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Addressing the Inevitability of Race in the DOJ's Enforcement of the Pattern-or-Practice Initiative

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Addressing the Inevitability of Race in the DOJ’s Enforcement of the Pattern-or-Practice Initiative

Joshua Chanin*

Section 14141 of the 1994 Crime Act empowers the U.S. Department of Justice (DOJ) to investigate and drive reform of local law enforcement agencies found to have engaged in a pattern or practice of misconduct. During the Trump administration, the DOJ willfully allowed its powers under this section to lie dormant, despite a number of high-profile incidents of police violence against Black Americans. Active enforcement of Section 14141 affords the federal executive branch significant opportunities to promote lawful policing. Using its pattern-or-practice authority, the DOJ has guided dozens of law enforcement agencies through a process designed to remedy systemic unlawful activity and establish systems built to enable a more accountable and transparent brand of policing. And yet, a close examination of these efforts over the last twenty-five years raises significant questions about whether the initiative is positioned to deliver on the hopes attached to it. Until the DOJ moves away from the exclusive reliance on technocratic solutions to address the symptoms of problems rooted in racial inequity, and instead positions pattern-or-practice reform to address the deep mistrust between police and communities of color, the aims of this effort will continue to fall short.

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I. INTRODUCTION

On the night of April 7, 2001, members of the Cincinnati (Ohio) Police Department (CPD) pursued an African-American man wanted on several misdemeanor charges through some of the city’s most dangerous

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neighborhoods. After a brief chase, the police cornered their suspect—Timothy Thomas, 19—shot, and killed him.¹ Thomas was the fifteenth Black male since 1995 to have died at the hands of the CPD.² Two days later, the city erupted in protest. Over-the-Rhine, the bleakest of Cincinnati's several struggling, majority-Black neighborhoods, bore the brunt of the three-day outburst.³ Once again, a fatal police encounter had thrown an American city into chaos and enflamed a long history of tension between the city's Black community and its police department.

The incident—like the beating of Rodney King and the recent deaths of Michael Brown, George Floyd, Freddie Gray, Breonna Taylor, Alton Sterling, Botham Jean, and Philando Castile—reflected many of the most pressing and vexing social, economic, political, and civic problems in modern America. To some Cincinnatians, Timothy Thomas came to symbolize the loss of hope often associated with perceptions of intractable poverty and systemic inequality.⁴ To others, the incident simply reflected the actions of a violent, racist police department, either unwilling or unable to constrain its officers.⁵ In either case, the incident and its aftermath conjured the late 1960s, when city residents had last witnessed racial tension and injustice metastasize into widespread violence.⁶

1. Susan Vela, *Officer Shoots, Kills Suspect*, CINCINNATI ENQUIRER, Apr. 8, 2001, at A1.

2. See generally Dan Klepal, *'Fifteen' Becomes Activists' Rally Cry*, CINCINNATI ENQUIRER, Apr. 15, 2001, at A18.

3. See Francis X. Clines, *Appeals for Peace in Ohio After Two Days of Protests*, N.Y. TIMES (Apr. 12, 2001), <http://www.nytimes.com/2001/04/12/us/appeals-for-peace-in-ohio-after-two-days-of-protests.html> [<https://perma.cc/N5A4-NY3G>] [hereinafter Clines, *Appeals for Peace*] (reporting eruption of long-standing tensions between Over-the-Rhine's predominantly Black community and Cincinnati police); Francis X. Clines, *Cincinnati Mayor Imposes Curfew to Quell Violence*, N.Y. TIMES (Apr. 13, 2001), <http://www.nytimes.com/2001/04/13/us/cincinnati-mayor-imposes-curfew-to-quell-violence.html> [<https://perma.cc/A7XH-BMP7>] [hereinafter Clines, *Cincinnati Mayor*] (describing mayor's attempt to stop vandalism and violence in street by implementing curfew); see generally Francis X. Clines, *Blacks in Cincinnati Hear Echoes Amid the Violence*, N.Y. TIMES (Apr. 14, 2001), <http://www.nytimes.com/2001/04/14/us/blacks-in-cincinnati-hear-echoes-amid-the-violence.html?pagewanted=all> [<https://perma.cc/UXP2-2QCE>] [hereinafter Clines, *Echoes Amid the Violence*].

