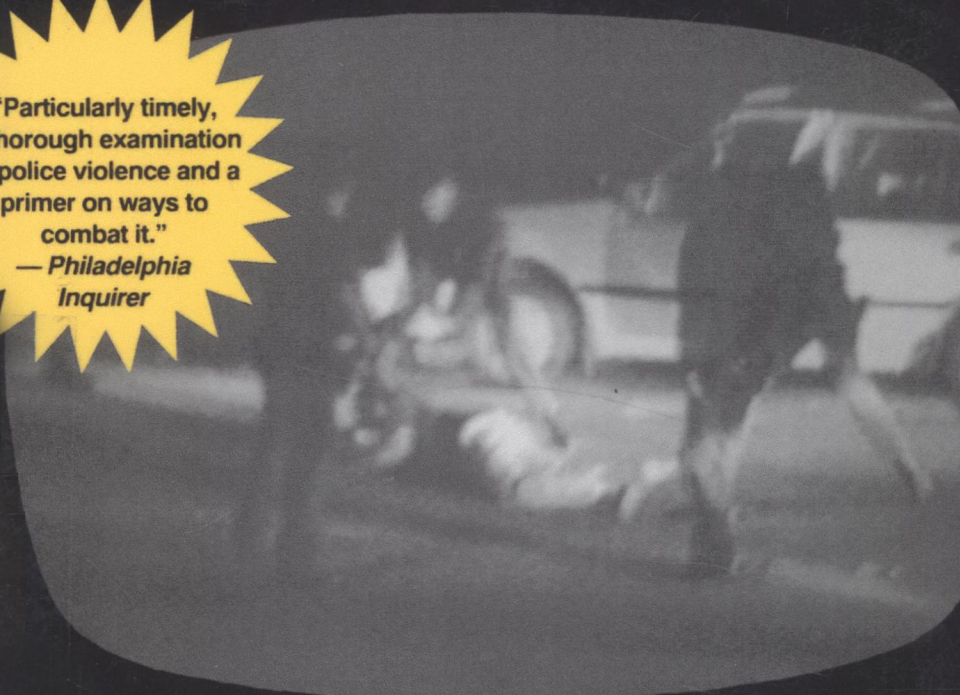


ABOVE THE LAW

**Police and the
Excessive Use of Force**

"Particularly timely,
a thorough examination
of police violence and a
primer on ways to
combat it."

— *Philadelphia
Inquirer*



**Jerome H. Skolnick
James J. Fyfe**

Above the Law

Police and the Excessive
Use of Force

JEROME H. SKOLNICK

JAMES J. FYFE



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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?*

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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