigating the riots and civil disorders of the 1960s found that police routinely used excessive force, especially against blacks. "Negroes firmly believe," the National Advisory Commission on Civil Disorders wrote in March 1968, "that police brutality and harassment occur repeatedly in Negro neighborhoods. This belief is unquestionably one of the major reasons for intense Negro resentment against the police."²⁹

Yet significant change has occurred in a number of police forces in the past twenty years. Those who work in organizations—whether IBM, McDonald's, or the FBI—reflect the values of their organization's leadership. This is especially true of police departments, because of their paramilitary character. Indeed, Gerald Uelman, a legal scholar, found that rates of police shootings in Los Angeles area police departments had more to do with individual police chiefs' personal philosophies and policies than with rates of crime and violence.³⁰ The chief who is interested in reducing use of force to a minimum must therefore make it absolutely clear that excessive use of force is not acceptable. Beating a prisoner should be a firing offense, and the best police chiefs make sure it is.

One impediment to police progress in controlling use of force is that even the police and some of their most sophisticated critics frequently fail to distinguish between brutality and unnecessary force.³¹ Brutality is a conscious and venal act committed by officers who usually take great pains to conceal their misconduct. Usually, as in the case of the King beating, it is directed against persons of marginal status and credibility. And in an era notable for its high fear of crime, juries, who understand that cops routinely undertake risky and protective work, are reluctant to convict police without compelling evidence. Consequently, in the absence of videotapes or other objective recording of gratuitous violence, brutality rarely causes public controversy and is extremely difficult to prove.

Except for the immediate family and some friends and associates, nobody was much concerned about the Larez incident, for example, until the jury hit Chief Gates in his pocketbook. Even then, Los Angeles Mayor Tom Bradley and the City Council expressed no distress about what had happened in the Larez house, uttered no apology to the family, and took no action to discipline the officers involved. Instead, Bradley complained that the verdict against Gates would have a chilling effect on law enforcement and asked the Council to indemnify Gates for his liability. The Council agreed to pay it.³²

When brutality is the isolated act of individual officers or small groups

of officers, it must be rooted out harshly. When, as apparently occurred in Los Angeles, it is committed with impunity in the presence of an audience of police officers, it reveals a deviant organizational culture that must be changed.

Unnecessary force, by contrast, is usually a training problem, the result of ineptitude or insensitivity, as, for instance, when well-meaning officers unwisely charge into situations from which they can then extricate themselves only by using force. Hasty cops who force confrontations with emotionally disturbed persons and who consequently must shoot them to escape uninjured have used unnecessary force. Because such officers typically neither plan nor intend to hurt anybody, their acts usually are quite public and sometimes are quite controversial. But however tragic the outcomes of their misconduct, their actions and motivations—and the cures for them—differ from those that apply to the beating of Rodney King. Unnecessary force may be a good-faith police mistake. Good faith plays no part in brutality.

POLICE AND THE PUBLIC

Perhaps the most significant explanation of the probable decline in police brutality is the increasing political power of minorities in many of the cities that experienced riots in the 1960s. This power has helped to elect a new cast of politicians and has led to the appointment of police chiefs who project a set of values more sensitive to the needs and wishes of inner-city communities. Such chiefs send a clear message that brutality will not be tolerated. San Jose, California, had a reputation for police brutality until Joseph McNamara was brought in from Kansas City as police chief and restored the community's confidence in the department. Santa Ana had a "kick ass and take names" policing stance until Raymond Davis became chief and cemented relations with the growing Spanish-speaking community. Houston had a notorious reputation as a gunslinger police force until Lee P. Brown, later to be appointed New York's police commissioner, was recruited by a woman mayor to be police chief. Brown turned the Houston department into one of the nation's most professional and innovative, and the Houston cops began to respect themselves. Despite Brown's competence and best efforts, however, even he could not eliminate brutality. One of his last official acts as he left office in Houston was to fire four officers who had shot and killed two citizens in separate events that began as minor traffic incidents.³³

Until June 3, 1992, Los Angeles was politically unique as the only major police department in the United States to retain civil service protection for

its chief. The voters, who had overwhelmingly lost confidence in Daryl Gates and his police department, supported a charter amendment to make the chief and other civil servants accountable to the Mayor. Charter Amendment F, which passed by a two-to-one margin, gives City Hall more power to remove the chief of police and limits the chief's tenure to two five-year terms. Even more important, the department's complex officer accountability system will change profoundly under Charter Amendment F. Officers will be subject to demotion as a possible punishment; the time period during which misconduct complaints can be made and investigated will be extended; and disciplinary boards will be allowed to consider patterns of old complaints against officers, even if the complaints could not individually be substantiated. While this last provision may appear draconian, it is not. In the absence of an objective recording—such as the King tape—the evidence in most citizens' complaints against officers consists only of the contradictory statements of the parties involved, so that the complaints cannot be resolved. In the LAPD, as in most other large agencies, a small number of officers account for a disproportionately large number of such "Yes, you did! No, I didn't!" swearing contests. Until the referendum, those patterns of past alleged misconduct could not be taken into account in determining what to do with officers found in more recent investigations to have engaged in abusive conduct. In short, the LAPD will now be authorized to use smoke in its search for the fire of excessive police force.

Even more significant than this new authority will be the addition of a civilian to the department panels, called "Boards of Rights." Hearings before them are usually reserved for more serious cases that could result in penalties harsher than twenty-two-day unpaid suspensions. In 1990—the last full year for which figures were available—only eight-five cases of the 1,699 investigated by the Internal Affairs Division went before a Board of Rights.³⁴ In police departments generally, however, any suspension without pay, even for a few days, is considered a serious penalty, since it can influence future career opportunities. Warren Christopher, the lawyer and former diplomat who led the special investigation of the LAPD after the beating of Rodney G. King, was also an architect of the complex Charter amendment. After the measure passed, Christopher described the disciplinary changes as "a critical aspect" of the measure, but they received little attention during the campaign because they are complicated and difficult to explain to voters, who mainly responded to the Chief's accountability and tenure provisions.³⁵

Civil Service protection for the police chief may have been a good idea in 1936, when the Los Angeles Police Department was entangled in the

corruption of the city's mayor and political establishment. But fifty years later it seemed an anachronistic and insulating requirement, one that permitted the philosophy of policing in Los Angeles to remain essentially unchanged and inappropriate. Under the system that produced the Rodney King beating, LAPD officers were accountable only to their Chief, except when they engaged in documented criminal misconduct. The Chief was accountable to nobody, except when increasingly frequent lawsuits were heard by the courts.³⁶

In this arrangement, even the Mayor of Los Angeles—whose colleagues in other cities are powerful commanders-in-chief of their police—had virtually no influence on LAPD policy and practice. Indeed, when Mayor Tom Bradley was asked by an attorney in a civil case whether he was the Commander-in-Chief of the Los Angeles Police Department, Bradley chuckled at the question. After a pause, he answered, smiling, "I've never heard myself described in that fashion."³⁷ Civil service protection for police chiefs clearly is an impediment to reform.

Ironically, even though the LAPD took great pride in its officers' military mien and discipline, that system also violated the democratic tradition of military accountability to elected civilian authority. Just as an army led by generals who do not have to report to the President has no place in a democracy, this insular system—with its lack of accountability to a mayor or any other elected official—has no place in any American city. As a result of the sweeping Charter amendment victory in Los Angeles, it joins the ash heap of solutions to short-term problems but have long outlived their usefulness.

