

Evaluating Section 14141: An Empirical Review of Pattern or Practice Police Misconduct Reform

Joshua Chanin*

Section 14141 of the Violent Crime Act of 1994 fundamentally restructures the regulation of police behavior in the United States. Since the law's passage, dozens of police departments have undergone lengthy and complex reforms designed to eliminate a pattern or practice of misconduct. Despite the program's wide application, neither scholars nor practitioners know much about the efficacy or sustainability of these reforms. This paper draws on longitudinal data across several outcome metrics, including citizen complaints, use of force incidence, and civil litigation, and a series of interviews with key stakeholders to examine pattern or practice initiatives in Pittsburgh, Pennsylvania, Washington, D.C., Cincinnati, Ohio, Prince George's County, Maryland, and Los Angeles, California. Findings suggest that the reform process has the ability to minimize unwanted police misconduct and generate desirable policy outcomes, particularly during the period of Department of Justice (DOJ) oversight. Sustaining these reforms after the settlement agreement is dissolved, however, has proved a challenge.

“We don't tend to evaluate . . . after we have left.” - Vanita Gupta¹

I. INTRODUCTION

On May 26, 2015, Vanita Gupta, Head of the Department of Justice's (DOJ) Special Litigation Section (SPL), announced an agreement between the DOJ and the City of Cleveland, Ohio. Seven months earlier, Tamir Rice, an unarmed twelve-year-old Black boy was shot and killed by the Cleveland Division of Police (CDP) in an incident that quickly came to symbolize the tension between the CDP

* Assistant Professor in the School of Public Affairs, San Diego State University. This paper draws heavily from two earlier studies: Joshua M. Chanin, *Negotiated Justice? The Legal, Administrative, and Policy Implications of 'Pattern or Practice' Police Misconduct Reform* (July 6, 2011) (unpublished Ph.D. dissertation, American University), <https://www.ncjrs.gov/pdffiles1/nij/grants/237957.pdf>, and Joshua M. Chanin, *Examining the Sustainability of Pattern or Practice Police Misconduct Reform*, 18 POLICE Q. 163 (2015).

¹ Kimbriell Kelly, Sarah Childress & Steven Rich, *What Happens When the Police Are Forced to Reform?*, PBS FRONTLINE (Nov. 13, 2015), <http://stories.frontline.org/what-happens-when-police-are-forced-to-reform>.

and its community.² The settlement was not designed to address the actions taken by officers involved in the Rice killing, but to address the wider problem of excessive force within the CDP.³ Gupta assured the people of Cleveland that the agreement would “transform this police agency into a model of community-oriented policing that will make both police officers and the people they serve safer.”⁴

The investigation of the CDP occurred pursuant to § 14141 of the Violent Crime Control and Law Enforcement Act of 1994, which vests the DOJ with authority to initiate legal action against law enforcement agencies found in systematic violation of constitutional or statutory law.⁵

This provision has been instrumental in identifying unlawful behavior in many of the country’s most prominent police departments, and has generated settlement agreements that articulate deep reforms to the offending department’s organizational model and accountability systems. The initiative continues to serve as the primary means of addressing systemic police misconduct in the United States. In fact, in the last eighteen months, the DOJ has used its pattern or practice authority to investigate allegations of systemic misconduct in several cities experiencing recent police-involved violence, including Ferguson, Missouri,⁶ Baltimore, Maryland,⁷ and Chicago, Illinois,⁸ among others.

Though perhaps this recent wave of litigation is unprecedented in its speed and aggression, the use of federal power to address police misconduct is nothing new. Since 1994, the DOJ has investigated allegations in some sixty-eight jurisdictions, taking formal legal action against thirty-eight departments found to

² Shaila Dewan & Richard A. Oppel, Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 22, 2015), <http://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html>.

³ Settlement Agreement, *United States v. City of Cleveland*, 1:15-cv-01046-SO (N.D. Ohio May 26, 2015), https://www.justice.gov/sites/default/files/crt/legacy/2015/05/27/cleveland_agreement_5-26-15.pdf.

⁴ Head of Civil Rights Division Vanita Gupta Delivers Remarks Announcing a Settlement Agreement with the City of Cleveland Over the Pattern or Practice Investigation into the Cleveland Division of Police, U.S. DEP’T OF JUSTICE (May 26, 2015), <https://www.justice.gov/opa/speech/head-civil-rights-division-vanita-gupta-delivers-remarks-announcing-settlement-agreement>.

⁵ 42 U.S.C. § 14141 (1994).

⁶ Mark Berman, Sari Horwitz & Wesley Lowery, *Justice Dept. Sues the City of Ferguson to Force Policing Reform*, WASH. POST (Feb. 11, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/02/10/ferguson-demands-changes-to-agreement-reforming-police-tactics-justice-dept-criticizes-unnecessary-delay/>.

⁷ Press Release, U.S. Dep’t of Justice, Justice Department Opens Pattern or Practice Investigation into the Baltimore Police Department (May 8, 2015), <http://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-baltimore-police-department>.

⁸ Press Release, U.S. Dep’t of Justice, Justice Department Opens Pattern or Practice Investigation into the Chicago Police Department (Dec. 7, 2015), <https://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-chicago-police-department>.

have engaged in a pattern or practice of misconduct.⁹ Rather than litigate these claims, most jurisdictions opt for settlement.¹⁰ The resultant agreements, which are enforceable in federal court, typically require the affected department to update relevant policy, revamp training requirements, and develop an infrastructure designed to promote internal and external officer accountability.¹¹

In many cases, including those reviewed here, an independent monitor is hired to oversee implementation and establish the terms of compliance. These agreements remain in place until the police are determined to have been in “substantial compliance” with the terms of the agreement—typically defined as 95 percent compliant—for at least two full years.¹² The emerging department is

⁹ Sara Childress, *Fixing the Force*, PBS FRONTLINE (Dec. 14, 2015), <http://www.pbs.org/wgbh/frontline/article/fixing-the-force/>.

¹⁰ Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3207–15 (2014); Press Release, U.S. Dep’t of Justice, Justice Department Reaches Agreement with City of Newark, New Jersey, to Address Unconstitutional Policing in Newark Police Department (July 22, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-newark-new-jersey-address-unconstitutional-policing>; Press Release, U.S. Dep’t of Justice, Justice Department and City of Ferguson, Missouri, Resolve Lawsuit with Agreement to Reform Ferguson Police Department and Municipal Court to Ensure Constitutional Policing (Mar. 17, 2016), <https://www.justice.gov/opa/pr/justice-department-and-city-ferguson-missouri-resolve-lawsuit-agreement-reform-ferguson>. There are exceptions. See Simone Weichselbaum, *A Rural Sheriff Stares Down the Justice Department*, THE MARSHALL PROJECT (Oct. 6, 2015), <https://www.themarshallproject.org/2015/10/06/a-rural-sheriff-stares-down-the-justice-department#.xJ9SSzY94> (U.S. lost at trial against Alamance, N.C. Sheriff Terry S. Johnson); Press Release, U.S. Dep’t of Justice, Justice Department Wins Religious Discrimination Lawsuit Against Colorado City, Arizona, and Hildale, Utah (Mar. 7, 2016), <https://www.justice.gov/opa/pr/justice-department-wins-religious-discrimination-lawsuit-against-colorado-city-arizona-and> (Colorado City, AZ lost advisory jury verdict on § 14141 claims).

¹¹ Joshua M. Chanin, *Negotiated Justice? The Legal, Administrative, and Policy Implications of “Pattern or Practice” Police Misconduct Reform 335* (July 6, 2011) (unpublished Ph.D. dissertation, American University), <https://www.ncjrs.gov/pdffiles1/nij/grants/237957.pdf>; Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3207–15 (2014); Debra Livingston, *Police Reform and The Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 817 (1999).

¹² Despite some variation in their data collection and oversight method, each monitor team applied the 95 percent substantial compliance threshold very similarly, regardless of the substantive nature of the provision under review. For example, when considering Pittsburgh’s Office of Municipal Investigation’s ability to issue final reports on all investigations, the monitor determined that “[a] failure rate of 15 of 55 completed cases constitutes 27 percent, far in excess of the allowable five percent.” PUB. MGMT. RES., AUDITOR’S NINETEENTH QUARTERLY REPORT 53 (2002), <http://www.clearinghouse.net/chDocs/public/PN-PA-0003-0020.pdf>. Similarly, “MPD’s demonstration of a sustained UFIR completion rate between 86% and 91% . . . [was] quite high, even if below the 95% threshold.” MICHAEL R. BROMWICH, OFFICE OF THE INDEP. MONITOR, FINAL REPORT OF THE INDEPENDENT MONITOR FOR THE METROPOLITAN POLICE DEPARTMENT 2 (2008), <http://www.policemonitor.org/MPD/reports/080613reportv2.pdf>.

stamped with the imprimatur of lawfulness and designated as a model for other departments in terms of lawfulness, accountability, and transparency.¹³

The pattern or practice initiative, as it has become known, has been a useful tool for police chiefs and elected officials seeking change,¹⁴ as well as reform minded community members.¹⁵ Anecdotal evidence suggests that many affected department leaders have found the process worthwhile as well.¹⁶ The response has not all been positive, however. Some have claimed that the DOJ's enforcement of § 14141 is overly political,¹⁷ with decisions on which jurisdictions to investigate made for partisan rather than policy reasons.¹⁸ Others have argued that the process is anti-democratic and unnecessarily exclusive of perspectives brought to bear by citizen groups and labor organizations.¹⁹ Some have also questioned whether this process, which often lasts for several years and costs cities tens of millions of dollars,²⁰ is capable of producing meaningful, durable organizational change.²¹

¹³ JANET RENO, U.S. DEP'T OF JUSTICE, PRINCIPLES FOR PROMOTING POLICE INTEGRITY: EXAMPLES OF PROMISING POLICE PRACTICES AND POLICIES (2001), <http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>.

¹⁴ E.g., Sari Horwitz & Jeff Leen, *District Asks U.S. to Review Shootings*, WASH. POST (Jan. 7, 1999), <http://www.washingtonpost.com/wp-srv/local/longterm/dcpolice/deadlyforce/police7.htm>; David McCabe, *Baltimore Mayor Asks DOJ to Investigate Police*, THE HILL (May 6, 2015), <http://thehill.com/blogs/blog-briefing-room/news/241180-baltimore-mayor-asks-doj-to-investigate-police-department>.

¹⁵ E.g., AM. CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL CTYS, ACLU STATEMENT ON REPORT ASSESSING SDPD'S MISCONDUCT POLICIES (2015), <https://www.aclusandiego.org/aclu-statement-on-report-assessing-sdpds-misconduct-policies/>.

¹⁶ E.g., POLICE EXEC. RESEARCH FORUM, CIVIL RIGHTS INVESTIGATIONS OF LOCAL POLICE: LESSONS LEARNED (2013), http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

¹⁷ Heather Mac Donald, *Targeting the Police*, WEEKLY STANDARD (Jan. 31, 2011), <http://www.weeklystandard.com/targeting-the-police/article/536863>; Brandon Darby, *Left Media Just Can't Stop Trashing Sheriff Joe Arpaio—For Doing His Job*, BREITBART (Oct. 3, 2015), <http://www.breitbart.com/big-government/2015/10/03/left-media-just-cant-stop-trashing-sheriff-joe-arpaio-for-doing-his-job/>.

¹⁸ Matthew J. Hickman, Opinion, *Department of Justice Owes the Seattle Police Department an Apology*, SEATTLE TIMES (Feb. 8, 2012), <http://www.seattletimes.com/opinion/department-of-justice-owes-the-seattle-police-department-an-apology/>.

¹⁹ Maxine Bernstein, *Portland Police Union Seeks to Intervene in Federal Court Review of DOJ's Negotiated Settlement on Police Reforms*, OREGONIAN: OREGONLIVE (Dec. 19, 2012), http://www.oregonlive.com/portland/index.ssf/2012/12/portland_police_union_files_mo.html; Levi Bruce, *Consent Decree Brings 500 Reforms, Controversy in NOPD*, NOLA DEFENDER (Aug. 2012), <http://www.noladefender.com/content/consent-decree-brings-500-reforms-controv99ersy-no5pd-0>.

²⁰ Aamer Madhani, *Ferguson: DOJ Consent Decree Could Cost City Nearly \$10M*, USA TODAY (Feb. 8, 2016), <http://www.usatoday.com/story/news/2016/02/08/ferguson-doj-consent-decree-could-cost-city-nearly-10m/80031828/>; Charles Maldonado, *Paying for the Consent Decree*, GAMBIT (Aug. 14, 2012), <http://www.bestofneworleans.com/gambit/reform-at-a-cost/Content?oid=2057022>.

The record of police department efforts to achieve and sustain organizational reform is at best mixed.²² Many of policing's most promising innovations, including high-profile efforts like community policing and problem-oriented policing, have not lived up to their initial promise.²³ Despite this pattern, those who study the police have largely overlooked the issue. In general, scholars know relatively little about the bureaucratic response to reform and thus remain somewhat ignorant about how and why innovations in policing continue to erode.²⁴

This is not entirely surprising given the complexity of the issue. Comprehensive reform efforts resist the kinds of clear, simple terms that facilitate *ex post* evaluation. The process is defined by multiple goals, varying perspectives, and competing political, administrative, and legal motivations, all conspiring to form "a confusing and contradictory picture of change."²⁵ The complexity of the process is only magnified by the intensity of the current political and social context and the contentiousness with which police officers confront changes to the organizational status quo.²⁶

Opposition among front line officers to pattern or practice reform is one of several reasons to study the process. The significance of the initiative, the issue that precipitates it, and the vehemence of arguments on both sides is belied by how little we actually know about the effectiveness and sustainability of these reforms. Despite its relevance to legal, administrative, and policy scholarship, to date there has been relatively little social science research on the reform process, with a particularly glaring lack of empirical analysis.

This paper is a step toward filling in this gap. Part II reviews the existing research that addresses efforts to institutionalize changes to organizational structures, policies, and procedures in other contexts. Part III explains the selection of departments for case studies, the available data, and the data's limitations. Part IV draws on longitudinal data across several metrics, including violent and property crime, citizen complaints, use of force incidence, and civil litigation to examine the sustainability of reform in various jurisdictions, including Pittsburgh, Pennsylvania; Washington, D.C.; Prince George's County, Maryland; Cincinnati, Ohio; and Los Angeles, California. Part V assesses what we can learn about the sustainability of reform from these examples.

²¹ Kristen Gwynne, *Can Obama's Justice Department Actually Curb Police Brutality?*, VICE (Dec. 9, 2014), <http://www.vice.com/read/can-obama-justice-department-do-anything-to-stop-police-brutality-129>.

²² Wesley G. Skogan, *Why Reforms Fail*, 18 POLICING & SOC'Y 23 (2008).

²³ Samuel E. Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57 (2012).

²⁴ *Id.* at 60.

²⁵ CANADIAN CTR. FOR MGMT. DEV., TAKING STOCK: ASSESSING PUBLIC SECTOR REFORMS 6 (Guy Peters & Donald J. Savoie eds., 1998).

²⁶ Evan MacDonald, *Cleveland Police Union Says Justice Department Reforms Would Endanger Police*, CLEVELAND.COM (May 28, 2015), http://www.cleveland.com/metro/index.ssf/2015/05/union_head_says_aspects_of_cle.html.

II. EXISTING LITERATURE ON INSTITUTIONAL REFORM LITIGATION

A. *The Sustainability of Court-Mandated Organizational Change*

The need for closer attention to this issue is highlighted by the impermanent nature of reforms brought about in other policy contexts through similar means. Much like pattern or practice settlements, judicially enforced remedial orders attempt to structure detailed reform of public bureaucracies found in systematic violation of the law.²⁷ This process has been used to facilitate the desegregation of school districts,²⁸ remedy unconstitutionally abusive prison systems,²⁹ and assert the rights of patients held unlawfully by state-run mental hospitals,³⁰ among others.