4. See generally John Byczkowski & Kevin Aldridge, *Races See Two Cincinnati*, CINCINNATI ENQUIRER, Sept. 2, 2001, at A1; Clines, *Appeals for Peace*, *supra* note 3; Clines, *Echoes Amid the Violence*, *supra* note 3.

5. See Dan Horn, *Respect at Core of Police Debate*, CINCINNATI ENQUIRER, Sept. 3, 2001, at A1 (discussing racial divide in community's views of police officers in Ohio).

6. See Clines, *Appeals for Peace*, *supra* note 3 (noting mayor's admission that recent violence was reminiscent of 1960s); Clines, *Cincinnati Mayor*, *supra* note 3 ("The last racial protests that attracted outside attention . . . were in 1968, in the aftermath of the assassination of the Rev. Dr. Martin Luther King Jr."); Kevin Sack, *Despite Report After Report, Unrest Endures in Cincinnati*, N.Y. TIMES (Apr. 16, 2001), <http://www.nytimes.com/2001/04/16/us/despite-report-after-report-unrest-endures-in-cincinnati.html?pagewanted=all> [<https://perma.cc/9XZJ-5P96>] (tracing Justice Department's pattern of investigating police violence against Black community since 1968 with few tangible results).

The anatomy of a police killing includes issues of race, class, power, and influence. It raises questions about the place of government in society, the proper relationship between citizen and state, and the role of pluralism and politics in our daily lives. This genus of problem has plagued America for decades. In the late 1960s, a long and historically complex set of perceived inequities boiled over. Across the country, hundreds died and hundreds of millions of dollars in property damage occurred as mostly African-American rioters lashed out in “bitterness and resentment” against “segregation and poverty” in cities as diverse as Tampa, Buffalo, and Los Angeles.⁷ Today, residents in Ferguson and Minneapolis experience similar injustices and draw on similar language to describe their desperation—just as Cincinnatians did in the wake of Timothy Thomas’s shooting. Indeed, protest and insurrection are seen as the only viable answer to police violence and the persistent, unyielding oppression it signifies.

It is important to note that despite this stasis, the federal government’s response to police violence has changed significantly over time, both in the language used to frame the issue and the legal and policy instruments available to address it. In 1968, at the behest of President Lyndon Johnson, a bipartisan group of politicians and civil servants set out to explain this turbulence. Though the Kerner Commission’s diagnosis was sweeping, much of its focus centered on the police. In one of the earliest and most important public recognitions of the profound connection between race and police behavior, the Kerner Commission Report “cited deep hostility between police and ghetto communities as a *primary* cause” of the violence.⁸ Federal funds poured into social services, housing, and job programs, as the Supreme Court was remaking the relationship between police and the communities they served. There was a clear acknowledgment of the broken relationship between municipal police and their Black constituents, but no formal mechanism for federal intervention.

Today, federal capacity to promote police-community relations has increased substantially. In fact, Section 14141 of the 1994 Crime Act empowers the U.S. Department of Justice (DOJ) to investigate and drive reform of local agencies found to have engaged in a pattern or practice of misconduct.⁹ It is under this substantial authority that the DOJ intervened in the management of the Cincinnati Police Department in the wake of

7. NAT’L ADVISORY COMM’N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 5 (1968) [hereinafter KERNER COMM’N REP.].

8. *Id.* at 157.

9. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 210401, 108 Stat. 1796, 2071 (originally codified at 42 U.S.C. § 14141). Note that this provision has been recodified under 34 U.S.C. § 12601. For the sake of familiarity, I will continue to refer to the original listing throughout the remainder of the essay.

the Thomas shooting, as it has done more recently in Ferguson and Baltimore. Despite its dormancy under Trump, there remains broad confidence in the “pattern-or-practice” initiative as the primary means for addressing systematic misconduct in America’s police and sheriff’s departments.