PART ONE

Occasions

The Culture of the Police

The police value orthodoxy, loyalty, obedience and silence. . . . The entering recruit's expectations of service and good deeds founders on the cold shoals of the secretive internal culture, the cynicism and the unspoken assignments pushed by the overclass.

—Chief Anthony V. Bouza, Ret.
The Police Mystique, 1990

Peter Marsala was a hero cop. During his ten-year career as a New York City Transit Police officer, Marsala was cited for bravery twelve times. On almost twenty occasions he had pulled fallen passengers from between subway cars. Once, when he had ventured above ground to patrol bus routes in a police car, a woman waved him to the side of the road. She pointed at a nearby building that was afire; Marsala ran into it and led twelve women and children out of it to safety.

Marsala's police career came to an end when he was convicted of assaulting a man he had originally arrested for violating the subway's anti-smoking regulations. According to Marsala, the smoker was handcuffed after he threatened to kill Marsala's partner. "Then," Marsala told the *New York Times*, "he said he was sorry, that he just lost his job, his father was dying of cancer, that his brother was a police officer. I told him that instead of arresting him I was going to give him a summons, and I removed the handcuffs. He turns around and throws a punch. I became so incensed that I pushed him against the wall and punched him three times. In the trial, it came out that as a result he had permanent brain damage." In the trial, Marsala was convicted and subsequently spent twenty-eight months behind bars.¹

How can police, who can be exemplary heroes, beat people and then

even be prepared to lie about it? We shall explain this paradox with the proposition that two principal features of the police role—danger and authority—combine to produce in them a distinctive world view that affects the values and understanding of cops on and off the job, sometimes leading to admirable valor, sometimes to brutality and excessive force, and sometimes to a banding together, a cover-up, a conspiracy of silence. And as Chief Bouza suggests, when police go astray they are often fulfilling the unwritten assignments of those of us who have real and personal property to protect.

THE WORK OF POLICE

Like a tribe or an ethnic group, every occupational group develops recognizable and distinctive rules, customs, perceptions, and interpretations of what they see, along with consequent moral judgments. Although some recognitions and prescriptions are shared with everyone else—we all live in the same society—others are mandates peculiar to and appreciated only by members of the craft or profession. In this sense, a specific world of work is rather like a game: One has to know the rules in order to play properly. Even those who play games develop such informal rules. “Baseball has evolved a set of unwritten and rarely even spoken norms, mores, habits, and customs,” George Will writes. “The code governs such matters as when it is appropriate to pitch at, or very close to, a batter; when and how to retaliate for that; which displays of emotion are acceptable and which constitute ‘showing up’ an umpire or opposing player; what sort of physical contact, in what sorts of game situations (breaking up a double play at second, trying to score when the catcher is blocking the plate), is acceptable.”²

Police also live by a profusion of such unwritten rules. Some have been adopted by police all over the Western world, such as customary ways of dealing with people who challenge police authority. Others are the unwritten norms prevailing in a specific department. Every police department has such written and unwritten guidelines, including the proprieties of accepting gratuities, discounts, bribes, or favors.

Even in those American police departments enjoying a reputation for “legalistic” and therefore incorruptible policing, such as the Los Angeles Police Department, police may enjoy certain favors but not others. Basing his observations on years of service as a Los Angeles police officer and detective, Joseph Wambaugh, in his novel *The Choirboys*, observes that one of his characters, an ordinary LA policeman, “had accepted a thousand packs of cigarettes and as many free meals in his time. And though he had

bought enough clothing at wholesale prices to dress a dozen movie stars, he had never even considered taking a five dollar bill nor was one ever offered except once when he stopped a Chicago grocer in Los Angeles on vacation.”

Like most of us, and unlike economists, police do not make their choices by a rational calculation of comparative economic values. Choices are made instead on moral grounds, developed within the subculture of a police department. Thus, Wambaugh interprets his character’s conduct as being in conformity with a distinction the police department and its members made “between gratuities and cash offerings, which were considered money bribes no matter how slight and would result in a merciless dismissal as well as citizen prosecution.”³ Robert Daley describes a similar, but more sinister, dichotomy in *Prince of the City*, his account of a New York City narcotics detective’s decline into corruption. Among this work group, the elite Special Investigations Unit, it was permissible to steal drug dealers’ money and to reward snitches with some of the drugs seized in raids made possible by their information. Money earned from selling drugs, however, was *dirty*.⁴ By the same logic, according to the Knapp Commission’s report on police corruption, other officers considered bribes from bookmakers and illegal numbers operators to be *clean money* and would have nothing whatever to do with drug dealers.⁵

We have read and heard boundless and unresolvable arguments over whether, like doctoring, lawyering, or ministering, policing qualifies as a “profession.” However that argument might be resolved, there is no question that policing is a defining identity. “The day the new recruit walks through the doors of the police academy,” the late New Haven Police Chief James Ahern wrote, “he leaves society behind to enter a profession that does more than give him a job, it defines who he is.” “For all the years he remains,” Ahern added, “he will always be a cop.”⁶

Doctors and lawyers are often at odds, because doctors understand why other doctors behave the way they do, while lawyers are largely unappreciative of the dilemmas of doctors—though they do empathize with other lawyers. So police are not alone in retaining a distinctive outlook on the world and a set of understandings peculiar to the craft of policing, when dealing with *their* occupational environment. As the sociologist Emile Durkheim observed, although a common political community is preeminent in forming our conceptions of morality, our conceptions of right and wrong are mostly shaped by the smaller social groups to which we belong. “Morality is complete,” Durkheim wrote, “only to the extent that we feel identified with those different groups in which we are involved—family, union, business, club, political party, country, humanity.”⁷

Policing, particularly because it is a twenty-four-hour-a-day identity, generates powerfully distinctive ways of looking at the world, cognitive and behavioral responses which, when taken together, may be said to constitute "a working personality."⁸ How working cops learn to see the world around them and their place in it has come to be acknowledged by scholars of police as an indispensable key to understanding their motives, fears, and aspirations, and the moral codes by which they judge themselves and affect the lives of others. "It is a commonplace of the now voluminous sociological literature on police operations and discretion," Robert Reiner observes, "that the rank-and-file officer is the primary determinant of policing where it really counts—on the street."⁹

Social scientists have studied police in every part of the United States, in Europe and in Asia. The fundamental culture of policing is everywhere similar, which is understandable since everywhere the same features of the police role—danger, authority, and the mandate to use coercive force—are everywhere present. This combination generates and supports norms of internal solidarity, or *brotherhood*. Most police feel comfortable, and socialize mainly, with other cops, a feature of police culture noted by observers of police from the 1960s to the 1990s. Every cop has a story about a social occasion where an inebriated guest would make a joking or half-joking remark that deprecated police or set them apart. Most cops prefer to attend parties with other police, where drinking and carousing can occur without fear of civilian affront or knowledge. Cops don't trust other people—which is practically everybody who is not a cop. "They know the public generally resents their authority," Mark Baker says, "and is fickle in its support of police policy and individual police officers. Older officers teach younger ones that it is best to avoid civilians."¹⁰ Different philosophies and styles can be introduced into policing, a point we shall elaborate in our chapter on police administration. Yet cops on patrol in New York, Philadelphia, Los Angeles, London, and Stockholm—with whom we and others have ridden and observed—are remarkably comparable, with kindred occupational perspectives and working personalities.