Again, as with pattern or practice reform, formal oversight is terminated upon a determination (typically made by the presiding judge) that the underlying constitutional violation has been redressed. As a result, many see the process as inherently fragile. At the heart of these arguments is the contention that the sustainability of reform is undermined by the use of a transitory policy solution—external oversight—to remedy what in many cases is a chronic organizational problem.³¹ In the absence of persistent external oversight and accountability, the argument goes, the affected bureaucracy can, and perhaps must, revert to *ex ante* operating procedures.

Two examples illustrate the point. Despite the significant gains made following the *Brown* decision,³² over the last twenty years or so, scholars have documented the increased segregation of primary and secondary school children along racial, economic, and linguistic lines.³³ Some contend that resegregation has occurred as a direct result of limitations placed on the ability of federal district

²⁷ PHILLIP J. COOPER, *HARD JUDICIAL CHOICES: FEDERAL DISTRICT COURT JUDGES AND STATE AND LOCAL OFFICIALS* (1988).

²⁸ See, e.g., MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004).

²⁹ Vincent M. Nathan, *Have the Courts Made a Difference in the Quality of Prison Conditions? What Have We Accomplished to Date?*, 24 PACE L. REV. 419 (2004).

³⁰ Jonathan Brant, *Pennhurst, Romeo, and Rogers: The Burger Court and Mental Health Law Reform Litigation*, 4 J. LEGAL MED. 323 (1983).

³¹ Michele Deitch, *The Need for Independent Prison Oversight in a Post-PLRA World*, 24 FED. SENT'G REP. 236 (2012).

³² CHARLES T. CLOTFELTER, *AFTER BROWN: THE RISE AND RETREAT OF SCHOOL DESEGREGATION* 48 (2004).

³³ See, e.g., Erwin Chemerinsky, *The Segregation and Resegregation of American Public Education: The Court's Role*, 81 N.C. L. REV. 1597 (2003); Sean F. Reardon et al., *Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 J. POL'Y ANALYSIS & MGMT. 876 (2012).

court judges to continue to manage local school districts.³⁴ Rights-based reforms achieved through litigation against state prison systems have eroded under similar circumstances. A recent examination of the Arizona Department of Juvenile Corrections, which operated under federal control between 2004 and 2007, documented post-termination slippage in two areas critical to the initial reform effort: suicide prevention and inmate education.³⁵ In each case, the absence of external pressure to adhere to new operational protocols corresponded with a reversion to pre-intervention practices.

B. *Evaluating Organizational Reform*

The term institutionalization is used to define the process of converting a reform effort into an established part of the organization's normal functioning³⁶ and "a way of regularly conducting . . . business."³⁷ According to Oliver,³⁸ once organizational activities are institutionalized, they are assumed to become relatively stable, enduring, reproducible, and sustainable over long periods of time without continuing justification. In this sense, "institutionalized" reforms are synonymous with "sustainable," "enduring," and "lasting" changes.³⁹

Identifying the point in time when a reform implementation effort ends and institutionalization begins is a complex task. This determination is particularly difficult in part as a result of the fact that the complex and perpetual nature of many implementation efforts makes a fixed end point difficult to identify. It is similarly difficult to identify the point at which assessment of a program's sustainability should begin. Here too the nature of the analysis resists a definitive, dichotomous answer, and what little research does exist provides conflicting

³⁴ GARY ORFIELD, *SCHOOLS MORE SEPARATE: CONSEQUENCES OF A DECADE OF RESEGREGATION 2* (2001), <https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/schools-more-separate-consequences-of-a-decade-of-resegregation/orfield-schools-more-separate-2011.pdf>; Chemerinsky, *supra* note 33.

³⁵ Melanie Ann Taylor, *A Case Study of the Civil Rights of Institutionalized Persons Act: Reforming the Arizona Department of Juvenile Corrections* (May 2013) (unpublished Ph.D. dissertation, Arizona State University), http://repository.asu.edu/attachments/110593/content/Taylor_asu_0010E_13015.pdf.

³⁶ THOMAS G. CUMMINGS & CHRISTOPHER G. WORLEY, *ORGANIZATION DEVELOPMENT AND CHANGE* 189 (8th ed. 2005).

³⁷ TRENT IKERD & SAMUEL WALKER, U.S. DEP'T OF JUSTICE, *MAKING POLICE REFORMS ENDURE: THE KEYS FOR SUCCESS 5* (2010), <http://ric-zai-inc.com/Publications/cops-p176-pub.pdf>.

³⁸ Christine Oliver, *The Antecedents of Deinstitutionalization*, 13 *ORG. STUD.* 563 (1992).

³⁹ *Id.* at 581.

guidance. Some scholars believe that analysis should begin after one year;⁴⁰ others say institutionalization takes somewhere between five and ten years to manifest.⁴¹

Previous scholarship has employed various approaches to examine the institutionalization of organizational reform, beginning with an assessment of staff response. This can be accomplished by measuring both the extent to which organizational actors are aware of and understand changes to policy and agency priorities brought on by the reform,⁴² as well as “the degree to which intervention behaviors are actually performed.”⁴³

Staff willingness to adopt new operational protocols is often couched in terms of organizational culture. Policing scholars have consistently found cultural change—measured in terms of individual officer preferences, norms, and values—predictive of institutionalized reform.⁴⁴ The sustainability of pattern or practice reform is at least in part likely to be a function of the degree to which street and mid-level officers, as well as department leadership, have come to view both the letter and the spirit of the settlement as central to the department’s mission and reflective of the department’s broader approach to policing.

Yet organizational reform is rarely pursued for these ends. Cultural and/or behavioral change is typically instrumental, sought as a means to improving certain measurable outcomes.⁴⁵ Since the early 1990s, public management scholars have advocated the use of outcomes to measure the performance of public agencies and individual bureaucrats, rather than intangibles like attitudes or culture.⁴⁶ The notion of “measuring what matters” is a strong current in policing research as well.⁴⁷ Police practitioners are also heavily dependent on these data—arrest rates, use of force statistics, demographic and geographic data, etc.—to drive officer behavior and evaluate policy change. The Compstat movement is one such example; predictive policing and crime mapping are others.

Part of the challenge in evaluating the durability of organizational reform is identifying performance measures that accurately identify sustainable change.

⁴⁰ NHS MODERNISATION AGENCY, IMPROVEMENT LEADER’S GUIDE TO SUSTAINABILITY AND SPREAD (2002).

⁴¹ John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, 73 HARV. BUS. REV., Mar.-Apr. 1995.

⁴² Trent E. Ikerd, *Beyond “Flavor of the Month”: Institutionalizing Problem-Oriented Policing (POP) in the CMPD*, 33 POLICING: AN INT’L J. OF POLICE STRATEGIES & MGMT. 179 (2010).

⁴³ CUMMINGS & WORLEY, *supra* note 36, at 196.

⁴⁴ See, e.g., WESLEY G. SKOGAN & SUSAN M. HARTNETT, COMMUNITY POLICING: CHICAGO STYLE (1997); IKERD & WALKER, *supra* note 37.

⁴⁵ Kathryn E. Newcomer, *Using Performance Measurement to Improve Public and Nonprofit Programs*, 75 NEW DIRECTIONS FOR EVALUATION 5 (1997).

⁴⁶ Robert D. Behn, *Why Measure Performance? Different Purposes Require Different Measures*, 63 PUB. ADMIN. REV. 586 (2003).

⁴⁷ NAT’L INST. OF JUSTICE, MEASURING WHAT MATTERS: PROCEEDINGS FROM THE POLICING RESEARCH INSTITUTE MEETINGS 151 (Robert H. Langworthy ed., 1999).

Two types of outcome measures are relevant, beginning with systematic metrics that establish broad, agency-wide performance. First, in terms of pattern or practice reform, several such indicators are relevant, including frequency of officer use of force incidents, citizen complaints, and civil suits filed against the department. In fact, nearly every key stakeholder interviewed as a part of this research stated that trend data is the most useful way to gauge the effectiveness of a reform effort and a department's progress toward institutionalization.

Second, an organization's ability to sustain change can also be evaluated in terms of its ability to avoid large-scale "performance crises." These events can take the form of isolated, high profile incidents, like a police shooting or a particularly vicious use of force caught on tape. Think Rodney King. Even one such episode can shake the public's confidence in the agency, negatively affect employee morale, and weaken organizational support for departmental leadership. To illustrate the magnitude of such a crisis, Oliver argues that the Space Shuttle *Challenger* disaster undercut the agency's reputation and "provoked serious doubts within the organization about a range of long-standing practices and procedures."⁴⁸ Along the same lines, Cincinnati City Manager Milt Dohoney acknowledged,

[T]he only thing that could undo the good that's been done is for [the Cincinnati Police Department] to have a number of questionable situations at the street level where a citizen gets either seriously injured or is the recipient of a use of deadly force [T]hat can bring all of that past baggage back up. You can have one incident that really gets the community on edge.⁴⁹

The perception of systematic and protracted corruption—LAPD's Rampart scandal, for instance—would no doubt have a similar destabilizing effect in a post-reform jurisdiction.

To summarize, scholars have examined the sustainability of organizational reform using four interrelated metrics: (1) staff knowledge of and compliance with new protocols; (2) the extent to which staff culture reflects reform values; (3) trend-based outcome data; and (4) the presence or absence of performance crises. This research will track pattern or practice institutionalization by examining metrics 3 and 4. What follows is a discussion of the data and method used.

⁴⁸ Oliver, *supra* note 38, at 568.

⁴⁹ Joshua M. Chanin, *Negotiated Justice? The Legal, Administrative, and Policy Implications of "Pattern or Practice" Police Misconduct Reform 228* (July 6, 2011) (unpublished Ph.D. dissertation, American University), <https://www.ncjrs.gov/pdffiles1/nij/grants/237957.pdf>.

III. CASE SELECTION, DATA, AND METHOD

Thirteen of the twenty-four jurisdictions facing federal oversight between 1994 and 2010 reached substantial compliance with the terms of their settlement agreement. Of those, only Pittsburgh, Washington, D.C., Cincinnati, Prince George's County, and Los Angeles were willing (or able) to share relevant outcome data.⁵⁰ These data, including use of force incidence, citizen-based allegations of misconduct, officer disciplinary decisions, and civil litigation related to police misconduct, were drawn from agency annual reports, independent monitor reports, and the FBI's Uniform Crime Report database. Where data was not available publicly, Freedom of Information Act requests were filed with affected police departments and other relevant city agencies.

Table 1. Sources of Data and Years of Availability

	Pittsburgh	Washington, D.C.	Prince George's County	Los Angeles	Cincinnati
Use of force	PBP (2004–2014)	MPD (2001–2015)	NA	LAPD (2001–2015)	CPD (1995–2012)
Civil litigation	NA	City of DC (2000–2010)	NA	City of LA (2000–2010)	NA
Citizen complaints	CPRB (1998–2014)	OPC (2001–2015)	CCOP (2006–2014)	NA	CCA (2005–2012)
Crime	UCR (1985–2012)	UCR (1985–2012)	UCR (1985–2012)	UCR (1985–2012)	UCR (1985–2012)

Note: PBP = Pittsburgh Bureau of Police; MPD = Metropolitan Police Department; CPD = Cincinnati Police Department; CPRB = Citizen Police Review Board; OPC = Office of Police Complaints; CCA = Citizen Complaint Authority; CCOP = Citizen Complain Oversight Panel; UCR = Uniform Crime Report.

As is clear from Table 1, both the sources and availability of these data vary greatly from jurisdiction to jurisdiction. In many cases, data were simply not available for the pre-reform period. Thus, establishing performance level benchmarks was all but impossible. In Cincinnati, the Citizen Complaint Authority, which was created as a result of the reform effort, began collecting data in 2005, some three years after the initiation of federal reform. In other instances, the analysis was complicated by changes in the way agencies captured and presented relevant information. For example, between 1998 and 2005, Washington, D.C. Metropolitan Police Department (MPD) shifted how they

⁵⁰ The remaining eight jurisdictions include: the State of New Jersey; Steubenville, OH; Montgomery County, MD; Highland Park, IL; Buffalo, NY; Mount Prospect, IL; Villa Rica, GA; and Cleveland, OH.

defined and categorized officer use of force incidents, rendering a consistent pre-post analysis all but impossible.

As a result of these deficiencies, the analysis presented falls short of a formal program evaluation and as such no causal conclusions are offered. There are, however, sufficient data to analyze the bureaucratic response to external reform mandates. Changes observed across each metric over time are evaluated as separate, but interrelated, markers of the effects of reform and the sustainability of such changes. Insights from several stakeholders, including independent monitors, police department leadership, and relevant political and community leaders were gathered from several in-depth interviews and are used to supplement the quantitative analysis.⁵¹ Newspaper reports and other secondary sources were helpful in establishing context and tracking the incidence of performance crises.

IV. FINDINGS

Before presenting the results of this analysis, it should be noted that in most cases, neither the effects of reform nor institutionalization should be measured dichotomously.⁵² Organizational change is something that proceeds incrementally and thus is most effectively measured in degrees. With that in mind, the analysis proceeds chronologically, beginning with Pittsburgh.

A. Pittsburgh, Pennsylvania

In April, 1997 the city of Pittsburgh agreed to settle DOJ claims that the Bureau of Police (BPP) had engaged in a pattern or practice of unlawful activity, including the use of excessive force and a failure to discipline officers adequately.⁵³ The consent decree was in place until September 2002.⁵⁴

Shortly after the decree was lifted, the Vera Institute of Justice attempted to gauge the degree to which “local officials can maintain [consent decree] reforms

⁵¹ The research that preceded this paper received Institutional Review Board approval. All but one interviewee agreed to speak on the record. A subject list and interview transcripts are on file with the author.

⁵² It is worth noting that not all reform efforts proceed incrementally, and some fail to take hold at all. See Samuel Walker, *Does Anyone Remember Team Policing? Lessons of the Team Policing Experience for Community Policing*, 12 AM. J. POLICE 33, 34–35 (1993) (describing the failure of the team policing reform effort); see also LAWRENCE W. SHERMAN, SCANDAL AND REFORM: CONTROLLING POLICE CORRUPTION (1978) (describing the failure of the effort to require officers to obtain a college degree).

⁵³ Consent Decree, *United States v. City of Pittsburgh*, 2:97-cv-00354-RJC (W.D. Pa. Feb. 26, 1997), <https://www.justice.gov/crt/united-states-district-court-western-district-pennsylvania-united-states-america-plaintiff-v-0>.

⁵⁴ Stipulated Order, *United States v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. Sept. 30, 2002), <https://www.justice.gov/crt/united-states-district-court-western-district-pennsylvania>.

after the federal government and its monitor withdraw.”⁵⁵ Drawing on survey data and interviews with PBP officers and leaders from key civil society groups gathered between March, 2003 and March, 2004, Vera evaluated the sustainability of changes to police behavior, officer morale, and public opinion brought on by federal oversight.⁵⁶

Three themes emerge from this research. First, PBP officers seemed to understand and respect the goals of the reform, but were strongly resentful of the process.⁵⁷ In fact, only a tiny percentage of those surveyed felt the reforms had improved performance or produced more professional encounters with citizens.⁵⁸ Second, despite this opposition, the first year or so after federal oversight was lifted, PBP maintained operation of various reform initiatives, including their early intervention system, new officer training protocols, and regular oversight inspections.⁵⁹ Third, a majority of community leaders and members of the public saw the PBP as effective in stopping crime, helping victims of crime, and working together with city residents to solve local problems.⁶⁰ Based on these findings, the authors conclude that “the implementation of the consent decree requirements in Pittsburgh dramatically changed the culture of the Bureau of Police” and that key departmental changes “survive[d] the life of the decree intact.”⁶¹

Much has happened in Pittsburgh since the study was published, including three mayoral transitions, the installation of four new police chiefs, and a protracted budget crisis. Recent data suggest that advances in officer accountability and community trust have eroded considerably over the last several years.

⁵⁵ ROBERT DAVIS, NICOLE HENDERSON & CHRISTOPHER ORTIZ, CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?: THE PITTSBURGH CONSENT DECREE 2 (2005), http://www.vera.org/sites/default/files/resources/downloads/277_530.pdf. Because the Office of Municipal Investigations (OMI) remained under the consent decree during the period when Vera examined the sustainability of reform at PBP, their 2005 report does not address efforts to institutionalize changes at OMI.