The House Judiciary Committee cited Section 14141 in calling for a federal investigation into the 2020 police-involved deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor.¹⁰ Prominent civil society organizations, including the U.S. Commission on Civil Rights,¹¹ the Leadership Conference on Civil and Human Rights,¹² the National Association for Civilian Oversight of Law Enforcement,¹³ and the American Society of Criminology,¹⁴ urged a similar course.

As a presidential candidate, Joe Biden placed pattern-or-practice

10. See Press Release, Jerrold Nadler, Chairman, H. Comm. on the Judiciary, House Judiciary Committee Democrats Demand DOJ Open Investigations in Response to Recent Murders of Ahmaud Arbery, Breonna Taylor, & George Floyd; Pledge Additional Oversight and Legislation (May 28, 2020), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=2972> [<https://perma.cc/7PL2-QNYW>] (“Ms. Taylor’s killing is the latest in a string of excessive force allegations against the LMPD, all of which require federal scrutiny into whether the LMPD is engaging in a pattern or practice of depriving individuals of their constitutional rights pursuant to 34 U.S.C. § 12601.”).

11. See Press Release, U.S. Comm’n on C.R., U.S. Commission on Civil Rights Unanimously Condemns the Killings of Ahmaud Arbery, Breonna Taylor, and George Floyd and Calls on the Department of Justice to Enforce Federal Civil Rights Laws that Protect Americans from Unconstitutional Policing Practices (June 5, 2020), <https://www.usccr.gov/press/2020/06-05-Pattern-or-Practice-Statement.pdf> [<https://perma.cc/XV77-CT8R>] (noting Commission’s acknowledgement of DOJ investigation into George Floyd’s death and its call for DOJ to open pattern-and-practice investigations into belated prosecutions related to Ahmaud Arbery’s and Breonna Taylor’s killings).

12. Letter from Leadership Conf. on Civ. & Hum. Rts., to William P. Barr, Att’y Gen., U.S. Dep’t of Just. (June 4, 2020), <https://civilrights.org/resource/civil-rights-groups-request-doj-investigation-into-death-of-george-floyd/> [<https://perma.cc/KT8L-MJBY>] (“On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference) and the 213 undersigned organizations, we urge the U.S. Department of Justice (DOJ) to fully investigate the circumstances surrounding Mr. Floyd’s death as well as the Minneapolis Police Department’s (MPD) long history of brutality against Black and Brown individuals in the community it serves.”).

13. Press Release, Nat’l Ass’n for Civilian Oversight of L. Enf’t, Civilian Oversight of Law Enforcement Necessary for Meaningful Reform (June 2, 2020), https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/80/attachments/original/1591134549/NACOLE_Floyd_Press_Release_FINAL_20200602.pdf?1591134549 [<https://perma.cc/9SLJ-6AVV>] (“We strongly recommend that oversight agencies have the authority to investigate, take testimony, audit or review internal investigations or processes, and make policy recommendations that will allow law enforcement departments to begin to serve communities in a truly just and unbiased way.”).

14. Press Release, Am. Soc’y of Criminology, Statement of the American Society of Criminology Executive Board Regarding the Deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery (June 2020), https://asc41.com/wp-content/uploads/ASC_Executive_Board_Statement_Regarding_the_Death_of_George_Floyd_2020.pdf [<https://perma.cc/6N8D-NLNW>] (“We encourage our members to continue their hard work in studying these important issues and are committed to continuing our support of their research.”).

reform at the center of his team's criminal justice policy, asserting that:

Under the Biden Administration, the Justice Department will again use its authority to root out unconstitutional or unlawful policing. The Biden Administration will reverse the limitations put in place under President Trump, and Biden will appoint Justice Department leadership who will prioritize the role of using pattern-or-practice investigations to strengthen our justice system.¹⁵