However skeptically police may be viewed by outsiders, police often identify themselves as a moral force, protecting innocent and productive members of the public against those who would brutalize and victimize ordinary decent citizens. People who are attracted to policing do not see themselves as bullies, nor does the literature on policing suggest that those drawn to it are authoritarian personalities. On the contrary, they tend to be upright, virtuous, and civic-minded. The typical police recruit is white, physically fit and agile, of the lower-middle or working class, male, in his twenties, and with some college education. Following each of the nation's

wars, veterans have gravitated toward the police world, where they are welcomed because of their ease with adapting to the uniform; their acceptance of the deference owed to, and the authority of, rank; and their familiarity with firearms. Students of police who have interviewed recruits, or who have themselves been recruits, report a combination of self-interest—it is a good, well-paid, and stimulating job—plus idealism as the motives for entering the occupation.¹¹

Those who choose policing as an occupation or profession are not entirely idealistic. Few Americans (or Britons or Swedes, for that matter) appreciate how well paid are their contemporary police in many departments. In no big U.S. city are they better paid than in Los Angeles.¹² Nor do pay scales fully capture the compensation given to high-ranking officers. In a California city with sometimes desperate fiscal problems—not Los Angeles—a captain of our acquaintance disclosed during a luncheon conversation that his 1990 salary, *with overtime*, was \$97,000. Additional fringe benefits included the use of a new four-door sedan, plus generous health insurance and pension plans. (So generous was the dental insurance plan that several officers, who were thirty-something, were wearing orthodontic braces.) Twenty Washington, D.C., police officers—most of whom were street cops rather than administrators or supervisors—earned enough in overtime to put their 1990 salaries into six figures.¹³ Recruits, of course, do not earn nearly so much, but they do share in the health and benefit packages, and many can look forward to remunerative careers.

Nevertheless, when asked, police recruits point to opportunities afforded by policing to serve the community as their primary motivation.¹⁴ Similarly, Robert Reiner, perhaps the leading contemporary British police scholar, has argued that a sense of mission is a central feature of the culture of police. "This is the feeling that policing is not just a job, but a way of life with a worthwhile purpose, at least in principle."¹⁵ Oddly enough, it may be precisely this sense of mission, this sense of being a "thin blue line" pitted against forces of anarchy and disorder, against an unruly and dangerous underclass, that can account for the most shocking abuses of police power.

THE POLICE ROLE

A by now sizable number of observers of police have made strikingly similar commentaries about the police role and how it shapes its occupants. Forty years ago Colin MacInnes, a British suspense novelist and student of police, portrayed police as neither the courteous, charming English "bobbies" so often portrayed in the British cinema nor as the equally distorted opposite fantasy, the devil-may-care-adventurer. Instead, MacInnes de-

picted the cop as an utterly conventional character, averse to risk, who above all prefers a predictable and orderly world. "The true copper's dominant characteristic, if the truth be known," he wrote, "is neither those daring nor vicious qualities that are sometimes attributed to him by friend or enemy, but an ingrained conservatism, an almost desperate love of the conventional. It is untidiness, disorder, the unusual, that a copper disapproves of most of all; more, even, than of crime which is merely a professional matter."¹⁶

These preferences are understandable, even inevitable. Consider that the world inhabited by cops is unkempt, unpredictable, and sometimes violent. Statistics suggest that the risk of physical injury is greater in many lines of industrial work than in policing,¹⁷ but cops are the ones to whom society accords the right to use, or to threaten to use, force. This assignment and the capacity to carry it out are said to be *the* central feature of the role of police in society. "Whatever the substance of the task at hand," the sociologist Egon Bittner writes, "whether it involves protection against an undesired imposition, caring for those who cannot care for themselves, attempting to solve a crime, helping to save a life, abating a nuisance, or settling an explosive dispute, police intervention means above all making use of the capacity and authority to overpower resistance."¹⁸ Bittner is well aware that police may not use force so very often. But he concludes: "There can be no doubt that this feature of police work is uppermost in the minds of people who solicit police aid or direct the attention of police to problems." It is also in the minds of police, and its potential hazards, however statistically remote, are never far away in the everyday life of the cop.

"You never know what's going to happen," one cop told Connie Fletcher, who interviewed more than a hundred. "The whole world can come to an end in your last few minutes of duty, right before you leave your watch. Or—right before you retire from the force. We've had cases of police officers working their last tour before going on pension. And they've run into a situation where they're killed."¹⁹

Every arrest, every handcuffing, involves an imposition of force on an essentially unwilling person, no matter how compliant. The volatility of even routine police field investigations—as well as the degree to which they dehumanize their subjects—is made plain by Jonathan Rubinstein:

[The patrol officer] may not only circumscribe a person's liberty by stopping him on the street, he may also completely violate the suspect's privacy and autonomy by running his hands over the man's entire body. The policeman knows that a frisk is a humiliation people usually accept from him because he can sustain his authority by almost any action he feels necessary.

While he does not frisk people often just to humble them, he can do so; when he feels obliged to check someone for a concealed weapon, he is not usually in a position to request their permission, even if this were desirable.²⁰

Understandably, police prefer to encounter citizens who appear stable, well-dressed, normal, and unthreatening enough not to warrant a field padown. But precisely because they are society's designated force-apppliers, police often encounter those who are unstable, ill-dressed, pugnacious, and threatening.

Students of police have frequently remarked upon the *machismo* qualities of the police culture. The typical police recruit is chronologically and temperamentally young, male, and athletic. Recruits often lift weights—like football players—so as to offer a more formidable appearance on the street. They are trained in self-defense. They are trained to handle a variety of offensive weapons, including deadly ones. They are taught how to disable and kill people with their bare hands. No matter how many warnings may be issued by superiors about limitations on the use of force, no matter how much talk about policing as a profession, police training continually reminds recruits that coercive power is a central feature of police life.

THE PARADOXES OF COERCIVE POWER

The informal norms that cops develop on the street are, at least in part, a paradox noted by William Ker Muir: "The nastier one's reputation, the less nasty one has to be"; in other words, *the stronger one's reputation for being mean, tough, and aggressive, the less iron-handed one actually has to be.*²¹ Cops and everyone else understand the reality of this paradox. And whether or not they actually articulate it, cops develop styles of policing in response to it. One style, as we have seen, was used by Southern police to keep the African-American population in a subordinate position. The cops made clear how nasty and brutal they could be. As a result, the Southern black population was, by and large, compliant to the rules of caste subordination.

Nevertheless, when police rely on coercive power to control a population, they may not be successful. The Southern police of the 1930s were agents of the power elite, and those who might have opposed them were virtually powerless. That is no longer true even in the South, and it is certainly not true in Northern cities. However much racist opinions may be expressed in private, the caste society of the Southern United States of the 1930s, a society of legal segregation of the races, is no longer acceptable to

the wider society. Our laws will not tolerate explicit racism. Nor can police publicly resort to coercive power without eliciting criticism from portions of the citizenry and the public, and from higher police and public officials. They may also subject themselves to criminal and civil liability.

Furthermore, even when iron-handed law enforcement proves effective in general, it also invites retaliation by those who are *not* intimidated by it. Abusive police must then raise the force ante, employing ever more severe violence to continue to seem formidable. This, for Muir, generates a competing paradox: *Police who rely on coercive force to make the world a less threatening place make it more dangerous place for themselves and for other cops.* Those who are being policed do not distinguish among blue uniforms. All cops come to be defined as brutal, and thus appropriate targets for retaliation. Hated cops are not safer cops.

