Consent Decrees: The Riverside Experience

Jeb Brown
Assistant County Counsel
Riverside County

Larry Gonzalez
Deputy Chief
City of Riverside

Introduction

- Federal Government
  - Special Litigation Section of DOJ
  - 42 USC § 14141 (now 34 USC § 12601)
  - New administration/New Attorney General
- State Government
  - Various state statutes
  - Attorney General

Introduction

- Areas of Potential Exposure (Use of Force, Arrest, Search)
- Pre-Litigation Warning Signs
- Consent Decrees/Stipulated Judgments/Settlement Agreements
- Lessons Learned

Federal Consent Decrees 42 USC § 14141

- In 1994, Congress passed the Violent Crime Control and Law Enforcement Act of 1994 which included 42 USC § 14141.
- This provision authorizes the Attorney General to file lawsuits to reform police departments engaging in a pattern or practice of violating citizens' federal rights. With the Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, these sections prohibit agencies from discriminating on the basis of race, color, sex or national origin that receive federal funding.

Federal Consent Decrees 42 USC § 14141

- Since the late 1990s, the Special Litigation Section of the USDOJ began to conduct investigations and implement consent decrees and settlement agreements where evidence demonstrated a violation of the misconduct statutes.

Federal Consent Decrees 42 USC § 14141

- (a) Unlawful conduct: It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.
- (b) Civil action by Attorney General: Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.

Federal Consent Decrees

- Since 2005, the Department of Justice has entered into a multitude of consent decrees throughout the Country.
- These consent decrees can control virtually every aspect of law enforcement operations and can cost cities or counties millions of dollars to implement.
- The Special Litigation section of the Civil Rights Division files these matters. They have broad discovery powers to collect evidence, even information that may be protected by state law, in order to form the basis for these actions.
- They then compel settlement.

Federal Consent Decrees

- Entities that have been subject to a consent decree include:
  - Los Angeles County
  - Baltimore
  - Yonkers
  - Newark
  - Ferguson
  - Cleveland
  - Albuquerque

Common Causes of Concern

- Use of Force
  - Deadly Force
  - Training
  - Tasers/ECWs
  - OC Spray
- Unlawful Stops, Searches & Arrests
- Policies and Training
- Pursuits
- Body Cameras

Examples of Consent Decrees

- Baltimore
  - Community Oversight Task Force
  - Impartial Policing
  - Behavioral Health/In Crisis Individuals
  - Interactions with Youth
  - Recruitment/Hiring/Retention

Examples of Consent Decrees

- Ferguson
  - Stops and Arrest
  - First Amendment
  - Use of Force
  - Impartial Policing
  - Revenue Generation

Examples of Consent Decrees

- Yonkers
  - Use of Force
  - Civilian Complaints
  - Supervision
  - Discipline
  - Training
  - Early Warning System

Litigation History

- Red flags can frequently relate directly to litigation history.
- As the number of similar instances occur giving rise to litigation, it is important that management recognize these trends and address them as quickly as possible.
- These actions are usually brought by "advocacy groups" such as the ACLU, National Lawyers Guild or by attorneys specializing in defending the rights of the accused.
- These attorneys will frequently work together to share information.
- Multiple actions can lead to class action law suits and Monell liability.

Tyisha Miller Shooting

- **December 28, 1998 - Shooting of Tyisha Miller by officers**
  - 24 shots fired – 12 hits
- **Officers placed on leave for seven months**
- **One witness officer reports racial remarks by officers at scene**
  - Interviewed by Ed Bradley on “60 Minutes”
  - Claimed retaliation by peers
  - Later recants many of his claims
- **First protest demanding prosecution and termination of officers**
  - Maxine Waters, Al Sharpton, Jessie Jackson, Johnnie Cochran, and Dick Gregory
  - Protests become weekly events

Tyisha Miller Shooting

- **Officers terminated**
  - One Sergeant
  - Two probationary officers
  - Two non-probationary officers
- **Police Association supports fired officers**
  - Some officers shave their heads
  - Placed ads in newspaper
- **District Attorney declined to prosecute officers**
- **Mayor's Use of Force Panel**
  - Citizen Review Board established
- **U.S. DOJ / California Attorney General conduct patterns and practices investigations**

Stipulated Agreement

- Lieutenant Watch Commanders (6 months)
  - Shift differential pay
  - Probationary officers assigned to shifts
- Traffic stop data collection
- Real-time roll call monitoring (3 months)
- Sergeants 12 month probationary period
- 7:1 Supervisor to officer ratio
- Supervisory and Leadership Institute
- Debrief all critical incidents
- Diversity training (6 months)

Stipulated Agreement

- Early Warning System (6 months)
- Strategic plan (1 year)
- Audio recorder issued to Field Ops (6 months)
  - Body worn cameras
- 10 in-car video recording systems (2 years)
  - All marked units have in-car systems
- Purchase and deploy a sufficient number and types of less lethal weapons (6 months)
  - Uniformed officers required to carry a Taser
  - All marked units have a less lethal shotgun

Stipulated Agreement

- **Revise the Field Training Program (6 months)**
  - **Revise the field training manual**
  - **Update the training issues to be covered**
  - **POST training for field training officers**
  - **Expanding the training phases**
  - **Computerize the trainee daily observation reports**
  - **Add two week Community Oriented Policing phase**

Stipulated Agreement

- **Modify the complaint policy (6 months)**
  - **POST approved Internal Affairs training within one year of promotion**
  - **Train all supervisors to investigate citizen complaints**
  - **Track complainant's race and gender**
  - **All complaints issued a tracking number and investigated**
  - **Evaluate and audit complaint procedures**
  - **Three times a year conduct random testing of the complaint procedure**

Lessons Learned

- Ultimately, questions of organizational culture, accountability, policy, training, hiring, etc. rise to the level of the Chief of Police or Sheriff.
- What raises the level of professional standards lowers the chances for liability, and what lowers the chances for liability raises the professional standards of the organization.
- If it is predictable, it is preventable.

Lessons Learned

- A policy is only as effective as the training as to the substance and requirements of that policy. If training is weak, unfocused or non-existent, then the policy will not be followed. Training must cover the full range of tasks which officers are expected to perform.

Lessons Learned

- There is no factor more important to the avoidance of liability and the upgrading of the agency's professional performance and attainment of its standards than the quality of supervision.
- Accountability, accountability, accountability!
- Get out ahead of the scrutiny that will be coming from state and federal officials.
- Consider the scrutiny as an opportunity to improve the quality of policing in your jurisdiction.

Lessons Learned

- Prevention is the key to success
  - Independent, regular audits of performance and services provided to inmates.
  - All analysis of operation should be undertaken under the Attorney Work Product and Attorney-Client Privileges.
  - Frequent and timely training and retraining directly related to issues in the field is critical.

Lessons Learned

- Monitor issues and address them early.
- Coordination among Law Enforcement, Executive Office, Governing Body and Attorney.
- Learn from experience (mistakes) of others.
- Settlement is always cheaper than litigation.

Contact

- Deputy Chief Larry Gonzalez, Riverside Police Department, Lgonzalez@RiversideCa.gov
- Assistant County Counsel Jeb Brown, Riverside County Counsel's Office, JebBrown@Rivco.org

QUESTIONS?