President Biden's DOJ, under Attorney General Merrick Garland, has begun to make good on these promises. Since taking office, Garland has initiated formal investigations in Minneapolis, Minnesota;¹⁶ Louisville, Kentucky;¹⁷ and, most recently, Phoenix, Arizona.¹⁸

Active enforcement of Section 14141 affords the federal executive branch significant power in promoting lawful policing. Under this authority, the DOJ has guided dozens of law enforcement agencies through a process designed to remedy systemic unlawful activity and establish systems built to enable a more accountable and transparent brand of policing. And yet, a close examination of these efforts over the last twenty-five years raises significant questions about whether the pattern-or-practice initiative is positioned to deliver on the hopes attached to it. Indeed, until the DOJ moves away from the exclusive reliance on technocratic solutions to address the symptoms of problems rooted in racial inequity, and instead positions pattern-or-practice reform to address the deep mistrust between police and communities of color, the aims of this effort will continue to fall short.

This Article begins with a brief history of Section 14141 and a review of the negotiated settlement process that defines the DOJ's role in reshaping unlawful agency practices. From there, the focus shifts to the

15. *The Biden Plan for Strengthening America's Commitment to Justice*, BIDEN HARRIS, joebiden.com/justice [https://perma.cc/H4KH-XBD5] (last visited Nov. 10, 2021).

16. See Press Release, U.S. Dep't of Just., Attorney General Merrick B. Garland Announces Investigation of the City of Minneapolis, Minnesota, and the Minneapolis Police Department (May 4, 2021), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-investigation-city-minneapolis-minnesota-and> [https://perma.cc/32FB-FQCV] (announcing formal DOJ pattern-or-practice investigation into MPD).

17. See Press Release, U.S. Dep't of Just., Department of Justice Announces Investigation of the Louisville/Jefferson County Metro Government and Louisville Metro Police Department (May 4, 2021), <https://www.justice.gov/opa/pr/department-justice-announces-investigation-louisvillejefferson-county-metro-government-and> [https://perma.cc/4PL2-F6R7] (noting DOJ plans to investigate Louisville and Jefferson County police departments' use-of-force policies).

18. See Press Release, U.S. Dep't of Just., Justice Department Announces Investigation of the City of Phoenix and the Phoenix Police Department (Aug. 24, 2021), <https://www.justice.gov/opa/pr/justice-department-announces-investigation-city-phoenix-and-phoenix-police-department> [https://perma.cc/S3B2-VFFF] (discussing Attorney General's decision to investigate Phoenix police department's use-of-force policies).

substance of these reform efforts, with a particular eye toward the rather narrow role that race plays. The paper closes with an argument for the future of pattern-or-practice reform to include a more explicit, proactive incorporation of racial dialogue.

II. THE FEDERAL PATTERN-OR-PRACTICE INITIATIVE

Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 empowers the DOJ to investigate allegations of ongoing and systematic misconduct in state and local police departments across the United States.¹⁹ Attorneys from the Special Litigation Section of the Civil Rights Division, which oversees enforcement of Section 14141, have initiated “hundreds” of preliminary inquiries under this authority.²⁰ This initial stage has generated evidence to support at least seventy-three formal investigations,²¹ the large majority of which have involved claims that agency use-of-force policies, search-and-seizure practices, and/or traffic or pedestrian-stop protocols violate either constitutional or statutory legal standards.²²

Of the DOJ’s seventy completed investigations, forty-four (62.9 percent) revealed evidence of a “pattern or practice” of misconduct. Forty of those forty-four (90.1 percent) affected jurisdictions that opted to settle immediately rather than litigate the DOJ’s legal claims.²³ The resultant settlement agreements, memorialized in the form of either a consent decree (n = 20) or a memorandum of understanding (n = 20), represent a legally binding, judicially enforced roadmap to remedying the legal

19. 34 U.S.C. § 12601(b) (originally enacted as 42 U.S.C. § 14141(b)).