William Ker Muir was the first police scholar to call attention to the paradoxes of coercive power. He saw how police who are gifted with maturity, empathy, and interpersonal skills could escape from the trap of relying on the threat of force. As he had seen in his observations of police, some accomplished cops could intuit how to handle even the most difficult and potentially explosive situations. He believed that appropriate "training and enhanced language skills" could diminish police violence,²² a possibility we shall explore in our chapter on police administration.

In connection with the need to use force, police and their culture are a complex and often contradictory combination of cautious values and risky undertakings. Mark Baker, who unscientifically, but convincingly, interviewed more than a hundred cops for his book on police and their lives, concludes that police lean to the right politically and morally. "They advocate the straight and narrow path to right living," he writes. "They believe in the inviolability of the marriage vows, the importance of the family, the necessity of capital punishment." In this, cops are in tune with the constituency that elected Ronald Reagan and George Bush to be President of the United States, that most politically conservative portion of the majority of Americans whom Anthony Bouza calls "the overclass."

The occupational vision of police and its culture is grounded in these beliefs. But cops do not necessarily abide by the apple-pie-and-motherhood values that they assert. As with most human beings, spoken values are often an aspiration, not necessarily something to embody. At least half the married male police officers whom Baker interviewed told him about their girlfriends and mistresses. After a few years on the job the cops interviewed developed a distinctive, but scarcely exemplary, hierarchy of wrongfulness: "dead wrong, wrong but not bad, wrong but everybody does it."²³ Skepticism, cynicism, mistrust—all are words observers of police

apply to them and that they apply to themselves, especially after years on the job.

Suspicion and skepticism are especially congruent with the capacity to use force and enforce the laws. We all make distinctions between the normal and the abnormal, the safe and the unsafe, the appropriate and the inappropriate. Police are, however, specially trained and required to make these interpretations. The distinction between what is "normal" and what is threatening or "abnormal" usually depends upon the context in which it appears. Is a man with a gun in a bank "abnormal?" That depends. The possession of a deadly weapon is appropriate for a bank security guard, but not for an armed robber. Similarly, we expect to see an electric light switched on to illuminate a room at night. But if the room is in a warehouse, and it is two in the morning, the policeman must understand whether the lighted room signifies that someone is, as usual, working late, or whether the warehouse is being burglarized. We want police to draw such distinctions and to act upon them.

Complaints about police conduct do not usually arise because police are apprehending burglars in the middle of the night, or robbers who are holding up a bank. Trouble arises out of social interactions, especially when cops encounter people who may not be engaging in criminal activity, but whose conduct suggests that they might be, or might be the sort of people who would if they could. A police manual cautions police to attend to the unusual, listing among the persons and conditions for which to be especially watchful and cautious: "suspicious persons known to the officer from previous arrests, field interrogations, and observations"; "persons who loiter about places where children play"; "known trouble-makers near large gatherings"; and "cars with mismatched hub caps, or dirty car with clean license plates (or vice versa)." Years ago, in our studies of police, one of us observed that because police work requires cops continuously to be alert, they become much attuned to deviations from the normal, especially those suggestive of potential violence. As a necessity and a consequence of maintaining this high state of readiness, police develop a perceptual shorthand to identify certain kinds of people as "symbolic assailants," that is, as persons whose gestures, language, or attire the police have come to identify as being potentially threatening or dangerous. This sort of apprehension and sensitivity sets police apart and tends to isolate them from those whom they are policing. Such isolation may be especially pronounced when police are patrolling in vehicles, rather than on foot, since the vehicle segregates the police from the people who are being policed. Well before community and problem-oriented policing became as acceptable as it has become in some police circles, the 1967 Civil Disorder Commission ad-

vised patrolmen to get out of their cars, into the neighborhoods, and on the same beat or assignment long enough to know the people and the neighborhood's prevailing conditions.

But even when police know the people with whom they are dealing, they still must distinguish the known from the unknown or unfamiliar. How much latitude police enjoy in making such distinctions and acting upon them has been a continuing issue in the constitutional law of search and seizure. When police do not have grounds for an arrest, do they have the right to stop and question suspects without their consent?

SUSPICIOUS PERSONS

The Supreme Court addressed that issue for the first time in the landmark case of *Terry v. Ohio*.²⁴ There, a police officer saw three men who were apparently "casing" a store for a stickup. The officer approached the men, asked them who they were, and when they mumbled an answer, patted them down and found weapons on two of them. Justice Earl Warren, often tagged a "liberal" but actually an experienced former prosecutor sensitive to the needs of the police, wrote an opinion that artfully evaded the "probable cause" requirements of the Fourth Amendment. The holding of the case is especially deferential to the need of the police to be suspicious in the interests of crime prevention, particularly where the crime may endanger the cop or members of the public. The opinion, rich with possibilities for interpretation, affirms the central features of the police role. It suggests that police are supposed to be suspicious of "unusual conduct" denoting "criminal activity" by possibly "armed and dangerous" criminals who threaten "safety."

But suppose a cop observes unusual conduct that seems to her or him to denote criminal activity merely because it violates a social preconception or prejudice? Such was the case of Edward Lawson, who perfectly fulfilled the stereotype of a burglar. Tall, angular, energetic, black, and athletic-looking, Edward Lawson could have been taken for a guard or small forward for a college basketball team, except for one thing. He had let his hair grow out naturally into long, coiled "dreadlocks."

Given his singular appearance, when Lawson took nocturnal walks in lily-white San Diego neighborhoods, he would often be stopped by cops, who would ask for his ID. Lawson invariably refused to identify himself on grounds that there was no reason to stop him since he was engaged in no criminal activity and was not planning to commit a crime. Nevertheless, he was arrested fifteen times by the San Diego police between March 1975

and January 1977. He was prosecuted only twice, was once convicted; the second charge was dismissed.

From what we know of police culture we can only speculate on how the cops involved might have viewed Lawson. John Van Maanen, who studied police in a place he called "Union City," a large metropolitan force employing more than 1,500 uninformed officers, developed a tripartite typology to categorize how police viewed the citizens with whom they came into contact.²⁵ Like other social scientists who had studied the police, Van Maanen came to understand that such "typifications," and the reasons behind them, are an important guide to understanding police behavior.

Suspicious persons, the first category of Van Maanen's typology, are those who, like Lawson, seem incongruous in their surroundings. Van Maanen says that when the police stopped such persons they were usually treated in a brisk, professional manner, as Lawson, in fact, was. (Once Lawson began to speak, it must have been plain to the San Diego police who arrested him that Lawson was well-spoken and articulate, however eccentric his appearance might have seemed.)

Lawson, who was in fact not a burglar but a disk jockey and promoter of rock music concerts, understood perfectly well what the police reaction would be to someone of his appearance.²⁶ Lawson sued to have the California statute requiring that persons provide "credible and reliable" identification to police declared unconstitutional. To the surprise of many legal experts, Lawson, who himself undertook and completed much of the legal research, won his case and later collected substantial civil damages from the City of San Diego. Justice O'Connor found that the statute Lawson had challenged was overbroad and vested police with "virtually complete discretion . . . to determine whether the suspect has satisfied the statute." In effect, Lawson had capitalized on his understanding of the police assignment to protect property, plus his realistic assumptions about how San Diego police would respond to a black man with dreadlocks walking about in a white neighborhood in the middle of the night.