⁵⁶ *Id.*

⁵⁷ *Id.* at 21.

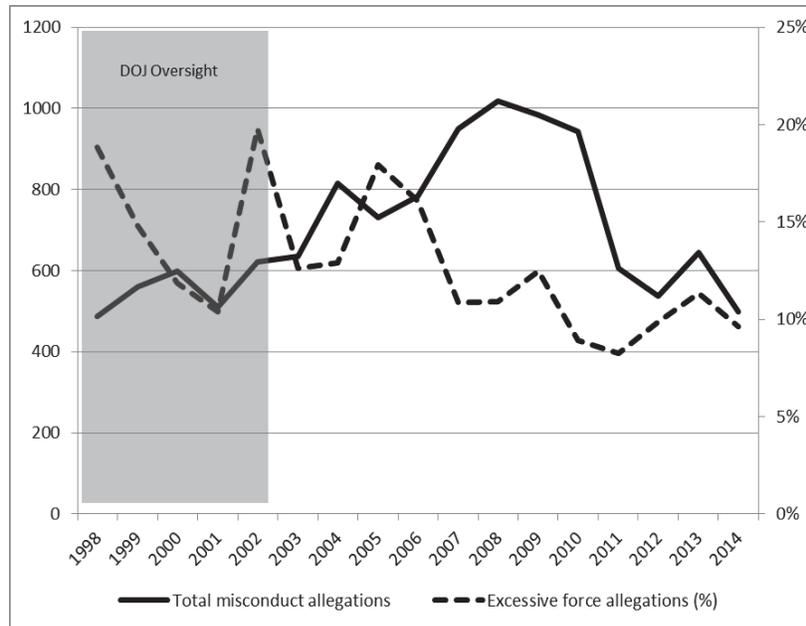
⁵⁸ *Id.* at 19–20.

⁵⁹ *Id.* at 7–14.

⁶⁰ *Id.* at 39.

⁶¹ *Id.* at 40–41.

Figure 1. Citizen Complaints of Police Misconduct in Pittsburgh (1998–2014)



Source: Pittsburgh Citizen Police Review Board

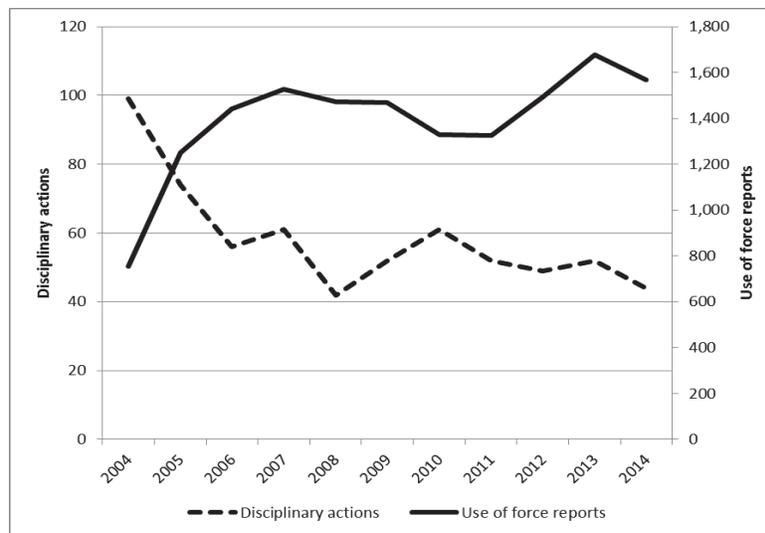
Figure 1 charts the citizen-based complaints filed against Pittsburgh Bureau of Police officers between 1998 and 2014. The figure shows a steady increase in total allegations until 2008, with a significant uptick occurring following consent decree (CD) termination. On average, there were 556 allegations made annually against PBP officers during the implementation period. In the six years immediately following termination, the mean annual total jumped to 822, an increase of 48 percent. Complaints have fallen precipitously in recent years, with the 499 recorded in 2014, the second lowest annual total since the CPRB came into existence. The percentage of complaints alleging unlawful use of force has also dropped fairly steadily since the DOJ terminated their oversight. That this occurred, even as annual complaint totals spiked, should be seen as circumstantial evidence of PBP's success in mitigating such incidents.

Citizen allegations of misconduct are important ways of assessing PBP officers' use of discretionary authority, their willingness to comply with law and Bureau policy, as well as their general attitudes toward city residents⁶²—the very behavior targeted by the consent decree, either directly or indirectly.

⁶² Kim M. Lersch, *Police Misconduct and Malpractice: A Critical Analysis of Citizens' Complaints*, 21 POLICING: AN INT'L J. POLICE STRATEGIES & MGMT. 80 (1998); Jeff Rojek & Scott H. Decker, *Examining Racial Disparity in the Police Discipline Process*, 12 POLICE Q. 388 (2009);

These data also provide a window into the operation of management and accountability systems created as a product of the reform effort.⁶³ Officer training, accountability infrastructure, and chain-of-command oversight all exist to either prevent or mitigate the kind of behavior that generates citizen complaints. What is more, citizen complaints help to define the Bureau's culture.⁶⁴ A culture that values the rule of law, citizen rights, and accountability would surely have relatively fewer such complaints than a department that either overlooked or treated with impunity violations along the lines of the categories measured below. According to former Washington, D.C. Metropolitan Police Department (MPD) chief Charles Ramsey,⁶⁵ citizen complaints are an important metric for tracking officer behavior and the sustainability of those systems, cultural norms, and values developed during the CD process: "Citizen complaints . . . [must be] review[ed] very carefully . . . to make sure that not just with use of force in terms of physical force, but even verbal abuse and complaints, things of that nature. . . . [A]ll those things . . . we want to monitor."

Figure 2. PBP Officer Use of Force, Disciplinary Actions (2004–2014)



Sources: Pittsburgh Citizen Police Review Board; Pittsburgh Bureau of Police

SAMUEL E. WALKER & CAROL A. ARCHBOLD, *THE NEW WORLD OF POLICE ACCOUNTABILITY* (2d ed. 2013).

⁶³ CARL B. KLOCKARS ET AL., *ENHANCING POLICE INTEGRITY* (2006).

⁶⁴ John D. McCluskey & William Terrill, *Departmental and Citizen Complaints as Predictors of Police Coercion*, 28 *POLICING: AN INT'L J. OF POLICE STRATEGIES & MGMT.* 513 (2005).

⁶⁵ Interview with Charles Ramsey, former Washington, D.C. Metropolitan Dep't Police Chief (May 20, 2010).

Given the several factors that may influence citizen complaint data, including the ease of filing complaints and trust in the complaint investigation process, and the ambiguous relationship between complaints and police behavior,⁶⁶ it is helpful to view these kinds of data together with other indicators of officer performance. Figure 2 tracks both use of force reports filed by PBP officers and the disciplinary actions taken by PBP leadership. Though the relationship between the two variables is unknown, that use of force has increased since 2004 just as disciplinary actions have declined suggests a curious and potentially troubling finding.

There are several possible explanations. The rise in use of force incidence could be a reflection of a department-wide emphasis on more accurate reporting, with officers mandated to document all use of force regardless of its nature or perceived insignificance. The decline in use of force-related citizen complaints is in line with the idea that documentation, not actual use of force, has increased. It is possible too that the reduction in disciplinary actions is consistent with this narrative. It is also quite possible that the combination of these trends is evidence of a department whose officers have become more violent and less accountable.

Though certainly not definitive, the broader context, including a recent history of political and departmental corruption and several high-profile incidents of police use of force, lends some credibility to the latter interpretation.

Robert McNeilly was hired in April 1996 and served as Chief in Pittsburgh until January 2006. McNeilly remains an outspoken proponent of DOJ-led reform and believes that the consent decree process helped to transform the PBP.⁶⁷ Despite his reputation as a “micromanager” and a “disciplinarian,” many believe the PBP was more accountable, more lawful, and more community-friendly during McNeilly’s tenure than it was before his hiring.⁶⁸

The same is not said of the PBP today,⁶⁹ and a concerted effort to move away from McNeilly’s leadership may be partly to blame. According to McNeilly, his longtime political battles with Mayor-elect Bob O’Connor precluded a cooperative transition. “I knew (O’Connor) wouldn’t keep me on for good, but I offered to stay there until [new chief] Costa settled in . . . to smooth the transition,” McNeilly

⁶⁶ Compare Kim M. Lersch & Tom Mieczkowski, *Who are the Problem-Prone Officers? An Analysis of Citizen Complaints*, 15 AM. J. POLICE 3, 23–24 (1996), with McCluskey & Terrill, *supra* note 64.

⁶⁷ Interview with Robert McNeilly, Police Chief, Elizabeth Twp. Police, in Pittsburgh, Pa. (Mar. 1, 2010).

⁶⁸ Michael A. Fuoco, *Police Chief McNeilly’s Tenure Saw Wrenching Changes*, PITTSBURGH POST-GAZETTE (Jan. 9, 2006), <http://www.post-gazette.com/stories/local/neighborhoods-city/police-chief-mcneillys-tenure-saw-wrenching-changes-416443/>.

⁶⁹ Paula R. Ward, *Justice Dept.’s Decision in Jordan Miles Case Increases Distrust*, PITTSBURGH POST-GAZETTE (May 8, 2011), <http://www.post-gazette.com/stories/local/neighborhoods-city/justice-depts-decision-in-jordan-miles-case-increases-distrust-296751/>.

said.⁷⁰ O'Connor never responded to McNeilly's request to have a "frank discussion" about the consent decree, and through his spokesperson issued an icy dismissal: "[McNeilly] offered to share what he'd done to comply with the consent decree, but it's a matter of public record what was done, and Chief Costa is more than qualified to continue those programs."⁷¹

Luke Ravenstahl took over as acting mayor in September 2006. Nathan Harper, a career PBP officer and Ravenstahl nominee, took control of the department shortly thereafter. Harper, like McNeilly before him, was seen as an extension of the mayor's office and the city's Director of Public Safety. In McNeilly's day, however, as the consent decree was being developed and implemented, the city's executive branch largely supported reform, whereas today there appears to be other priorities driving city administration.⁷² Whether or not changes in PBP's leadership can be causally connected to recent backsliding, it is hard to ignore the fact that many of PBP's biggest problems have occurred since McNeilly's firing.

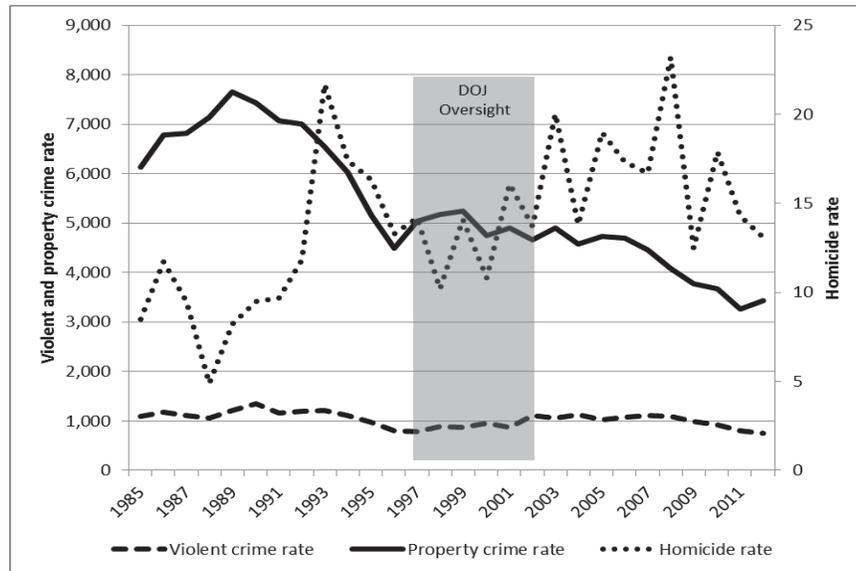
To wit, between 2003 and 2005, PBP officers averaged 1,033 use of force incidents per year. Between 2006 and 2012, that number jumped to 1,427, an increase of 38 percent. Similarly, the average number of assaults committed against PBP officers in the years after McNeilly was fired was 408, some 49 percent higher than the average committed during McNeilly's tenure. This occurred as both property and violent crime trended down.

⁷⁰ Jill King Greenwood, *Ex-Police Chief Says Mayor Snubbed Him*, PITTSBURGH TRIBUNE-REVIEW (Mar. 6, 2006), <http://triblive.com/x/archive/1416632-74/archive-story>.

⁷¹ *Id.*

⁷² Joe Smydo, *Mayor Moves to Replace Some Members of Police Review Board*, PITTSBURGH POST-GAZETTE (June 19, 2010), <http://www.post-gazette.com/stories/local/neighborhoods-city/mayor-moves-to-replace-some-members-of-police-review-board-251953/>.

Figure 3. Crime in Pittsburgh (1985–2012)



Source: FBI Uniform Crime Report

Several recent high-profile incidents contribute to the notion that changes made pursuant to the consent decree may have begun to erode with the replacement of Robert McNeilly. In September 2009, Pittsburgh hosted the G-20 summit. A cause célèbre for anti-globalization and anti-corporate activists, significant protests tend to accompany the annual G-20 meetings. 2009 was no exception. Several hundred protesters were arrested as the city sustained an estimated \$50,000 in property damage.⁷³

A September 2010 suit filed by the ACLU on behalf of a class of protesters claims the PBP surrounded them, “refused to allow them to leave, ordered them to lie on the ground and placed them in handcuffs” in violation of their First Amendment right to assembly. The protesters also allege that the police “falsely charged them with failure to disperse and disorderly conduct.”⁷⁴

The aftermath of the G-20 protests exacerbated an already contentious relationship between Pittsburgh’s independent Citizen Police Review Board

⁷³ Associated Press, *83 Arrested at G-20 in Pittsburg, \$50,000 in Damage*, PENNLIVE (Sept. 25, 2009), http://www.pennlive.com/midstate/index.ssf/2009/09/83_arrested_at_g-20_in_pittsbu.html.

⁷⁴ Interview with Robert McNeilly, Police Chief, Elizabeth Twp. Police, in Pittsburg, Pa. (Mar. 1, 2010). In fairness to the police, crowd control and protest management were not specific areas of focus under the pattern or practice reform initiative. The police contend that their behavior in response to the G-20 protests was entirely lawful and well-within department protocol. Alexandra Frean & David Byers, *Police Embroiled in Violent Battles with G20 Protesters*, TIMES (Sept. 24, 2009), <http://www.thetimes.co.uk/tto/news/world/americas/article2001320.ece>.

(CPRB) and the city's executive branch.⁷⁵ After receiving scores of G-20-related complaints, the CPRB moved to open a general investigation of PBP's actions during the protest. The mayor's office successfully litigated to prevent the CPRB from accessing G-20 documents.⁷⁶ After losing an initial round in the legal fight, Mayor Luke Ravenstahl replaced five of the Board's seven members, a move one city councilmember believes was an attempt to "circumvent" or "destroy" the CPRB.⁷⁷ Beyond its reflection of alleged police abuse, the city's response to the G-20 investigations suggests a political class, led by the Mayor, which is reflexively defensive of the police and the politically powerful officer union, and skeptical of transparency and accountability.

Less than five months out from the G-20 meetings and just over seven years after the consent decree was lifted, the Pittsburgh Bureau of Police suffered a second major performance crisis. Three undercover Pittsburgh Bureau of Police officers attempted to stop Jordan Miles, a classical musician and a high school honor student, near his residence in Homewood, a largely African-American neighborhood on Pittsburgh's east side.⁷⁸ Miles believed he was about to be robbed and attempted to flee the scene.⁷⁹ After he fell, the officers allegedly delivered several blows to Miles's head and back, ultimately sending him to the hospital. Miles was arrested for aggravated assault and resisting arrest, though the charges were later dismissed.⁸⁰ On March 31, 2014, after several years in court, a jury found in Miles' favor on his claim of false arrest, but denied the excessive force charge; he was awarded \$119,000 in damages.⁸¹

In March 2013, former PBP chief Nathan Harper was indicted on federal corruption and tax evasion charges stemming from an alleged scheme to divert city

⁷⁵ Sadie Gurman, *Chief Ordered to Give Police Review Board G-20 Reports*, PITTSBURGH POST-GAZETTE (Mar. 19, 2010), <http://www.post-gazette.com/local/city/2010/03/19/Chief-ordered-to-give-police-review-board-g-20-reports/stories/201003190154>.