In reality, of course, the environment police inhabit is extraordinarily complex, and legal rules stemming from cases like *Lawson* have an effect on only a small part of the normative climate of policing. Even after the *Lawson* case, police were not forbidden to ask a strolling citizen for identification, but if he refused, they could not arrest him for refusing.

Police have developed all sorts of strategies for legally extracting information from citizens. Cops can usually find some pretext to stop an automobile, particularly in inner-city neighborhoods where automobiles often have visibly defective equipment. Once a stop is made, the officer can ask

to search the car. At that point the driver, usually confused as to “rights,” perhaps frightened, often intimidated, rarely refuses.

In carrying out the war on drugs, police have taken to stopping individuals in airports, train stations, and bus depots when their demeanor suggests in some vague way, that they are carrying illegal drugs. Police will ask entirely innocent persons for their identification and will even ask to search their belongings without any probable cause to believe they have committed a crime, or even without a reasonable suspicion that they are engaged in criminal activity. So long as the stopped person feels that he or she is free to leave, the provisions of the Fourth Amendment forbidding “unreasonable searches and seizures” have not been violated. Fourth Amendment jurisprudence has it that a person who feels free to leave has not been “seized;” and cannot therefore have been *unlawfully* seized.

In Broward County (Fort Lauderdale), Florida, Sheriff’s Department officers developed a program of boarding buses at scheduled stops and asking passengers for permission to search their luggage. Whatever pressure passengers feel in a terminal or depot must be heightened on a bus. Here is how the Florida Supreme Court described what happened in the case of Terrence Bostick:

Two officers, complete with badges, insignia and one of them holding a recognizable zipper pouch, containing a pistol, boarded a bus bound from Miami to Atlanta during a stopover in Fort Lauderdale. Eyeing the passengers, the officers admittedly without articulable suspicion, picked out the defendant passenger and asked to inspect his ticket and identification and both were returned to him as unremarkable. However, the two police officers persisted and explained their presence as narcotics agents on the lookout for illegal drugs. In pursuit of that aim, they then requested the defendant’s consent to search his luggage.²⁷

Bostick denied that he “consented” to the search, while the police maintained that he did. The Florida Supreme Court said that any encounter on a bus is a “seizure” *per se*, because people who ride buses scarcely are free to leave. If they do, they are stranded. Consequently, the Florida court ruled that cops cannot search luggage on a bus unless they can articulate why they thought the person they searched was holding drugs or some other contraband.

But the United States Supreme Court overruled the Florida Court. Justice O’Connor said that people on buses are not necessarily intimidated when cops in raid jackets and guns ask questions of them. She recognized that people on buses are restrained but rejected the “not free to leave” analysis on which Bostick relied to win his case in the Florida Supreme Court.

Justice O’Connor held that “in such a situation, the appropriate inquiry is whether a reasonable person would feel free to decline the officers’ requests or otherwise terminate the encounter,” and sent the case back to the trial court to make that determination.

Did Bostick consent? Would a trial court be able to tell? That depends on what we mean by consent. Fourth Amendment jurisprudence and social reality are scarcely commensurate. Those who have studied police have observed that rarely will people who are stopped by police officers refuse to show their ID, and rarely even understand when they are not required by law to show it, such is the authority that police ordinarily command. Cops know this, and also learn how to manipulate such encounters so as to appear forceful in the encounter, using a *command* voice, while later testifying that the person “volunteered” to be searched when it was clearly in their self interest not to be.

Paradoxically, people in the “overclass” may be especially likely to respond politely to a police officer’s request for information about themselves or others. They fit the description of what Van Maanen calls “know-nothings,” ordinary citizens who are not police and who know nothing of the world police inhabit, that peculiar spot on the bridge between the *first America* and the *second America*. These are the good citizens for whose benefit police will present a courteous and efficient performance.

Besides, those who comply with police requests for identification are probably discerning to do so, regardless of Constitutional prerogatives. For those who are carrying drugs, it would, of course, be more prudent to decline a police officer’s request to search their bags. But being questioned by police is often intimidating. This is especially so in bus sweeps since, as the dissenters argued in Bostick, such sweeps are inherently “inconvenient, intrusive, and intimidating.”

Imagine standing up to armed police in that situation. Most of us learn early to respect the authority of a police officer, and that it is impolitic for a citizen to challenge that authority. When he or she does, especially when he does, he may find himself occupying Van Maanen’s third and most evocative category, that of “the asshole,” that is, a person who denies, resists, or questions the authority of the police. The following story, offered by Van Maanen, exemplifies the category: A cop stops a motorist for speeding and politely asks for license and registration. “Why the hell are you picking on me,” says the motorist, “and not somewhere else looking for real criminals?”

“Cause you’re an asshole,” replies the policeman. “But I didn’t know that until you opened your mouth.”

Paul Chevigny similarly explains the origins of much police brutality in

Police Power, his classic study of police abuses in New York City in the 1960s.²⁸ Following an extensive two-year study of complaints against police, Chevigny identified as "the one truly iron and inflexible rule" he could deduce from the cases he reviewed was this: "any person who defies the police risks the imposition of legal sanctions, commencing with a summons, on up to the use of firearms."²⁹

Chevigny goes on to describe a three-step process leading to excessive force. Step One involves a perception by police of a challenge to authority. Those who take the police on high-speed chases are, of course, among the most extremely confrontational. But Chevigny reports instances of much lesser defiance, such as merely questioning an officer. Such a person, in the New York of the 1960s, was called a "wise guy," a term that seems in retrospect antiquated and mild but conveys the appropriate connotation. The speaker is thought by the police officer to be presenting himself as superior to the cop. In the parlance of the police studied by Van Maanen, he is said to be an "asshole, creep or bigmouth," or any number of other dismissive names used by cops to describe a person who resists police authority.³⁰

In Step Two, when police have so defined the malefactor, as in, "So you're a wiseguy," an arrest, according to Chevigny's respondents, would almost invariably follow.

Whether it did or not depended on the offender's response (Step Three). If the citizen admitted that he was, in fact, a wiseguy, or turned polite and complied with the officer's request, he was usually released. If he persisted in defying police authority, an arrest would typically follow. If he further persisted, he would be taught a lesson of compliance by being beaten, and then charged with resisting arrest, in addition to the original charge.

Albert Reiss, Jr., who with Donald Black conducted a systematic observational study of police coercion for the President's Commission on Law Enforcement and Administration of Justice, reported that, of the incidents of excessive force recorded by observers, nearly half occurred when the victims verbally defied police authority. The authority that was defied was not "official" but the personal authority of the individual officer. Reiss was surprised to find that in 40 percent of the cases of what the police considered open defiance, the police never executed an arrest, nor did they file charges of resisting arrest to "cover" their improper use of force. Reiss inquired further into what police interpreted as defiance. "Often he seems threatened," Reiss observed, "by a simple refusal to acquiesce to his own authority. A policeman beat a handcuffed offender because, when told to sit, the offender did not sit down. One Negro woman was soundly slapped for her refusal to approach the police car and identify herself."³¹

Recently, one of us was riding alongside a patrol officer in a Midwestern city. The officer saw a young white woman seated behind the driver's seat of a car parked in the area of a predominantly black housing project noted for drug dealing. Since the cop suspected that the woman was picking up drugs, the officer waited until she left, determined to stop her for something, anything, such as running a red light, so he could search her car. He noted that one of the taillights on her car was slightly damaged and stopped her for that. He checked out the car on his computer and discovered that the owner, her boyfriend, had failed to pay three parking tickets.

The officer asked to search the car, and she reluctantly consented, clearly unaware of what rights she had, if any. He found no drugs, and she denied ever using or selling them. She did act annoyed, talked back to the officer, and complained that she was being harassed. In return for her seeming insolence, the officer committed no act of brutality but had the car towed, arrested her for a traffic violation, and booked her at the police precinct. In reality, she had committed two police cultural crimes: She was a white driver in a black neighborhood where drugs were sold, and she had challenged the authority of the officer, a serious transgression in the police cultural statute book, where it is an offense to talk back to a cop.

Chevigny was sensitive in his three-step paradigm to two other important considerations. First, an ordinary citizen begins to assume the status of a pariah only when actively defying the police, while an outcast group member may be presumed to be a potential offender. Consequently, when such a person is arrested, the arrest can be considered the ethical, if not the legal, equivalent of arresting a criminal. The arrest can be justified on grounds that even if the outcast has not committed a crime this time, he has been guilty many times in the past.

Second, Chevigny notes that it also may be more difficult for members of minority groups to show the submissive qualities middle-class people learn to use to when dealing with authorities. He further observes that the words "Sorry, Officer" often feel like galling words of submission to the downtrodden and are especially hard for African-Americans to say. "The combination of being an outcast (step one)," he writes, "and refusing to comply in step three is explosive; thereby hangs the tale of many police brutality cases."³²

THE UNDERCLASS

Chevigny's is a book of the 1960s and reflects the deep social divisions of those troubled and turbulent years. The economic and social conditions of America's inner-city ghettos have cruelly worsened in the intervening

years. "The urban black poor of today," Wacquant and Wilson wrote in 1989, "differ both from their counterparts of earlier years and from the white poor in that they are becoming increasingly concentrated in dilapidated territorial enclaves that epitomize acute social and economic marginalization." This "hyperghettoization" has brought in its wake a tangle of unfathomed social miseries, including crime, drug use and sale, high rates of unemployment, high teenage pregnancy rates, the highest homicide rates in American history, and unprecedented homicides and interpersonal violence among young black males. For several years, black-on-black homicides have been the leading cause of death for young black males.³³

No scholar on any part of the political spectrum denies this reality, although scholars differ considerably as to how to interpret its significance for social policy and whether the term "underclass" inappropriately mislabels and demeans all residents of inner-city areas. Astute scholars of poverty, such as Michael Katz, are supremely sensitive to the politics of its discussion. Most American political discourse, he observes, has transformed poverty into an issue of "family, race and culture rather than inequality, power and exploitation."³⁴

Structural theorists and liberals (for whom William Julius Wilson has become the most prominent spokesman) detail how economy, society, and history have imposed severe limits on the life chances of inner-city African-Americans.³⁵ They highlight such *causal* factors as the loss of jobs in a postindustrial economy; the internationalization of manufacturing and the associated flight of capital and jobs to low-wage havens; the loss of housing and concomitant family stability; the lack of connection to employment or business opportunity; the impoverishment of educational facilities; and the legacy of racism.³⁶

If liberals tend to stress the environmental and historical roots of poverty, conservatives (among whom Charles Murray is one of the most prominent spokesmen) stress the ethical and cultural inadequacies of "the underclass." Murray defines the "underclass" as the parasitical poor, a subclass of the impoverished "who chronically live off mainstream society (directly through welfare or indirectly through crime)." To Murray, the underclass are people who *choose* to be bad. Their malfunctioning is attributable primarily to moral failure: "They characteristically take jobs sporadically if at all, do not share the social burdens of the neighborhoods in which they live, shirk the responsibilities of fatherhood and are indifferent (or simply incompetent) mothers."

Although liberals locate the underlying *causes* of antisocial and criminal behavior in the inner city in structural unemployment, inadequate educa-

tion and housing, and blocked opportunity linked to historical racism, such explanations, Robert Kuttner says, "lose much of their resonance against the reality of a junkie, a middle-class kid panhandling, or a crack-using teen mother, or other seemingly irresponsible forms of urban low-life."³⁷

In fact, both visions of the underclass can be justified. The behavior of young men who assault strangers, neighbors, and friends, and who deal drugs on the street and in housing projects, are harmful and destructive of self and community. Former Washington, D.C., Police Chief Isaac Fulwood, himself a product of a poor black District of Columbia family, has seen the drug culture wreak havoc with that area's public safety and civic values. "1988 changed us," he observed. "We can never go back to being what we were. It's not just the volume of murders, it is the viciousness—the kinds of wounds that you see—where young people have had their kneecaps shot off, had their testicles shot off. We charge these cocky kids with taking another person's life and there's no remorse."³⁸

What they are, however, is not adequately described by such terms as "culture of poverty" or "the underclass," which in any case should encompass the homeless and the deinstitutionalized mentally ill. Instead they express capitalism run amok, a robber baron behavior of the streets. The street world, especially the drug trade, is harsh and dangerous. For many young men, especially gang members who live in that assertive and lawless world, the appearance of vulnerability may invite aggression. Gang members, Martin Sanchez Jankowski reports, are defiant individualists and outlaw capitalists. They cannot call the police when they are robbed or sue for breach of contract when they are cheated. Like nations that stock an oversupply of nuclear weapons in the interest of deterrence, outlaw capitalists need to present an impenetrable exterior to those seen as threatening their status, honor, or economic advantage, especially when they are marketing drugs.³⁹ The drug business is vividly described by Terry Williams, a sociologist who spent more than 1,200 hours over a period of five years observing a primarily Dominican drug gang in Washington Heights, the upper Broadway locus of Manhattan's drug scene. While not denying that the "cocaine kids" are antisocial dealers responsible for violence and death, Williams also portrays them as "struggling young people trying to make a place for themselves in a world few care to understand and many wish would go away."⁴⁰

Cops usually resonate to what they see happening in front of them, not to underlying causes or sociological explanations, although many cops are surprisingly sensitive to these. Yet, no matter how discerning, when doing

their policing job cops do not interpret *why* someone is mugging, raping, or selling drugs on the street, just that they are doing it or are threatening to do it. If cultural beliefs shape the working personalities of police, as we have argued they do, the cop, like the majority of Americans, is unlikely to define the street drug dealer as a victim of inequality, structural unemployment, and exploitation. What the cop perceives is a bad and dangerous person who preys on the *deserving* poor and exacerbates the social conditions found in the inner cities. Such preconceptions profoundly influence police behavior, especially their use of force.

Still, problems of excessive force rarely arise when police address actual crime and criminals. A clean, straightforward apprehension of a robber or of a drug dealer who has been busted following an undercover police officer's "buy" is rarely an occasion for exercising excessive force. Abuses occur when police develop two visions of their work that are often a prelude to excessive force. One is described by the Christopher Commission as a "siege mentality."⁴¹ The other is "the Dirty Harry" vision, which rationalizes vigilante justice.

THE SIEGE MENTALITY

In the course of its investigation, the Christopher Commission, the 1991 blue-ribbon commission headed by Warren Christopher to investigate the LAPD following the Rodney King beating, found general agreement among all sources, from senior and rank-and-file police to the general public, that the LAPD reflected an organizational culture, based on its time-honored notion of "professionalism," that "emphasized crime control over crime prevention and isolated the police from the communities and the people they serve."⁴² This organizational culture insisted on both the aggressive detection of such major crimes as murder, burglary, and auto theft and a rapid response to calls for service. Officers were rewarded for the number of calls they handled and arrests they made, as well as for being "hardnosed." As a result, the LAPD consistently outperformed other big-city police departments in the number of violent crime arrests per officer, but at the risk of creating what the Commission calls a "siege" (us-them) mentality that alienates the officer from the community. Obviously, not every police department encourages a siege mentality. But the Los Angeles Police Department's policing style for many years served nationally as an important model of police professionalism. Consequently, its vision of hardnosed and impersonal policing influenced the training of thousands of American cops—so much so that its vision and values became entrenched as an element of traditional police culture.