⁷⁶ *Court Rules for Pittsburgh on G20 Arrests*, UNITED PRESS INT'L (Dec. 29, 2011), http://www.upi.com/Top_News/US/2011/12/29/Court-rules-for-Pittsburgh-on-G20-arrests/UPI-57881325188557/.

⁷⁷ Joe Smydo & Moriah Balingit, *Controversy Addressed Over Police Review Board Changes in City*, PITTSBURGH POST-GAZETTE (June 23, 2010), <http://www.post-gazette.com/local/city/2010/06/23/Controversy-addressed-over-police-review-board-changes-in-city/stories/201006230185>.

⁷⁸ Between 93 and 95 percent, according to the 2010 U.S. Census. UNIV. CTR. FOR SOCIAL & URBAN RESEARCH, UNIV. OF PITTSBURGH, CITY OF PITTSBURGH NEIGHBORHOOD PROFILES, CENSUS 2010 SUMMARY FILE 1 (SF1) DATA 47-49 (2011), http://ucsur.pitt.edu/wp-content/uploads/2014/11/UCSUR_SF1_NeighborhoodProfiles_July2011.pdf.

⁷⁹ Paula R. Ward, *Judge Dismisses Charges against CAPA Student*, PITTSBURGH POST-GAZETTE (Mar. 5, 2010), <http://www.post-gazette.com/stories/local/neighborhoods-city/judge-dismisses-charges-against-cap-a-student-236378/>.

⁸⁰ *Id.*

⁸¹ Rich Lord & Liz Navratil, *Jordan Miles Jury Reaches Split Verdict*, PITTSBURGH POST-GAZETTE (Mar. 31, 2014), <http://www.post-gazette.com/local/city/2014/03/31/Jury-reaches-verdict-in-Jordan-Miles-civil-trial/stories/201403310142>.

funds for personal use.⁸² Harper was sentenced in February 2014 to an eighteen-month prison sentence;⁸³ he was released from federal custody in May 2015.⁸⁴

Of course, these events do not alone signal PBP's failure to sustain pattern or practice reforms. Longstanding and unaddressed tension between the police and minorities, as well as shifts in economic and other social conditions, may help explain incidents like the G-20 protest and the alleged beating of Jordan Miles. Taken together, the incidents do seem to suggest an erosion of the accountability infrastructure developed during the reform period. Regardless of their cause, such incidents have had a dramatic effect on police-community relations in the city and continue to negatively affect public perceptions of the Bureau.

With all of that said, the current state of police-community relations in Pittsburgh may be as strong as it has been since 2002, when the consent decree was dissolved. Former Madison, Wisconsin captain Cameron McLay was hired in September 2014 and immediately set about attempting to reform a department he saw as lacking accountability and community trust.⁸⁵ Citizens Police Review Board Executive Director Beth Pittenger, who has a long history of tension with PBP leadership,⁸⁶ has seen enough to call McLay's first year on the job "extraordinary."⁸⁷ Pittenger went on: "In terms of reorganization, creating a new identity in the public perspective and keeping everyone safe, cops as well as the

⁸² Jonathan D. Silver et al., *Attorney: Ex-Pittsburgh Police Chief Nate Harper to Plead Guilty*, PITTSBURGH POST-GAZETTE (Mar. 22, 2013), <http://www.post-gazette.com/stories/local/region/federal-grand-jury-meeting-suspended-police-finance-manager-on-hand-680415/>.

⁸³ Rich Lord, *Former Pittsburgh Chief Harper Gets 18-Month Prison Sentence*, PITTSBURGH POST-GAZETTE (Feb. 25, 2014), <http://www.post-gazette.com/local/city/2014/02/25/Former-Pittsburgh-police-chief-Nathan-Harper-sentenced/stories/201402250123>.

⁸⁴ Luke Nozicka, *Former Pittsburgh Police Chief Nate Harper Released from Prison*, PITTSBURGH POST-GAZETTE (May 30, 2015), <http://www.post-gazette.com/local/city/2015/05/30/Former-Pittsburgh-police-chief-Nate-Harper-released-from-prison/stories/201505300157>.

⁸⁵ Dale Shoemaker, *Chief on Duty: Pittsburgh Police Chief Cameron McLay Wants to Change His Force, and He Knows Just How He's Going To Do It*, THE PITT NEWS (Sept. 18, 2015), <http://pittnews.com/article/63046/news/chief-on-duty-pittsburgh-police-chief-cameron-mclay-wants-to-change-his-force-and-he-knows-just-how-hes-going-to-do-it>.

⁸⁶ Jonathan D. Silver, *City's Citizen Police Review Board Still a Subject for Debate*, PITTSBURGH POST-GAZETTE (May 3, 2005), <http://www.post-gazette.com/local/city/2005/05/03/City-s-Citizen-Police-Review-Board-still-a-subject-for-debate/stories/200505030245>; Christian Morrow, *Citizen's Police Review Board: Fire Pittsburgh Cop for Teacher Arrest*, PITTSBURGH COURIER (Mar. 26, 2014), <http://newpittsburghcourieronline.com/2014/03/26/citizen-police-review-board-fire-pittsburgh-cop-for-teacher-arrest/>.

⁸⁷ Rebecca Nuttall, *Cameron McLay Getting High Marks after First Year as Pittsburgh Police Chief*, PITTSBURGH CITY PAPER (Sept. 23, 2015), <http://www.pghcitypaper.com/pittsburgh/cameron-mclay-getting-high-marks-after-first-year-as-pittsburgh-police-chief/Content?oid=1855889>.

community, all of these things in the short time of a year are truly remarkable.”⁸⁸ While it is still in its early days, at least some of McLay’s rhetoric on accountability and transparency are supported by evidence. According to a recent analysis of 350 police websites, PBP was the second-most transparent department among those sampled.⁸⁹

B. *Washington, D.C.*

In June 2001, the District of Columbia and the Washington, D.C. Metropolitan Police Department (MPD) entered into a Memorandum of Agreement (MOA) designed eliminate a pattern or practice of excessive force.⁹⁰ The Department reached substantial compliance in June 2008, an occasion for former monitor Michael Bromwich to laud the Department and the process:

MPD has become a much more sophisticated police agency. . . . We believe that the City’s and MPD’s success in implementing the MOA’s reforms, which are now embedded in the Department’s internal policies and practices, stands as a model for municipalities and police departments across the country.⁹¹

MPD Chief Cathy Lanier paints a similar picture. Not only does she credit the MOA with significant improvements to the Department’s accountability infrastructure, but with catalyzing a shift in MPD’s officer culture. Changes made under the MOA are “the status quo now. It’s part of our daily operations. It’s what we do.”⁹² Despite their remarks, the evidence suggests a more complex picture of the institutionalization process.

⁸⁸ *Id.*

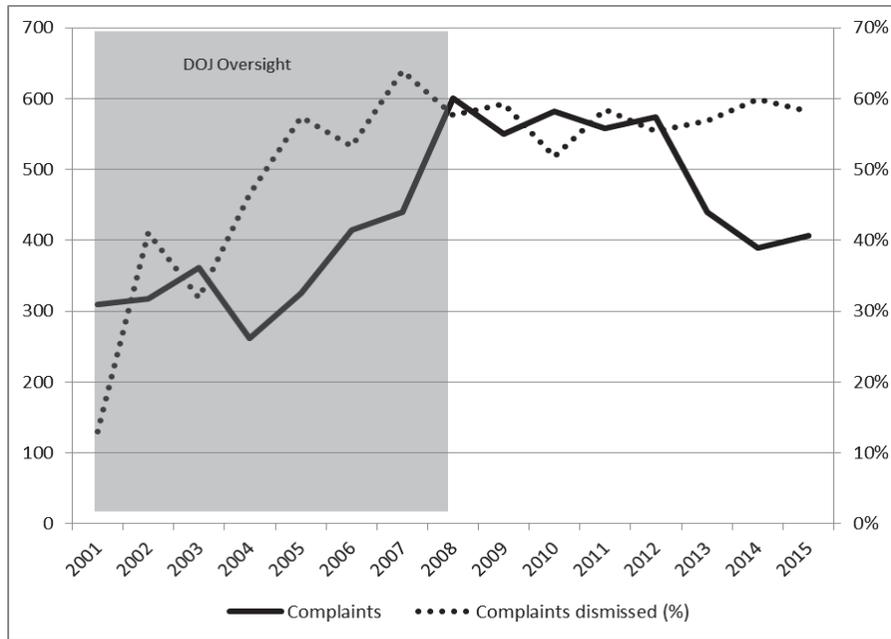
⁸⁹ On file with author.

⁹⁰ *Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, U.S. DEP’T OF JUSTICE (June 13, 2001), <https://www.justice.gov/crt/memorandum-agreement-united-states-department-justice-and-district-columbia-and-dc-metropolitan>.

⁹¹ BROMWICH, *supra* note 12, at 3–4.

⁹² Chanin, *supra* note 49, at 257.

Figure 4. Citizen Complaints Filed against MPD Officers (2001–2015)

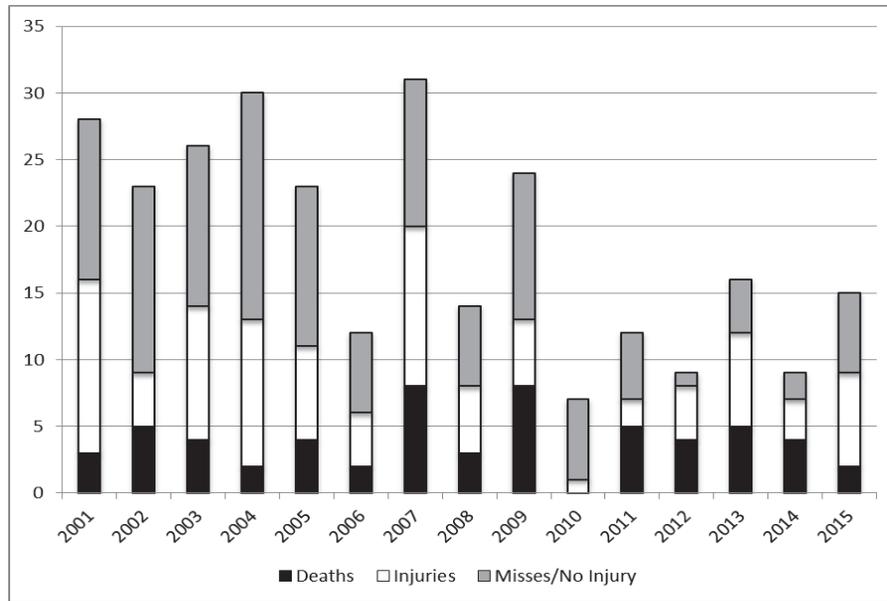


Source: Washington D.C. Office of Police Complaints

The total number of misconduct complaints levied against MPD officers increased steadily as the MPD implemented the terms of MOA. From 2001 through 2007, annual totals hovered around a mean of 347 complaints, reaching a high of 440 in 2007, 42 percent higher than the 310 filed in 2001. In 2008 (the MOA terminated in June of that year), however, total allegations increased to 600, an additional 27 percent jump. Between 2009 and 2012, residents filed an average of 566 complaints against MPD officers, well above the volume seen during implementation. As is clear in Figure 4, as complaint totals have been somewhat volatile since 2005, the rate of dismissal has been relatively stable over that period, with investigators determining that well over half of complaints filed were without merit.

Interpreting these results is tricky, particularly in the absence of a larger sample of data. The upward trend may simply indicate a steady increase in unlawful police activity. It may also signal that reform-based changes, including those designed to make the process of filing a complaint easier, were having the desired effect. But even if a simplified complaint process can account for the upward trend while the new policies were being implemented, it is unlikely that the effect of such changes would stretch beyond the first four or five years of reform. In other words, these policy changes do not seem to explain the observed post-reform spike. Six years' worth of data is not nearly enough to justify the conclusion that reform gains in D.C. have eroded.

Figure 5. MPD Officer Use of Deadly Force, by Incident Type (2001–2015)



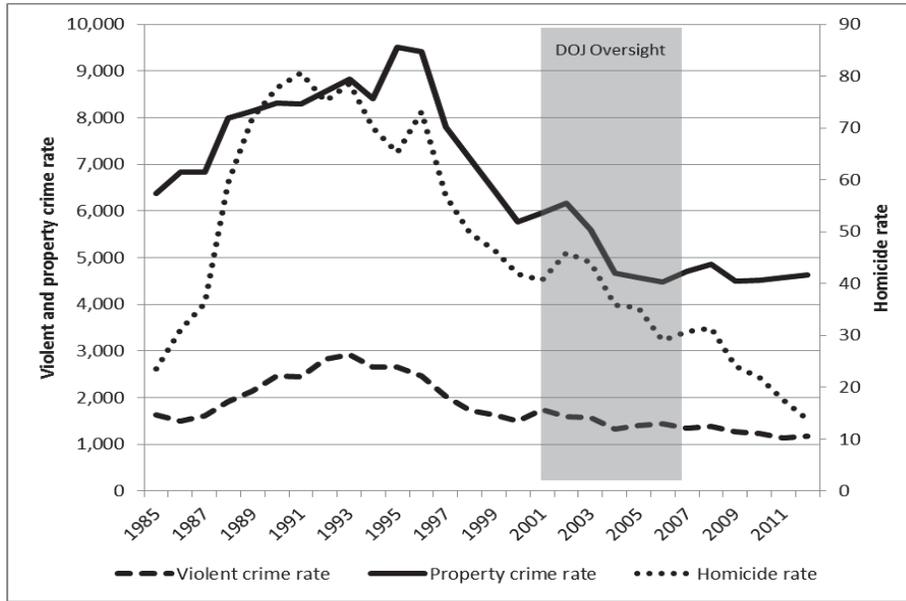
Sources: Washington D.C. Metropolitan Police Department

Figure 5 documents MPD use of deadly force between 2001 and 2015 broken down by incident type. Between 2001 and 2008, when the CD was terminated, MPD officers averaged 23.4 deadly force incidents per year, 44 percent higher than the 13.1 they have averaged since. Given the small sample and the lack of pre-MOA data from which to base comparisons, it is difficult to draw anything other than superficial conclusions. The absence of an immediate post-MOA spike is worth noting, particularly in light of the dramatic reporting by the *Washington Post* on MPD use of deadly force,⁹³ which is widely believed to have set in motion the DOJ pattern or practice investigation.⁹⁴ It is also worth noting that neither the MOA nor its dissolution appears to have affected the decades-long decline in the District's rate of violent or property crime, as is shown in Figure 6.

⁹³ See, e.g., Jeff Leen et al., *District Police Lead Nation in Shootings: Lack of Training, Supervision Implicated as Key Factors*, WASH. POST, Nov. 15, 1998, at A1.

⁹⁴ See BROMWICH, *supra* note 12, at app. D.