THE DIRTY HARRY PROBLEM

The Dirty Harry dilemma was so named by the sociologist Carl B. Klockars, who drew its name from a 1971 Warner Brothers film. "Dirty Harry" Callahan, played by Clint Eastwood, is on the trail of a psychopathic killer who has kidnapped a fourteen-year-old girl and buried her with just enough oxygen to keep her alive for several hours. Harry meets the kidnapper with the ransom. The kidnapper reneges on his bargain, wounds Harry's partner, and escapes. Harry manages to track him down, illegally searches his apartment, finds guns and other evidence of his guilt, and captures the kidnapper on a football field. He shoots the kidnapper in the leg and tortures him, twisting the injured leg, into revealing where the girl has been hidden. Unfortunately, she is already dead, and the killer must be set free because none of the evidence—the gun, the confession—was legally obtained.

Released in 1971, *Dirty Harry* could properly be interpreted as a right-wing attack on "legal technicalities." But, as Klockars astutely saw, it also raises a fundamental problem constantly confronting police, namely, "When and to what extent does the morally good end warrant or justify an ethically, politically, or legally dangerous means for its achievement?"

The Dirty Harry dilemma faces every cop in the course of his or her career, and its ultimate resolution is always problematic and subject to hindsight criticism. Extralegal resolution of the Dirty Harry dilemma is difficult enough when the "bad guy" is an identifiable and factually guilty individual. It is most problematic when the criminal is not an individual but a loosely defined gang or criminal organization, where the consequences of a mistake can be tragic for innocent individuals or bystanders, and where a gut-level racism can be imputed to the officers involved.

This was the case in the LAPD's Gang Task Force raid in South Los Angeles on August 1, 1988, which by mid-June 1991 had cost Los Angeles taxpayers \$3.4 million. Police believed that four apartments at 39th Street and Dalton Avenue were gang-controlled "crack" cocaine houses. Police Captain Thomas Elfmont, who was in charge of the raid, was accused of having urged his officers to render the apartments "uninhabitable" and was later charged in a criminal court of "aiding and abetting vandalism," a misdemeanor.

According to testimony, police believed that the Rolling 30s, a gang associated with the Crips, were selling drugs and terrorizing a family that lived between two apartment buildings where the drugs were being sold. They also believed that the drug dealers were heavily armed and had threatened a family that had put up security lights. The police decided to

raid the apartments and destroy the young drug-dealing gangsters. Three days before the raid, the captain in charge held a roll call and told the assembled officers to "hit hard." He used such words as "leveled" and "uninhabitable" to describe how the apartments should appear after the raid.

Thus advised, police raided the apartments with guns and axes. Nobody was killed, but the police methodically destroyed beyond recognition the four apartments where the "search" occurred. They broke all the toilets, tore them from the floor, and left water running everywhere. They smashed in plaster walls with sledge hammers, breaking everything in sight, including TV sets, VCRs, and typewriters. Bedroom and living room sets were smashed, couches and chairs were cut, bottles of wine and jars of baby food were emptied on clothes and bedding. Phone wires were cut, light fixtures were destroyed, and "LAPD Rules" graffiti were spray-painted on the walls. According to eyewitnesses, the thirty-three people who were brought to the Southwest Division police station "were forced to whistle the theme from the old Andy Griffith television show, and to run a gauntlet of police officers who allegedly struck them with fists and flashlights."⁴³

But no gang members lived in the Dalton Avenue apartments, where scarcely any drugs were found—just a small amount of cocaine and marijuana—and no guns. Captain Elfmont and two other police officials were charged with crimes but were ultimately acquitted of "aiding and abetting" vandalism, because, the prosecutor said, the LAPD's "code of silence" prevented police who were eyewitnesses from testifying in court about what had actually happened.

THE CODE OF SILENCE

We have both heard comments that, in near mystical terms, describe or speculate about a highly conspiratorial police code of silence. Those who propound this theory assert that, like gangsters who understand that death is the penalty for violations of *omerta*—the Mafia rule of absolute secrecy—police officers risk their lives when they violate their brotherhood's unwritten regulations.

Frequently used in support of this theory is the movie version of Frank Serpico's efforts to get action on his allegations of police corruption. The film begins with an incident where Serpico is shot in circumstances that make it appear that he was set up by his colleagues to be killed. The evidence does not support this interpretation.⁴⁴

Frank Serpico was shot while on a drug raid in what New York cops knew as "Brooklyn North," one of two umbrella commands into which the NYPD had divided the city's most populous borough. He got there when

Brooklyn North narcotics officers—whose jurisdiction included ten police precincts and a resident population of more than 840,000—learned late one night that the services of a Spanish-speaking undercover officer might help them make a drug buy and arrest. They called the NYPD's Narcotics Bureau's central headquarters in Manhattan and asked whether any Spanish-speaking narcotics officers were on duty in the city at that late hour. Headquarters then called Serpico, who left his assignment in "Brooklyn South," which included the sixteen precincts and nearly 2 million residents of the borough's other end, to help in the Brooklyn narcotics bust.

When Serpico arrived, he met officers who knew him only by reputation. They had never previously worked with him, had not been implicated by him in any misconduct, and never were. They worked in a unit—Brooklyn North Narcotics—that had nothing to do with the corruption that Serpico had exposed in his anti-gambling squad across the city in the Bronx. Indeed, he had been assigned to Brooklyn South Narcotics because it was as far removed as possible from his old assignment.

The officers planned a "buy-and-bust" in which Serpico would go to an apartment door, use code words in Spanish that had been provided by the Brooklyn officers' informant, and buy a small amount of heroin while his colleagues remained out of sight a few feet away, ready to assist. This would all be done while Serpico stood at the threshold of the apartment's front door, which, in the tradition of small-time urban heroin dealing, would be opened only far enough to accommodate a short chain of the familiar type that serves as a failsafe lock by connecting the door to its frame. Once Serpico had completed the buy, he was to put his shoulder to the door, identify himself as a cop, signal his colleagues, and, with their help, force the door open and *bust* the drug dealer.

At the time, buy-and-bust operations were the routine procedure of the NYPD's narcotics units. They were also very dangerous. In the first four months of 1971, the year in which Serpico was shot, two detectives on two similar operations were beaten unconscious and robbed. Another was shot and wounded. One killed a suspect in a gun duel. Another detective shot a man who had tried to rob him with a weapon that turned out to be a starter's pistol. Another officer shot and wounded one of three suspects who attacked him with lengths of two-by-four planks. Another, shot at twice by a suspect, grabbed the suspect and engaged in a struggle; the suspect's gun discharged between the two men, and the suspect was shot in the leg.⁴⁵

Things went wrong in Serpico's buy and bust as well. After making his buy, Serpico yelled that he was the police and tried to force his way into the apartment. The dealer slammed the door, trapping Serpico's head, arm, and shoulder between it and its frame. Serpico managed to unholster his gun,

but the dealer shot him in the face and fled out a window. Several hours later the dealer was found at another location, pulled his gun on the cops who had come to get him, and was shot, wounded, and arrested.