Figure 6. Crime in Washington, D.C. (1985–2012)



Sources: FBI Uniform Crime Report

Figure 7. Civil Litigation Alleging Police Misconduct in Washington D.C. (1999–2010)

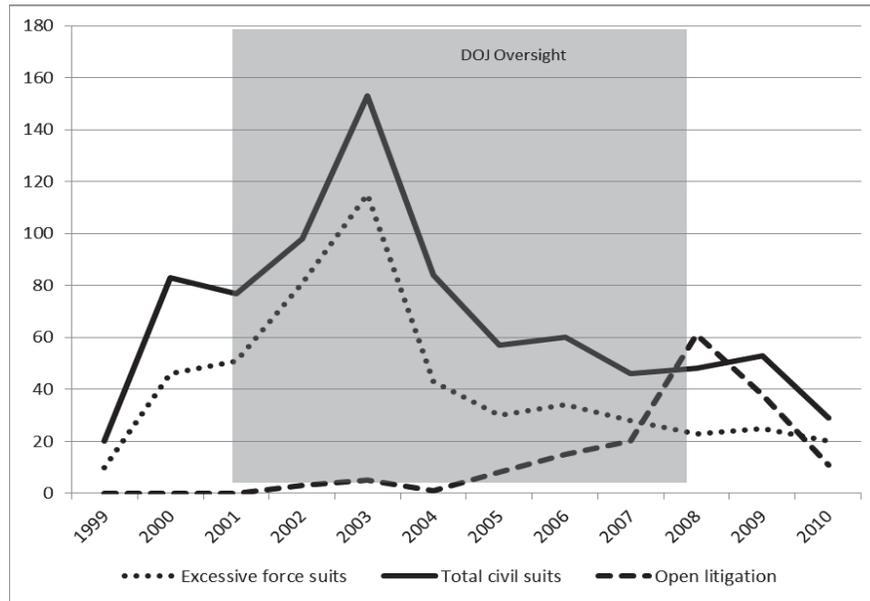


Figure 7 charts the total number of civil suits resulting in either a settlement or judgment in favor of plaintiffs filing use of force-related claims against the MPD. The significant spike that occurred between 2001 and 2004 is the result of litigation stemming from police action taken during the 2000 inauguration of George W. Bush⁹⁵ and the mass arrest in Pershing Park during a 2002 anti-globalization protest.⁹⁶ Combined, Washington, D.C. faced at least fifty-seven different suits and paid out a total \$34,420,295 in damages as a result of these events.⁹⁷ Non-protest litigation trended downward throughout the reform and has remained steady since the MOA was dissolved in 2008.

Figure 8. Pro-Plaintiff Awards in Litigation Alleging Police Misconduct in Washington D.C. (1999–2010)

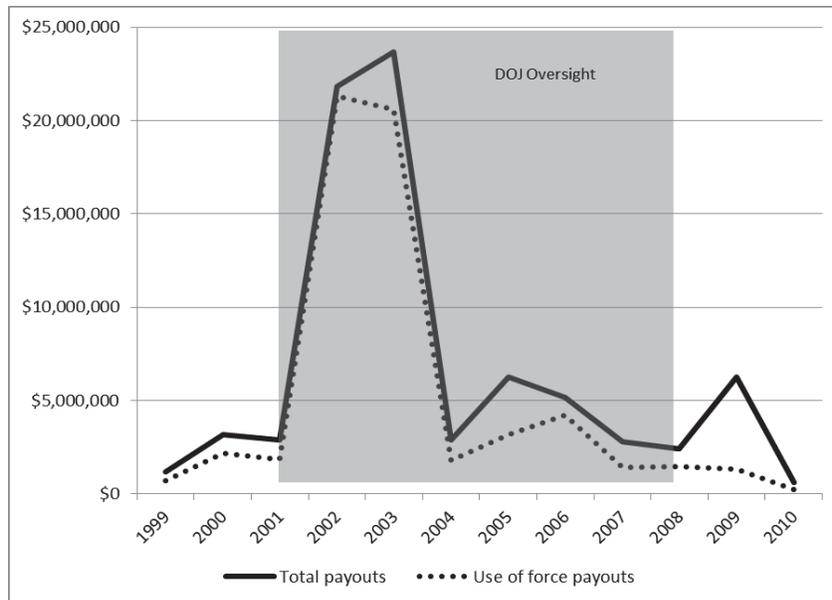


Figure 8 tracks the total dollar amounts paid out by the District as a result of force-related settlement/disposition awards for suits filed during that same period of time. The data show that non-protest payouts were flat during the

⁹⁵ Associated Press, *Protesters Scuffle with Police along Inaugural Route*, USA TODAY (Jan. 20, 2001), <http://usatoday30.usatoday.com/news/politics/inaug/2001-01-20-approtests.htm>.

⁹⁶ Julie Zauzmer, *Arrested Protesters Ask for Sanctions on District Officials*, WASH. POST (July 3, 2013), http://articles.washingtonpost.com/2013-07-03/local/40349777_1_plaintiffs-court-filing-attorney-general.

⁹⁷ These data are of limited value as a part of a broad review of MPD's efforts to sustain reform-related changes, as the settlement agreement did not address in any capacity policy related to mass protest. What is more, the incident occurred less than a year in to the implementation process.

implementation period and have continued to decline in the post-reform years.⁹⁸ On balance, both the rate and cost of litigation stemming from force-related misconduct was fairly stable during the implementation period and has continued to trend downward in the years following MOA termination.

Finally, while MPD has not faced the kind of major event or scandal that has plagued Pittsburgh in recent years, over ninety MPD officers were arrested between 2009, the first full year after the MOA was terminated, and 2012.⁹⁹ Police accountability expert Sam Walker argues that, in light of the fact that MPD's early intervention system is designed to identify and correct such problematic behavior, this pattern "raises very serious questions about whether the accountability procedures instituted by the MOA are functioning at all."¹⁰⁰

C. Cincinnati, Ohio

In April 2001, a white Cincinnati police officer shot and killed Timothy Thomas, an unarmed black teenager, setting off riots throughout the city.¹⁰¹ In response to a pattern of excessive force, the Department of Justice oversaw police reform in Cincinnati from April 2002 through April 2007. During this five-year period, in addition to the reforms required by the MOA, the Cincinnati Police Department (CPD) also implemented the terms of a privately negotiated settlement with several community groups and the local chapter of the Fraternal Order of Police. As a result of this unique arrangement, the CPD was not only required to reform its approach to police use of force and officer accountability, but also to develop and implement new crime control, order maintenance, and community relations strategies. The changes required of Cincinnati were broader and deeper than in any of the several other jurisdictions affected by the DOJ's pattern or practice initiative.

Six years removed from DOJ and monitor oversight, the CPD has experienced little or no discernable backsliding, a finding supported by consistent reductions in undesirable outcomes, including use of force incidence and allegations of abusive or unlawful behavior. In short, the reform effort in Cincinnati appears to have transformed the CPD.

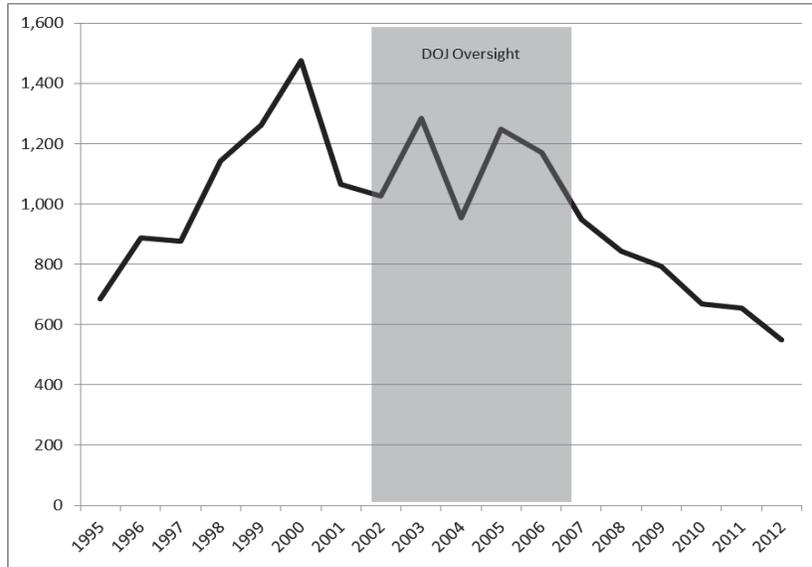
⁹⁸ A total of 68 force-related suits filed between 2003 and 2010 remain unresolved and have the potential to increase Washington, D.C.'s total annual payouts. Yet, even if one projects plaintiffs to win every outstanding case and receive the average non-protest payout awarded between 2000 and 2010 (\$57,096), the effect on annual totals would be marginal.

⁹⁹ Aubrey Whelan, *90-Plus Arrests of D.C. Cops in Under 4 Years*, WASH. EXAMINER (Sept. 9, 2012), <http://www.washingtonexaminer.com/90-plus-arrests-of-d.c.-cops-in-under-4-years/article/2507386>.

¹⁰⁰ Walker, *supra* note 23, at 64.

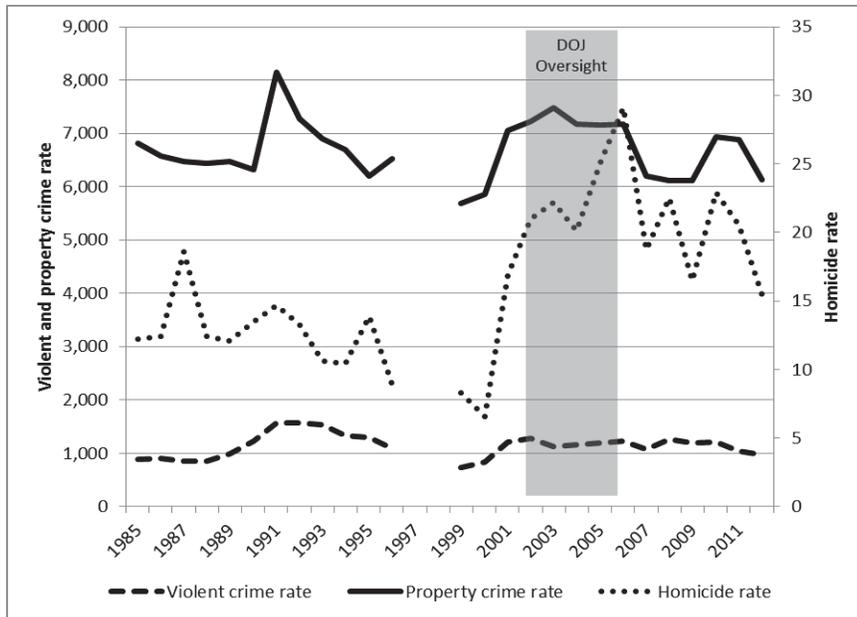
¹⁰¹ Francis X. Clines, *Appeals for Peace in Ohio After Two Days of Protests*, N.Y. TIMES (Apr. 11, 2011), <http://www.nytimes.com/2011/04/12/us/appeals-for-peace-in-ohio-after-two-days-of-protests.html>.

Figure 9. Police Use of Force in Cincinnati (1995–2012)



Source: Cincinnati Police Department

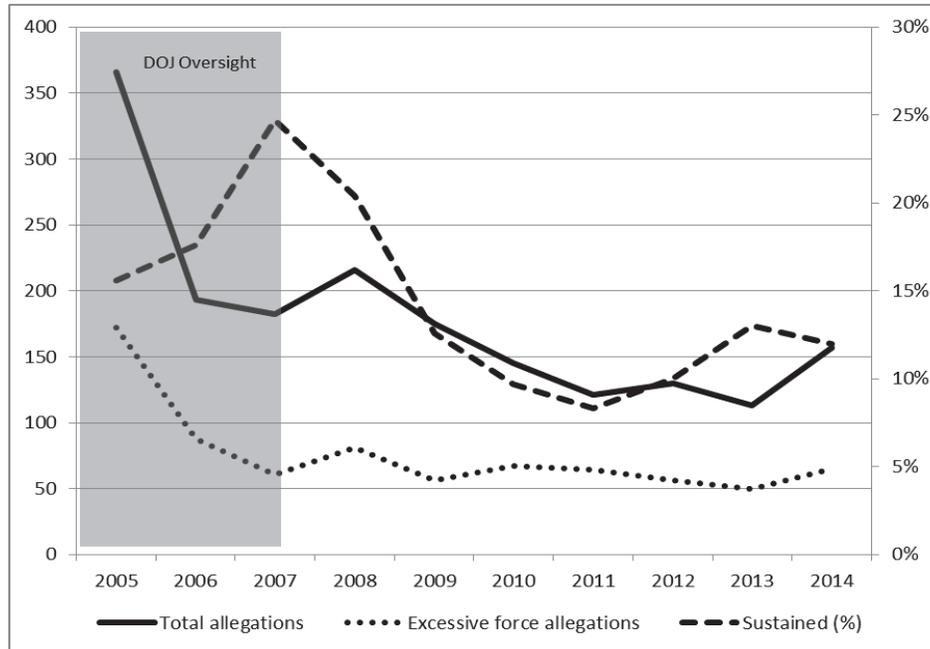
Figure 10. Crime in Cincinnati (1985–2012)



Source: FBI Uniform Crime Report. Note: data from 1997 and 1998 are missing.

Longitudinal data show significant and lasting change within the CPD. As documented in Figure 9, police use of force in Cincinnati was fairly volatile during the MOA implementation period but has dropped by an average of 11 percent per year since 2005. In fact, between 2002 and 2014, as crime rates have remained relatively stable, use of force has declined by 46 percent.

Figure 11. Citizen Complaints of Misconduct against CPD Officers (2005–2014)



Source: Cincinnati Citizen Complaint Authority

Data from Cincinnati's Citizen Complaint Authority (CCA) shows a similar downward trend. According to annual reports filed by the CCA between 2005 and 2014, complaints against CPD officers continued to decline even after the department was released from formal oversight. As is documented in Figure 11, the sixty-five allegations of excessive force investigated by the CCA in 2012 represent a 26 percent drop in the number of similar allegations made in 2006, the last full year that CPD was under federal control. Further, the percentage of complaints against CPD officers found by the CCA to have some merit (i.e., sustained) continued to fall in the years following MOA termination.

The data are more impressive in light of the changes made to the complaint process as a result of the MOA. Prior to the reform, complainants had to appear at CPD stations in person. Today, one can file a complaint by phone or by email, directly to CPD or CCA, and may even do so anonymously. In short, the MOA made it easier for people to complain, and far fewer people have. According to

ACLU attorney Scott Greenwood, “overall satisfaction is better. People—the community—trusts the integrity of the review process now.”¹⁰²

CCA Director Kenneth Glenn has sensed a change not just in the data, but in how complainants view the CPD. Anecdotally, even though complainants are upset about the incident, they are attempting to address, their overall attitude and orientation towards the police is more positive. To Glenn, trust in the CPD has continued to grow as a result of the MOA: “[A]s we go out into the community and talk with young people in the community . . . the tone is a lot better than it was in 2002.”¹⁰³ That the CPD has been able to avoid a destabilizing, high-profile performance failure in recent years contributes to the growth of the Department’s legitimacy in the eyes of the community.

Cincinnati’s City Manager Milt Dohoney’s view of the Department does well to summarize CPD’s progress since 2002:

The changes that were made have resulted in . . . a significant drop-off in the number of instances where citizens are injured as they’re being taken into custody. There’s a lot fewer injuries to police officers as they’re trying to make an arrest. The allegations of excessive force have plummeted. The incidents where the use of deadly force is even an issue has plummeted. . . . [The DOJ] agreement helped make all that happen.¹⁰⁴

Cincinnati residents, like those in every other major metropolitan area in the country, have experienced their share of violent encounters with the police. In June 2014, CPD officers shot and killed Donyale Rowe following a routine traffic stop.¹⁰⁵ Police Chief Jeffrey Blackwell immediately released recorded footage of the incident and was credited with helping to avoid the kind of wider conflict that followed the death of Timothy Thomas.¹⁰⁶ Mike Bricker, policy director at the ACLU of Ohio, credited the reform effort with this progress: “Even where there is a strong intervention and things have changed significantly, I think it’s unrealistic to say that there is never going to be another police problem or another issue that

¹⁰² Chanin, *supra* note 49, at 272–73.

¹⁰³ *Id.* at 273.

¹⁰⁴ *Id.* at 273–74.

¹⁰⁵ Jennifer E. Baker, *Chief: Police-Involved Shooting ‘a Fight for Survival,’* CINCINNATI.COM (Aug. 5, 2014), <http://www.cincinnati.com/story/news/2014/08/05/cincinnati-police-officer-shoots-man-killed-traffic-stop/13611479>.

¹⁰⁶ Susan Vela, *Officer Shoots, Kills Suspect*, CINCINNATI ENQUIRER (Apr. 8, 2001), http://enquirer.com/editions/2001/04/08/loc_officer_shoots_kills.html; Marc Fisher, *Cincinnati Still Healing from its Riots, and Has Lessons to Share with Ferguson*, WASH. POST (Sept. 5, 2014), https://www.washingtonpost.com/politics/cincinnati-still-healing-from-its-riots-and-has-lessons-to-share-with-ferguson/2014/09/05/2ff8b944-34a1-11e4-9e92-0899b306bbea_story.html.

crops up But I think what has changed is that there are much fewer of them.”¹⁰⁷ And when such incidents do occur, Bricker believes CPD officers “have the tools and the training and the mutual understanding of how to talk about these issues” to reduce the likelihood of wider unrest.¹⁰⁸

D. Prince George’s County, Maryland

On January 22, 2004, Prince George’s County, the Prince George’s County Police Department (PGPD), and the U.S. Justice Department signed a Memorandum of Agreement (MOA) designed to remedy a pattern or practice of excessive force.¹⁰⁹

The PGPD MOA adopts a structure and content very similar to those settlement agreements established in Pittsburgh, Washington, D.C., and Cincinnati. The terms of the MOA require changes to PGPD use of force policy and reporting protocols,¹¹⁰ “evaluation, documentation, and review of uses of force,”¹¹¹ officer training,¹¹² “receipt, investigation, and review of misconduct allegations,”¹¹³ and the development of further officer accountability systems, including an improved “early identification” system and a protocol for conducting internal “integrity audits” of the department.¹¹⁴

On January 15, 2009, some five years after the MOA was instituted, the independent monitor team filed its final report, documenting PGPD’s substantial compliance with all but one of the sixty-nine substantive provisions of the agreement.¹¹⁵

In announcing the MOA’s formal termination, two years after the scheduled three-year deadline, County Executive Jack B. Johnson claimed victory: “We have rebuilt a police department that was once and now is considered a model for law

¹⁰⁷ Nicole Flatow, *What Has Changed About Police Brutality in America, from Rodney King to Michael Brown*, THINKPROGRESS (Sept. 11, 2014), <http://thinkprogress.org/justice/2014/09/11/3477520/whats-changed-and-what-hasnt-in-policing-the-police/>.

¹⁰⁸ *Id.*

¹⁰⁹ U.S. DEP’T OF JUSTICE, MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND PRINCE GEORGE’S COUNTY POLICE DEPARTMENT 1 (2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/pg_memo_agree.pdf.

¹¹⁰ *Id.* at 6–8.

¹¹¹ *Id.* at 8–11.

¹¹² *Id.* at 11–14.

¹¹³ *Id.* at 14–18.

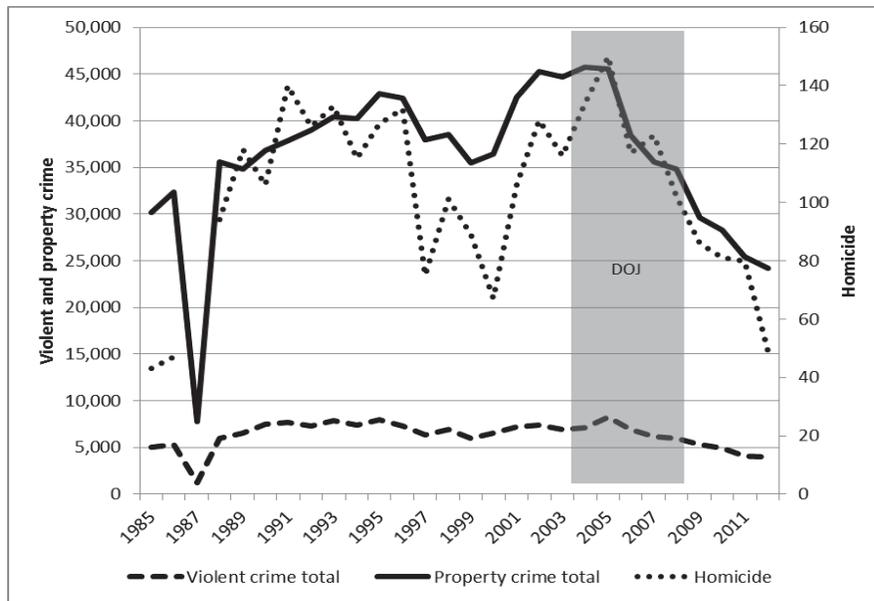
¹¹⁴ *Id.* at 18–24.

¹¹⁵ At the end of the five-year implementation process, PGPD was still unable to meet the 90-day requirement for completing misconduct investigations. ALEXANDRIA GROUP OF MPRI, REPORT OF THE INDEPENDENT MONITOR EIGHTEENTH QUARTERLY REPORT 47–48 (2009), <http://web.archive.org/web/20110419215549/http://www.princegeorgescountymd.gov/Government/PublicSafety/Police/pdfs/Final%20Eighteenth%20Quarterly%20Report%2001-15-09.pdf>.

enforcement. . . . I want everyone to know that our commitment to improvement that we have made while under DOJ oversight will not wane simply because the department is no longer watching.”¹¹⁶

Relative to the other three jurisdictions under review, little is known about PGPD’s experience since termination. There have been no independent reports published, and requests to speak with PGPD leadership, County administrative, and political officials, as well as members of local civil rights organizations, have been denied. Further, requests for data on police use of force and civil litigation outcomes were either denied or fulfilled with unusable data.

Figure 12. Crime in Prince George’s County (1985–2012)



Source: FBI Uniform Crime Report

Like much of the rest of the county, crime in Prince George’s County is down precipitously. On February 4, 2009, shortly after the MOA was terminated, the *Washington Post* published an editorial lauding what it calls a “remarkable turnaround,” and attributing some of this success to enhanced PGPD officer training requirements and other MOA-driven reforms.¹¹⁷ These trends have continued since termination and add further support to the notion that pattern or

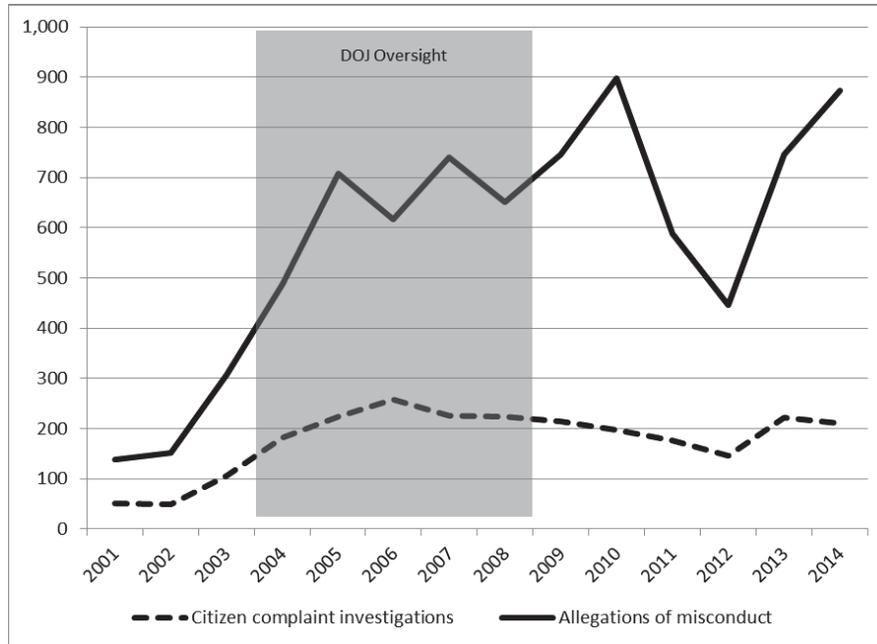
¹¹⁶ Aaron C. Davis, *Justice Closes Pr. George’s Police Review*, WASH. POST (Feb. 11, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/02/10/AR2009021002067.html?tid=a_inl.

¹¹⁷ Opinion, *Crime Drops in Prince George’s County*, WASH. POST (Feb. 4, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/03/AR2009020302969.html>.

practice intervention does not correlate with increased incidence of either violent or property crime.

A review of what few outcome-based data points that do exist leaves the impression that the pattern or practice reform process has not had the same kinds of effects in Prince George's County as it has in other jurisdictions.

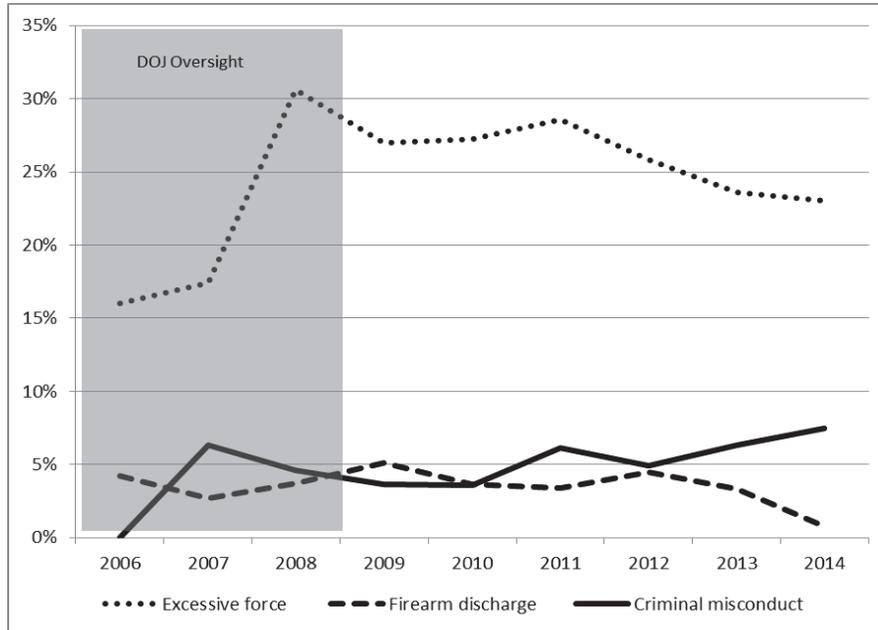
Figure 13. Citizen Complaints of Misconduct against PGPD Officers (2001–2014)



Source: Prince George's County, Maryland Citizen Complaint Oversight Panel

Data from Prince George's County's Citizen Complaint Oversight Panel (CCOP) indicate that allegations of PGPD officer misconduct increased steadily over the lifetime of the five-year agreement. Figure 13 shows an average annual increase of sixty-nine allegations per year between 2004 and 2008. Total allegations of misconduct rose from 472 in 2004 to 650 in 2008, the last full year of the implementation process, an increase of 33 percent. On average, Prince George's County residents filed 641 allegations per year during the MOA implementation, some 12 percent less than the yearly average during the 2009 to 2014 post-implementation period.

Figure 14. Citizen Complaints against PGPD Officers, by Type (2006–2014)



Source: Prince George’s County, Maryland Citizen Complaint Oversight Panel

Interestingly, CCOP data shows that between 2006 and 2014, nearly 25 percent of all allegations made against PGPD officers involved the use of excessive force, second most common behind the catchall category, “Conduct.” As Figure 14 documents, the rate of excessive force complaints has steadily declined since 2008, when some 30.6% involved allegations of excessive force. Without a closer examination of the department’s accountability systems, its officer culture, or the context offered by a broader set of systematic trend indicators, it is difficult to extract much meaning from these data. Perhaps it is enough to say that neither the reform process nor the termination of DOJ oversight has had a significant effect on the volume or nature of complaints submitted to the CCOP.

According to a recent story in the *Washington Post*, PGPD reported 303 use-of-force incidents in 2010, the first full year after the DOJ terminated oversight.¹¹⁸ In 2014, the Department logged 555 such incidents, an 83 percent increase. PGPD Chief Mark Magaw denied that this trend was at all worrisome, instead pointing to the county’s increased population size and a newly expanded definition of use of

¹¹⁸ Kimbriell Kelly et al., *Forced Reforms, Mixed Results*, WASH. POST (Nov. 13, 2015), <http://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results/>.

force: “The way I read these numbers is we’re doing a better job, we’re holding our officers more accountable and we’re being more transparent.”¹¹⁹

Magaw’s sentiment is belied by several media reports of excessive force and corruption involving PGP officers. In March 2010, several Prince George’s County police officers were videotaped beating a University of Maryland student during a wild celebration of a victory by the school’s basketball team. According to the *Washington Post*, PGP officers falsely accused the victims of aggressive behavior in an attempt to justify the use of force: “Police charging documents initially alleged that [two students] jointly assaulted police officers and their horses. The video contradicted that, and the charges against the students were dropped.”¹²⁰ The incident, which cost county taxpayers a total of \$3.6 million in legal fees,¹²¹ led the *Washington Post* editorial board to conclude that if no video had surfaced of Mr. McKenna’s beating, that too would have been swept under the rug of police impunity and official indifference. This cannot be allowed to stand. It sends a terrible message to the Prince George’s police, who now know that consequences for their misconduct, if any, will be slight.¹²²

The post-MOA list of other incidents involving excessive force is long. In October 2010, five PGP officers moonlighting as security guards were involved in the alleged beating of a student attending a local fraternity party. Allegations of lying and cover-up were attached to this incident as well.¹²³ In September 2012, Stephen Merritt, a 23-year veteran of the Washington, D.C. Metropolitan Police Department, filed civil charges against the county, claiming he was unnecessarily beaten by PGP officers outside a nightclub.¹²⁴ The criminal charges filed against Merritt in connection with the incident were subsequently dropped.¹²⁵ In October 2014, two PGP officers were indicted on charges stemming from separate

¹¹⁹ *Id.*

¹²⁰ Matt Zapotosky & Ruben Castaneda, *Feds Now Lead Probe of Police Beating*, WASH. POST (Dec. 4, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/03/AR2010120306980.html>.

¹²¹ *Officer Receives Suspended Sentence in UMD Beating Case*, NBC 4 WASH. (Dec. 14, 2012), <http://www.nbcwashington.com/news/local/Officer-Sentenced-UMD-Beating-James-Harrison-James-McKenna.html>.

¹²² *Opinion, A Judge Wrongly Throws Out an Officer’s Assault Verdict in Prince George’s County*, WASH. POST, Sept. 20, 2014, at A22.

¹²³ Ruben Castaneda & Matt Zapotosky, *Four More Prince George’s Officers Suspended in Alleged Moonlighting Misconduct*, WASH. POST (Nov. 8, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/08/AR2010110805432.html>.

¹²⁴ Matt Zapotosky, *D.C. Police Officer Sues Two Prince George’s Officers, Saying He Was Beaten*, WASH. POST (Oct. 3, 2012), https://www.washingtonpost.com/local/crime/dc-police-officer-sues-two-pr-georges-officers-claiming-he-was-beaten/2012/10/03/66c249b0-0d73-11e2-a310-2363842b7057_story.html.

¹²⁵ Matt Zapotosky, *Charges Dropped Against D.C. Police Officer*, WASH. POST (Feb. 28, 2013), https://www.washingtonpost.com/blogs/crime-scene/post/charges-dropped-against-dc-police-officer/2013/02/28/8dec0f7c-81e4-11e2-8074-b26a871b165a_blog.html.

incidents, “one involving a school resource officer at Suitland High School charged with assaulting a student, the other involving the reported assault of a handcuffed suspect in a jail cell.”¹²⁶ In December 2015, PGPD Officer Jenchesky Santiago was convicted on first-degree assault charges stemming from an incident where he held a gun to a man’s head, apparently to impress his friends.¹²⁷

In addition to these allegations of unlawful use of force and cover-up, the PGPD in 2010 became embroiled in a wide-ranging federal investigation into illegal and corrupt practices within the department. According to the *Washington Post*, “at least 46 Prince George’s officers are either suspended or assigned to administrative duties for misconduct or violations. In at least 19 of those cases, investigators have reason to think the officers committed a crime.”¹²⁸

In late 2010, a separate federal investigation into allegations of corruption among Prince George’s County government officials led to the arrest of then-Prince George’s County Executive Jack Johnson, under suspicion of bribery and corruption.¹²⁹ The conspiracy, alleged to have started in 2003, is thought to have involved a “pay-for-play” scheme wherein Johnson is accused of accepting among other things, cash, trips, and tickets in exchange for official favors.¹³⁰ In December 2011, Johnson was sentenced to seven years in prison.¹³¹

At least four PGPD officers were swept up in the investigation that led to Johnson’s arrest. Two county officers were indicted in federal court on charges related to their alleged participation in an illegal cigarette and alcohol distribution ring, while a third was accused of dealing drugs.¹³² The fourth officer, a narcotics detective, “accused of taking guns he had seized from criminals and reselling them

¹²⁶ Lynh Bui, *2 Pr. George’s Officers are Indicted on Assault Charges*, WASH. POST, Oct. 31, 2014, at B6.