These facts do not support the conclusion that the cops who were with Serpico put him into harm's way and intentionally left him there to be shot. Those officers didn't even know Serpico. While they may have wished that headquarters had sent them someone other than this *troublemaker* whose name was then vaguely floating around their department, their professional involvement with him would have ended with this single case. We agree with Patrick V. Murphy, New York's Police Commissioner at the time Serpico was shot. Murphy writes: "I do not believe Serpico was set up, and, even more, I do not believe that Detective Serpico believes it either."⁴⁶

Further, although it probably has occurred at some point in American police history, we know of no other cases in which police have punished those who betrayed the code of silence with anything as extreme as a shooting. Instead, the code—and there is a code—typically is enforced by the threat of shunning, by fear that *informing* will lead to exposure of one's own derelictions, and by fear that colleagues' assistance may be withheld in emergencies.

In our experience, this last incentive to silence—denial of help in street emergencies—is more often imagined than real. Officers who by their own admission "do not see eye-to-eye" with their work groups frequently complain that colleagues intentionally fail to respond promptly to their calls for urgent assistance. On close examination, however, these complaints usually reflect a variety of paranoia that itself accounts for these officers' unpopularity among their peers. In other words, some officers perceive situations as more threatening than they are (or, through bungling, make them worse than they began), call urgently for help, and draw the rapid response of colleagues who arrive and can't figure out what all the fuss was. After a few such incidents, such officers' credibility is damaged, and their colleagues come to regard their calls for help like that of the boy who cried wolf too often.

The first two disincentives to violating the code of silence—shunning and exposure of one's own derelictions—are real and are discussed further in Chapter 6. For now, having claimed that the police code of silence is not a mafia-style life-or-death pact with the devil, we shall confine ourselves to some observations about what the police code of silence is.

Most important, a code of silence is not unique to the police. In every identifiable group, there exists an unspoken understanding that one reports on members' misconduct only at some risk. The sociologist and police scholar Albert J. Reiss, Jr., has suggested that even his Yale University

students share such a set of understandings.⁴⁷ In the pressure cooker of elite academic institutions, Reiss points out, students sometimes are tempted to cheat to maintain the grades necessary for a big job or a slot at a prestigious professional or graduate school. On occasion, other students become aware of such cheating but, despite academic codes of honor, rarely will call their peers' misconduct to official attention.

In our own university discussions of the code of silence, we regularly ask for students who have become aware of classmates' cheating at some point in their educational careers to raise their hands. Invariably, almost every hand in the class is raised. When we ask for only those who have called such cheating to teachers' attention and have been willing to be publicly identified as accusers, virtually every raised hand is lowered.

The point, of course, is that it is not easy in any group to be identified as the *rat*, the *squealer*, the *busybody*, the one person who cannot be trusted absolutely. Doctors rarely expose the incompetence of their colleagues, even though, as the great frequency and size of medical malpractice verdicts suggests, it certainly must come to their attention. College athletes don't usually talk about alumni boosters' under-the-table payments to superstars, and office workers do not inform on co-workers who take supplies home. Similarly, real estate agents and banks remain mum about *de facto* discrimination and redlining in apartment rentals and mortgage lending. Regardless of where, any member of any group who considers becoming a *whistle-blower* must know that, however laudable one's motives, doing so will forever change one's own life and status in the group.

In the closed society of police departments, especially in departments or units that see themselves and the public in terms of "us and them" and adopt the siege view of the world, the pressure to remain loyal is enormous. In such societies, there is no need for violent means of enforcing the code, because, having subsumed their individual identities into the whole, cops know that betraying the group betrays themselves and destroys their identities.

Consider Robert Leuci, the *Prince of the City* whose testimony eventually put his whole squad and about seventy other New York city narcotics detectives behind bars. According to Robert Daley, before blowing his whistle, Leuci had a conversation with his wife, telling her of his intentions:

"I'm not going to implicate any one close to us."

"Do you think they will allow you to do whatever you choose to do? Do you think they will say: Okay, Bob, whoever you want to tell us about. You decide. I don't think they will allow you to do that."

After a moment she added, "I know you feel guilty. Other people are responsible, not you. They are guiltier than you are."

In a low voice, he replied, "I want to end this life I have been living."

"Then quit the Police Department."

But he loved the Police Department. "And do what? Sell insurance? Work in a bank?"

Gina said, "I know you. It's going to kill you. They will force you to hurt friends, people who have done no harm to you, only good. When you were sick, they all came. They called me every day. I know what kind of man you are. I know what you can live with and what you can't live with. This will kill you. You tell me the feelings you have for informants, and now you are going to be an informant. How are you going to live with that? How am I going to live with you, as you live with that?"⁴⁸

There is no mention in this conversation of Leuci's safety, because Leuci anticipated—correctly—that none of the people he "hurt" would try forcibly to silence him or to avenge his turnaround. In the end, he suffered great stigmatization and the reality that, having broken the code, he could never be what he once was: the "Prince of the City," the hotshot member of the most envied and prestigious detective unit in the biggest police department in the country.

A conversation one of us had with a former Special Investigations Unit detective who had been imprisoned on Leuci's testimony shows how strong was that group's cohesiveness. "Whatever happened to Leuci?" this detective was asked, "Has anybody heard from him?" "Nah. And that's too bad," the detective replied. "We run an SIU reunion every year, and we always send him an invitation. We never hear from him, though. He probably thinks the guys are pissed at him, but it's water under the bridge. He did what he had to do, and we know that."

The code of silence, then, is not one that is enforced by assassins lurking in dark alleys or arranging for drug dealers to terminate cops who inform. The police code of silence is an extreme version of a phenomenon that exists in all human groups. It is exaggerated in some police departments and some police units because cops so closely identify with their departments, their units, and their colleagues that they cannot even conceive of doing anything else. Like Bob Leuci, they live in a world of desperately conflicting imperatives, where norms of loyalty wash up against standards of law and order. So mostly, like the cops who witnessed the beating of Rodney King, they see, hear, and speak no evil. As we shall discuss later, special efforts can and must be made to overcome these powerful prescriptions of silence and loyalty in the culture of policing.

6

Cops as Soldiers

The difference between the quasi-military and the civil policeman is that the civil policeman should have no enemies. People may be criminals, they may be violent, but they are not enemies to be destroyed. Once that kind of language gets into the police vocabulary, it begins to change attitudes.

—John Alderson, *The Listener*, 1985

Identifying the enemy makes us very uncomfortable because the enemy happens to be a great many of us.

—Daryl F. Gates, Address to Attorney General's Crime Summit, March 4, 1991

Military jargon shows up in virtually any discussion of the police. Police departments are "paramilitary," complete with "chains of command," "divisions," "platoons," "squads," and "details." In many places, patrol officers are "privates" or "troopers." In virtually all places, officers report not to supervisors, middle managers, or executives, but to sergeants, lieutenants, captains, majors, and colonels. In police training academies, much attention is devoted to close order drill and military courtesy.

The military metaphor also colors the public's expectations of the police. Our police have been engaged in a nonstop "war on crime" for the last sixty years. Most recently the battle has focused on ridding the country of the scourge of drugs and the profiteering "drug kingpins." Just a few days before Rodney King's beating, then Attorney General Richard Thornburgh opened a national "crime summit," at which Chief Gates spoke of the enemy among us. In his keynote address, Thornburgh asked law enforcement officials to attack street crime and "vio-