¹²⁷ Julie Zauzmer, *Officer Convicted of Assault for Pointing Gun at Civilian’s Face*, WASH. POST (Dec. 2, 2015), https://www.washingtonpost.com/local/public-safety/officer-convicted-of-assault-for-pointing-gun-at-civilians-face/2015/12/02/f8d3ec04-992b-11e5-94f0-9eeaff906ef3_story.html.

¹²⁸ Matt Zaposky, *Pr. George’s Police Woes Wider than U.S. Probe*, WASH. POST (Nov. 29, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/28/AR2010112804028.html>.

¹²⁹ Paul Schwartzman et al., *Jack Johnson, Prince George’s County Executive, and His Wife, Leslie, Arrested*, WASH. POST (Nov. 13, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/12/AR2010111204001.html>.

¹³⁰ Maria Glod & Ovetta Wiggins, *Johnson, Former Prince George’s County Executive, Charged with Taking \$200,000 in Bribes*, WASH. POST (Feb. 14, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/14/AR2011021406579.html>.

¹³¹ Cheryl W. Thompson, *Jack Johnson, Former Prince George’s Exec, Sentenced to 7 Years in Corruption*, WASH. POST (Dec. 6, 2011), https://www.washingtonpost.com/local/crime/former-pr-georges-exec-jack-b-johnson-is-sentenced-to-7-years/2011/12/01/gIQAKa7iZO_story.html?tid=a_inl.

¹³² Matt Zaposky, *Pr. George’s Exec.-Elect Urged to Keep Hylton*, WASH. POST (Nov. 18, 2010), <http://voices.washingtonpost.com/crime-scene/matt-zaposky/pr-georges-activists-urge-exec.html>.

on the streets[,] was indicted . . . on 13 counts of misconduct in office and theft, according to law enforcement officials and online court records.”¹³³

In 2010, PGPD was also marred by allegations of cheating on police academy exams. The cheating scandal, which implicated approximately 30 cadets and at least one instructor, was not only highly embarrassing for the department, but threatened several ongoing criminal investigations. The County’s State’s Attorney Glenn Ivey admitted that his office was forced to review all cases involving the alleged cheaters: “We assembled a team of prosecutors in the office to start finding out which cases they were on and make a case by case determination whether these cases should stand or not.”¹³⁴ An audit conducted by the State of Maryland in 2011 determined (without examining the allegations of cheating) that the affected officers did not “need to be removed from the streets because there were no ‘substantive issues’ with their training.”¹³⁵

Despite this pattern of unlawful and corrupt behavior among PGPD officers and a continued absence of respect for the rule of law among certain county officials, it is hard to draw any definitive conclusions about the effectiveness or long-term viability of the reform effort. There is simply not enough known about the department to make a legitimate assessment of efforts to change the department’s approach to the use of force and external accountability.

Further, the lack of available information on the PGPD reform effort seems to support the notion that the Prince George’s County government is either unwilling or unable to make police accountability and department transparency a priority, despite claims to the contrary.¹³⁶ The widespread unwillingness among stakeholders to speak with me (either on or off the record) about the process adds weight to this conclusion. These impressions become stronger still after even the most cursory examination of incidents involving the County and its police department since 2010, the first full year after the MOA was terminated.

Taken together, the existing quantitative and qualitative information seems to suggest a wide gulf between where Prince George’s County appears to be and where the Justice Department would have wanted them to be seven years after the MOA was signed.

¹³³ Matt Zaposky, *Prince George’s Police Officer Indicted*, WASH. POST (Oct. 27, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/26/AR2010102607607.html>.

¹³⁴ Matt Zaposky, *Prince George’s Probes Officers’ Criminal Cases*, WASH. POST (Oct. 7, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/10/06/AR2010100607126.html>.

¹³⁵ Matt Zaposky, *Audit Confirms Training of Police Cadets in Testing Scandal*, WASH. POST Mar. 18, 2011, at B1.

¹³⁶ Lynh Bui & Arelis R. Hernandez, *Magaw Retires as Prince George’s Police Chief but Stays with County*, WASH. POST (Dec. 11, 2015), https://www.washingtonpost.com/local/public-safety/magaw-retires-as-prince-georges-police-chief-but-stays-with-county/2015/12/11/16400fcc-9fa6-11e5-bce4-708fe33e3288_story.html (“Many also credit Magaw for improving transparency and community relations by hiring a former television news journalist to run media relations.”).

E. Los Angeles, California

On July 15, 2001 the City of Los Angeles and the DOJ formalized what remains arguably the most comprehensive, pervasive reform instrument authorized under § 14141. Like the agreements discussed above, the LAPD consent decree (CD) addressed a pattern or practice of excessive force and the absence of requisite officer accountability and inadequate oversight.¹³⁷ The DOJ also sought to address unlawful search and arrest protocols, treatment of mentally ill suspects, and racial inequities in the administration of both traffic and pedestrian stops, in order to remedy problems with both the receipt and investigation of complaints filed against LAPD officers, as well as the management of confidential informants and department gang units.¹³⁸

The CD relied heavily on increased officer training and the institution of several mechanisms designed to strengthen both internal and external accountability. In addition to the development of an early warning system designed to predict officer misconduct, the LAPD agreed to conduct regular audits of CD-related performance and to accept enhanced oversight from the City's Inspector General and the Police Commission,¹³⁹ a civilian body instituted in the 1920s to oversee the Department.¹⁴⁰

Former prosecutor Michael Cherkasky served as independent monitor, charged with overseeing implementation.¹⁴¹ On July 17, 2009, Federal District Court Judge Gary Feess signed an order approving termination of all but a few provisions of the original CD.¹⁴² The consent decree was formally terminated on May 15, 2013.¹⁴³

Much of the response to the reform effort has been positive. Attorney Merrick Bobb, who is currently the Independent Monitor of the § 14141 process in Seattle and longtime Los Angeles resident, saw the LAPD go from "an occupying

¹³⁷ Consent Decree, *United States v. City of Los Angeles*, 2:00-cv-11769-GAF-RC (C.D. Cal. June 15, 2001), http://www.lapdonline.org/assets/pdf/final_consent_decree.pdf.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *The Function and Role of the Board of Police Commissioners*, L.A. POLICE DEP'T, http://www.lapdonline.org/police_commission/content_basic_view/900 (last visited Sept. 4, 2016).

¹⁴¹ Patrick McGreevy, *N.Y. Firm Chosen to Monitor Reforms*, L.A. TIMES (May 19, 2001), <http://articles.latimes.com/2001/may/19/local/me-65453>.

¹⁴² Order Re: Transition Agreement, *United States v. City of Los Angeles*, 2:00-cv-11769-GAF-RC (C.D. Cal. July 17, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/US_v_LosAngeles_TA-Order_071709.pdf.

¹⁴³ Joel Rubin, *Federal Judge Lifts LAPD Consent Decree*, L.A. TIMES (May 16, 2013), <http://articles.latimes.com/2013/may/16/local/la-me-lapd-consent-decree-20130517>; Order of Dismissal, *United States v. City of Los Angeles*, 2:00-cv-11769-GAF-RC (C.D. Cal. May 15, 2013), <http://www.clearinghouse.net/chDocs/public/PN-CA-0002-0069.pdf>.

army to being a community partner.”¹⁴⁴ Critics of the Department also have recognized a change. “I’m not particularly fond of the police,” said Clarence Heard, a minister in South Los Angeles, “but, to be honest with you, I think L.A. is much better since the feds took over the LAPD. You know, I think they work harder at trying to defuse a situation as opposed to escalating a situation.”¹⁴⁵ According to the executive director of the ACLU of Southern California, the consent decree process resulted in “serious culture changes” to the Department.¹⁴⁶

In 2009, Harvard University published a comprehensive analysis of the LAPD, with a particular focus on the effects of the consent decree on officer morale and performance, police-community relations, and the accountability infrastructure inside the Department.¹⁴⁷ After reviewing available administrative data, including figures on use of force, citizen complaints, and traffic and pedestrian stops, as well as survey and interview data gathered from citizens and LAPD staff, the authors conclude that the “LAPD of today is a changed organization.”¹⁴⁸ The available empirical evidence largely supports these observations,¹⁴⁹ beginning with the absence of any visible increases in jurisdiction crime rates. Figure 15 makes clear that pattern or practice reform in Los Angeles had no adverse effect on the City’s violent or property crime.

¹⁴⁴ Kirk Siegler, *LAPD Chief Has Lessons to Share About Department’s Past ‘Ghosts,’* NPR (Dec. 15, 2014, 4:30 PM), <http://www.npr.org/sections/codeswitch/2014/12/15/370952512/lapd-chief-has-lessons-to-share-about-departments-past-ghosts>.

¹⁴⁵ Carrie Kahn, *After Riots, Scandal Sparked Reform in LAPD,* NPR (Apr. 25, 2012, 5:50 PM), <http://www.npr.org/2012/04/25/151354376/after-riots-scandal-sparked-reform-in-lapd>.

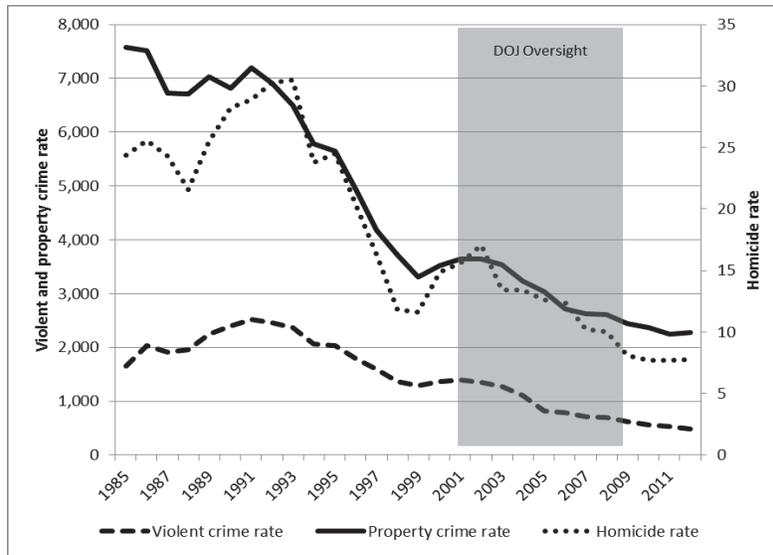
¹⁴⁶ Rubin, *supra* note 143.

¹⁴⁷ CHRISTOPHER STONE ET AL., *POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD 1* (2009), <http://www.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf>.

¹⁴⁸ *Id.* at 68.

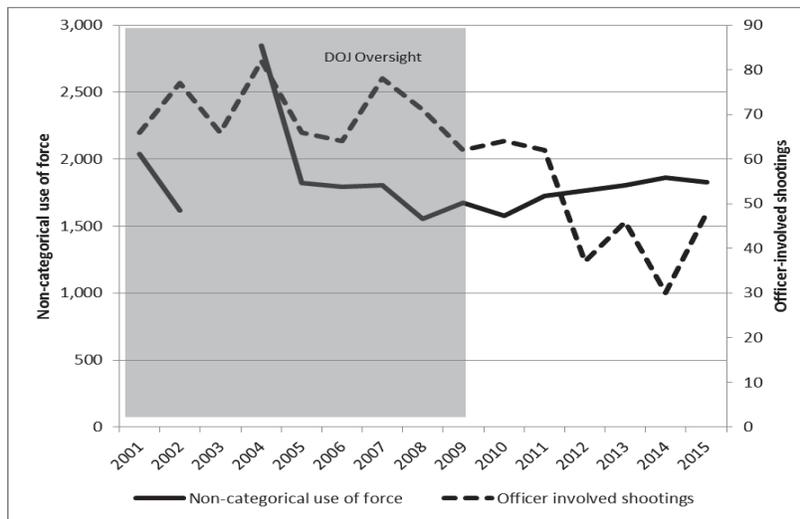
¹⁴⁹ See IAN AYRES & JONATHAN BOROWSKY, *A STUDY OF RACIALLY DISPARATE OUTCOMES IN THE LOS ANGELES POLICE DEPARTMENT* (2008), <https://www.aclusocal.org/wp-content/uploads/2015/09/11837125-LAPD-Racial-Profiling-Report-ACLU.pdf>. Their analysis of traffic and pedestrian stops from June 2003 to June 2004 found that “African Americans and Hispanics are over-stopped, over-frisked, over-searched, and over-arrested.” *Id.* at i. An analysis of these data published in 2006 by another team of academic researchers made similar findings, though presented their conclusions in starkly different language. See ANALYSIS GROUP, *PEDESTRIAN AND MOTOR VEHICLE POST-STOP DATA ANALYSIS REPORT* (2006), http://assets.lapdonline.org/assets/pdf/ped_motor_veh_data_analysis_report.pdf.

Figure 15. Crime in Los Angeles, CA (1985–2012)



Source: FBI Uniform Crime Report

Figure 16. Use of Force by LAPD Officers (2001–2015)

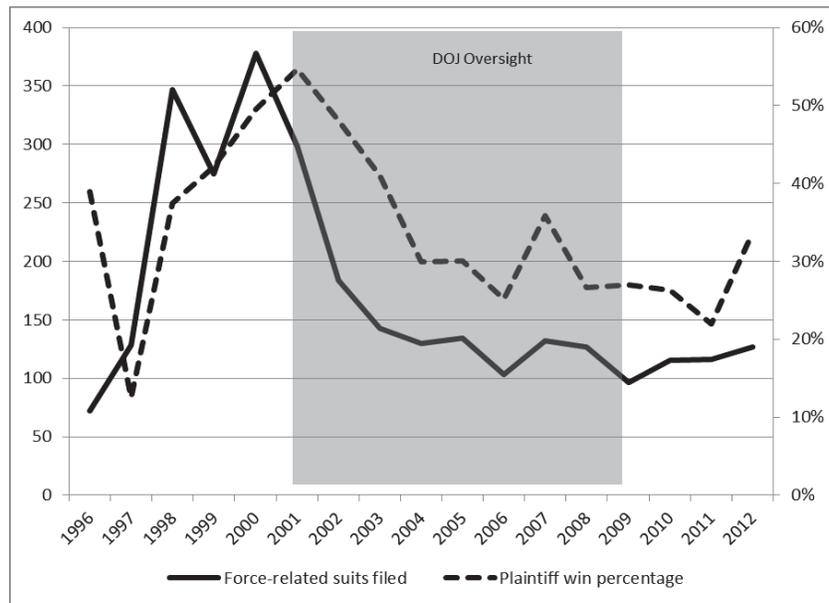


Source: LAPD. Note: Data on non-categorical use of force missing for 2003.

Between 2001, when the CD was instituted, and 2009, when the Transition Agreement went into effect, the LAPD averaged just over seventy officer-involved shootings per year. In the six years since, the yearly average fell to 47.8, a drop of

22.4 percent. Incidence of non-categorical (non-deadly) use of force spiked in 2004, but has remained relatively constant since, as is shown in Figure 16. During the CD, LAPD officers used non-categorical force 1,894 times per year on average, compared to 1,759 such incidents between 2010 and 2015. As no pre-CD data is available, it is impossible to know how these reform and post-reform data compare to pre-CD use of force levels. But that incidence of both deadly and non-deadly force trend down at least suggests that there has not been considerable backsliding in the absence of DOJ oversight.

Figure 17. Use of Force-Related Civil Litigation in Los Angeles (1996–2012)



Source: City of Los Angeles

Data on use of force-related litigation, charted in Figure 17, is consistent with these conclusions. Between 1996 and 2001, when the CD was enacted, citizens filed an average of 240 civil suits alleging excessive force by LAPD officers. During that period, plaintiffs won an average of 36 percent of the time. Between 2002 and 2009, average annual litigation fell to 150, with plaintiff remaining flat at 35 percent. Between 2010, the first full year after the transition agreement was signed, and 2012, plaintiffs won on 27 percent of the 119 suits filed on an average annual basis.

Figure 18. Financial Awards for Use of Force-Related Civil Litigation in Los Angeles (1996–2012)



Source: City of Los Angeles

That the volume of civil litigation related to officer use of force and the odds of a plaintiff victory each declined fairly steadily during the CD period and continued to decline as the Department transitioned from federal oversight is a solid indication that out-of-policy force events have become less common, which reflects positively on the reform effort. Data on force-related payouts complicates the story a bit. As is clear in Figure 18, which documents the total annual cost of force-related civil litigation and the average payout of each plaintiff victory between 1996 and 2012, the cost of police abuse is more variable than case filings.

Though the trend lines for each variable appear to slope downward, there are three clear spikes: 1999/2000, 2007, and 2010. In 2007 and 2010, these payout spikes occurred without significant corresponding spikes in either the volume of cases filed or recorded use of force events, which suggests that they can reasonably be attributed to a particularly severe incident or series of incidents, like the May 1, 2007 confrontation between immigration protestors and LAPD officers in MacArthur Park.¹⁵⁰ Uses of force incidents such as these are unavoidable in a city as large and as diverse as Los Angeles. That two such high profile and significant

¹⁵⁰ Maeve Reston & Joel Rubin, *Los Angeles to Pay \$13 Million to Settle May Day Melee Lawsuits*, L.A. TIMES (Feb. 5, 2009), <http://articles.latimes.com/2009/feb/05/local/me-lapd-settlement5>.

events occurred in a three-year period is most likely an indication of this inevitability, though something that should be monitored fairly closely.

Tellingly, the CD process has been credited with minimizing the effects of these types of violent incidents: “Los Angeles has had its fair share of officer-involved shootings recently, and they still generate protests. But things haven’t really gotten out of hand. Police reform groups and many LAPD officials say this is a testament to all the work that’s been done to repair relations with communities over the year.”¹⁵¹

The Harvard report concludes with a note about the sustainability of the changes found: “It is not that policing in Los Angeles is all that it can ever be, but the balance of local leadership and local oversight is healthy enough to carry the process of continuous improvement forward” in the absence of DOJ oversight.¹⁵²

The strongest argument to be made along these lines will surely include discussion of the relatively strong external accountability mechanisms in Los Angeles. Pre-existing institutions like the Police Commission and the City’s Inspector General’s Office were empowered by the consent decree and appear as of this writing to remain active in their oversight of the LAPD.¹⁵³ Moreover, the city has a strong network of civil rights organizations to buttress these formal institutions, as well as an active local media. One manifestation of this external oversight is the extent to which the Department has committed to sharing performance data and other information with the public. According to a recent analysis of 350 police department websites, the LAPD ranked third in terms of web based transparency.¹⁵⁴

To some, including author and attorney Tom Hayden, the current regulatory infrastructure is insufficient: “[W]ithout the oversight of a federal judge and a consent decree road map, the system of police reform in Los Angeles will remain ad hoc, ineffective and even broken. . . . Beneath the layers of reform added to the department over three decades, it remains the fact that the police predominate in

¹⁵¹ Siegler, *supra* note 144; Tim Rutten, *LAPD Has Made Great Strides, Thanks to Consent Decree, Reform Minded Chiefs*, L.A. DAILY NEWS (Aug. 22, 2014, 10:56 AM), <http://www.dailynews.com/opinion/20140822/lapd-has-made-great-strides-thanks-to-consent-decree-reform-minded-chiefs-tim-rutten>.

¹⁵² STONE ET AL., *supra* note 147, at 68.

¹⁵³ See *Special Investigations Reports*, OFFICE OF THE INSPECTOR GENERAL L.A. POLICE COMMISSION, <http://www.oig.lacity.org/#!special-investigations-reports/onf50> (last visited Nov. 1, 2016).

¹⁵⁴ Between November 2013 and March 2014, Author reviewed the contents of 350 U.S. police and sheriff’s department websites in an attempt to document the extent to which local law enforcement agencies use the Internet to share information with the public. Each website was scored on a 26-point scale, tracking the presence of data ranging from officer contact information and department social media presence to data on traffic stops and use of force. The full dataset is on file with author.

policing the police.”¹⁵⁵ This skepticism is surely a function of the Department’s long history of violence, racial injustice, and impunity. The view of Earl Ofari Hutchinson, president of the Los Angeles Urban Policy Roundtable, is instructive:

There are still some of the old troubling signs . . . Officers that overuse deadly force or commit acts of misconduct must be punished. Without it, it reinforces the notion that officers can administer street corner justice. This is the practice that got the LAPD into so much hot water in years past.¹⁵⁶

V. ANALYSIS

A. *Variations in Outcomes*

Organizational response to the termination of pattern or practice reform varied considerably between police departments in Pittsburgh, Cincinnati, Washington, D.C., Prince George’s County, and Los Angeles. The PBP was not able to sustain organizational changes made under federal oversight. Key outcomes that remained flat during implementation, including use of force incidence and allegations of misconduct, now trend upward. Though there is new leadership in place, the PBP is less than two years removed from the corruption scandal and several high profile force-related incidents that prompted Pittsburgh Mayor Bill Peduto to declare the department “on the verge of another consent decree.”¹⁵⁷

By contrast, the process seems to have had a sustained, positive effect in both Cincinnati and Washington, D.C. Numbers of post-reform citizen complaints against CPD officers continue to decline, as does use of force incidence, and the number of injuries sustained by CPD officers. Such progress has contributed to strengthening the relationship between the Department and minority community members¹⁵⁸ and a sterling national reputation.¹⁵⁹ In Washington, D.C., declines in

¹⁵⁵ Tom Hayden, *Has Bratton’s LAPD Really Reformed?*, NATION (July 20, 2009), <https://www.thenation.com/article/has-brattons-lapd-really-reformed/>.

¹⁵⁶ Daniel B. Wood, *Los Angeles Riots: 20 Years Later, Has LAPD Reformed?*, CHRISTIAN SCI. MONITOR (Apr. 25, 2012), <http://www.csmonitor.com/USA/2012/0425/Los-Angeles-riots-20-years-later-has-LAPD-reformed>.

¹⁵⁷ Jeffrey Benzing, *Pittsburgh Police Could Face Second Federal Consent Decree, Peduto Says*, PUBLICSOURCE (July 1, 2014), <http://publicsource.org/from-the-source/pittsburgh-police-could-face-second-federal-consent-decree-peduto-says#.V79Mw1dlnVo>.

¹⁵⁸ Alana Semuels, *How to Fix a Broken Police Department*, ATLANTIC (May 28, 2015), <http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/>.

¹⁵⁹ Danny Vinik, *We’ve Been Here Before. A Solution Exists*, NEW REPUBLIC (Aug. 18, 2014), <http://www.newrepublic.com/article/119133/cincinnati-2001-race-riots-reveal-solutions-fergusons-unrest>; Jon Schuppe, *Blueprint for Peace: What Ferguson Can Learn From Cincinnati*, NBC NEWS

both deadly force incidence and force-based civil litigation suggest that the consent decree brought with it significant improvements in department use of force policy, training, and oversight. Inconsistencies in citizen complaint volume complicate the picture somewhat, as does the startling number of officers that have faced criminal charges in the post-reform years, though on balance the department appears to have made and sustained considerable progress. Similar positive trends are evident in Los Angeles, though there has been less time to evaluate post-reform progress there.

Objective evaluation of Prince George's County is rather difficult, given the limited amount of data made available. But it seems apparent that the department continues to struggle with officer misconduct and has quite a ways to go to reach the kind of accountability infrastructure developed in other jurisdictions.

Even in light of certain methodological limitations, these findings highlight the challenge jurisdictions face in working to institutionalize pattern or practice reform. They also demonstrate how little we actually know about the effectiveness and sustainability of pattern or practice reform.

B. The Need for More Consistent Data

Owing largely to the absence of consistent outcome data and a lack of cooperation among potential subject jurisdictions, it is rather difficult to generalize beyond the included cities. Further, without the data needed to properly establish benchmarks, formal consideration of causal hypotheses was all but impossible. In the absence of a deeper quantitative analysis, there remains the possibility that some of the trends discussed occurred as a result of factors other than reform implementation or termination.

The need to evaluate the effectiveness and long-term sustainability of these initiatives is clear, yet we lack the basic data needed to do so. This need not be the case. In some jurisdictions, including Los Angeles, the DOJ has insisted on the capture and publication of relevant outcome measures.¹⁶⁰ Mandating the dissemination of use of force statistics, officer disciplinary decisions, and civil litigation results would be a solid step toward facilitating evaluation of future settlement agreements, as would requiring independent monitors to set and report on outcome-related goals, rather than continuing to perform what amounts to an exclusively process-driven assessment.

C. The Need for More Thorough, Nuanced Analysis

The field would also benefit from future research that moves beyond the use of outcome data to evaluate sustainability, beginning with an assessment of officer

(Aug. 29, 2014, 11:52 AM), <http://www.nbcnews.com/storyline/michael-brown-shooting/blueprint-peace-what-ferguson-can-learn-cincinnati-n191911>.

¹⁶⁰ Consent Decree, *supra* note 137.

attitudes and organizational culture more broadly. In addition to contributing to more thorough descriptive knowledge, examining the relationship between outcomes, officer behavior, and department culture, would help to broaden understanding of those factors that explain institutionalization success and failure. To what extent do these elements show a consistent picture of agency efforts to pursue and institutionalize reform? Can a department achieve and sustain desirable levels of key outcomes, for example, in spite of a culture that may not reflect core reform values?

A closer look at the inner-workings of affected departments would allow for a much more nuanced assessment of change. By necessity, the current research framed pattern or practice reform as a monolithic initiative, rather than as a series of individual components. In fact, development and implementation of each component, from new policies and training to community outreach efforts, are unique, distinguishable efforts, each worthy of a separate evaluation. As it stands today, it is all but impossible to tease out the value of specific components, either in terms of their effectiveness or sustainability. Does a department's use of an early intervention system actually lead to fewer incidents of misconduct and lower civil litigation costs? To what extent does the system's effectiveness change over time? Is there an interaction between system usage and officer training, in terms of both short- and long-term outcomes? Answers to these and other similar questions would improve the efficiency of future settlement agreements and aid departments in institutionalizing change.

Finally, future research should continue to monitor these and other pattern or practice jurisdictions, paying particular attention to identifying those factors that distinguish reforms that endure from those that erode. Explaining the success in Cincinnati would be a useful point of departure. To what extent did support for reform among city leaders and community residents contribute to the durability of that Department's turn-around? The strength of officer accountability mechanisms, both internal to the CPD and in agencies like the Citizen Complaint Authority? Strategic efforts to coopt potentially hostile groups like the officers' union? Was support from middle management as critical in Cincinnati as it was to sustaining problem-oriented policing strategies in Charlotte, North Carolina?¹⁶¹ Perhaps sustainability is a function of robust efforts to educate officers to "nature, goals, and benefits" of such reforms, as some contend.¹⁶²

¹⁶¹ IKERD & WALKER, *supra* note 37.

¹⁶² Walker, *supra* note 23, at 91.

VI. CONCLUSION

The best evidence on the DOJ's pattern or practice initiative suggests that after implementing mandated reforms, affected departments will likely possess a stronger, more capable accountability infrastructure, more robust training, and a set of policies that reflect national best practices.¹⁶³ These changes occur as a result of the agreements' substantive requirements and the close, external oversight that tends to accompany their implementation.

But as the current research shows, the reform process is more complex than the pursuit of substantial compliance with settlement terms. The resultant organizational changes are not self-sustaining; implementation does not in and of itself guarantee meaningful, institutionalized change. In fact, the assumption that it does may undermine efforts to promote lasting reform. The typical settlement agreement binds affected departments to a five-year period of federal oversight. Upon a declaration of substantial compliance, which usually occurs on or around the end of the contractual term, the DOJ announces that department has been reformed, promptly terminates the agreement, and moves on to other initiatives.¹⁶⁴ This abrupt stoppage signals to the department that sufficient change has been made and that no further attention to the reform is necessary. Given how tenuous these reforms appear to be and how unpopular they remain among the rank-and-file, the goals of the initiative would likely be better served by ongoing external oversight of the affected department. Periodic external check-ups designed to promote independent post-termination oversight, whether conducted by DOJ attorneys or a public agency similar to the one created by the State of New Jersey,¹⁶⁵ would be a worthwhile investment.

The absence of sufficient monitoring and oversight can be tragic. The City of Cleveland knows this well. In August 2000, the DOJ opened a pattern or practice investigation into claims of excessive force by Cleveland Division of Police (CDP) officers.¹⁶⁶

In July 2002, the year Tamir Rice was born and twelve years before his fatal encounter with the Cleveland Police Department, DOJ attorneys recommended that

¹⁶³ ROBERT C. DAVIS ET AL., TURNING NECESSITY INTO VIRTUE: PITTSBURGH'S EXPERIENCE WITH A FEDERAL CONSENT DECREE 1 (2002), http://archive.vera.org/sites/default/files/resources/downloads/Pittsburgh_consent_decree.pdf; STONE ET AL., *supra* note 147.

¹⁶⁴ Order Re: Transition Agreement, *supra* note 142. Of course, there are exceptions to this general rule. In Los Angeles, the transition from DOJ oversight to department autonomy was made more gradual by a 2009 Transitional Agreement (TA). Under the TA, the federal court maintained jurisdiction over the case and authority to mandate continued federal oversight unless and until the LAPD addressed the remaining matters to the satisfaction of the presiding judge.

¹⁶⁵ Chris Megerian, *Gov. Corzine Signs Racial Profiling Reforms into Law*, NJ.COM (Aug. 27, 2009, 8:55 PM), http://www.nj.com/news/index.ssf/2009/08/gov_corzine_signs_racial_profi.html.

¹⁶⁶ Childress, *supra* note 9.

the CDP “clarify its use of deadly force policy,”¹⁶⁷ while raising questions about “the competency, thoroughness, and impartiality of [CDP] use of force investigations”¹⁶⁸—nearly identical to language drawn from the Investigative Findings Letter sent to Cleveland Mayor Frank Jackson in December 2014.¹⁶⁹

Though the case of police reform in Cleveland is certainly unique, the overarching point remains: organizational change is a long and fragile process. Effectiveness is not guaranteed and early gains do not necessarily equate to institutionalized change. This lesson is a critical one, for DOJ staff and stakeholders in jurisdictions currently under federal oversight, for police leaders and other public actors contemplating reform, and for policing scholars and other students of the administrative process. The sooner it takes hold, the more likely it is that changes brought about through the pattern or practice initiative will not suffer the fate of other recent reform efforts.

¹⁶⁷ STEVEN H. ROSENBAUM, SPECIAL LITIGATION SECTION, U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 3 (July 23, 2002), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/cleveland_uof.pdf.

¹⁶⁸ *Id.* at 4.

¹⁶⁹ VANITA GUPTA & STEVEN M. DETTELBACH, U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 3 (Dec. 4, 2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf (“We found that CDP officers too often use unnecessary and unreasonable force in violation of the Constitution. Supervisors tolerate this behavior and, in some cases, endorse it. . . . CDP’s pattern or practice of excessive force is both reflected by and stems from its failure to adequately review and investigate officers’ uses of force; fully and objectively investigate all allegations of misconduct . . .”).