20. C.R. DIV., U.S. DEP’T OF JUST., THE CIVIL RIGHTS DIVISION’S PATTERN AND PRACTICE POLICE REFORM WORK: 1994–PRESENT 5 (2017), <https://www.justice.gov/crt/file/922421/download> [<https://perma.cc/527A-HTY8>] (“The Division has opened hundreds of preliminary inquiries since the enactment of Section 14141 in 1994.”).

21. As of 2017, the DOJ had initiated seventy formal investigations. After opening none during the Trump presidency, the DOJ has recently initiated investigations in three jurisdictions: Minneapolis, Minnesota; Louisville, Kentucky; and Phoenix, Arizona. See generally *Special Litigation Section Cases and Matters*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#police> [<https://perma.cc/D66L-QV3X>] (last visited Dec. 21, 2021).

22. See *Fixing the Force, Allegations*, FRONTLINE, <http://apps.frontline.org/fixingtheforce/> [<https://perma.cc/YWB8-T32L>] (last visited Nov. 10, 2021) (surveying patterns and practices of law enforcement agencies nationwide that have resulted in civil-rights violations); C.R. DIV., *supra* note 20, at 41–48 (summarizing Division’s pattern-or-practice cases initiated through January 2017).

23. There are exceptions to this pattern. At least four jurisdictions have pursued litigation, including Columbus, Ohio; Maricopa County, Arizona; Alamance County, North Carolina; and Colorado City, Arizona, before opting to settle. C.R. DIV., *supra* note 20, at 42, 46, 47.

violation.²⁴

Despite variation in the nature and the severity of the misconduct at issue in each case, the DOJ continues to draw on a set of organizational and managerial reforms it developed during the Clinton administration to drive change.²⁵ The reliance on several key components has remained stable over time. A significant majority of settlements includes mandates to change relevant policy and related officer training. To improve compliance with the new policies, most agreements require increased data collection efforts, the development of an early intervention system, and the institution of heightened chain-of-command oversight. New officer complaint protocols are often incorporated to promote both internal and external accountability.

The system developed to drive the implementation of these reforms is a clear strength of the initiative. In nearly every settlement agreement developed under Section 14141, strict timelines are established, along with regular status update requirements, each designed to promote incremental progress while building momentum toward the broader reform goals. Day-to-day management of this process has been overseen by an independent monitor in sixty percent of all cases ($n = 24$), a total that includes nearly every settlement involving a major urban jurisdiction, including Los Angeles; Cincinnati; Washington, DC; Baltimore; Seattle; Portland; Miami; and Detroit.²⁶ In cases where the scope of the reform was sufficiently narrow that costs of independent oversight outweighed benefits, DOJ staff have served in this role.²⁷

The standard settlement agreement also includes explicit long-run horizons, which typically range from five to seven years for major efforts. In Seattle, where the settlement included scores of mandated changes to address a wide range of issues, the deadline for implementation was set

24. See *Fixing the Force, Status*, FRONTLINE, <http://apps.frontline.org/fixingtheforce/#status> [<https://perma.cc/3HBT-GQGM>] (last visited Nov. 10, 2021) (quantifying the status of Justice Department investigations since 1994); see generally *An Interactive Guide to the Civil Rights Division's Police Reforms*, U.S. DEP'T OF JUST. (Jan. 18, 2017), <https://www.justice.gov/crt/page/file/922456/download> [<https://perma.cc/2383-2TB5>].

25. See C.R. DIV., *supra* note 20, at 20, 26 (explaining current reform model's goal as achieving organizational change within police departments and advancing a community- and problem-oriented policing strategy); see generally *Fixing the Force*, FRONTLINE, <http://apps.frontline.org/fixingtheforce/> [<https://perma.cc/3WKJ-WKB4>] (last visited Nov. 30, 2021).

26. See C.R. DIV., *supra* note 20, at 1–2, 21–23, 30–31 (analyzing Independent Monitoring team's role and noting that fourteen of the eighteen currently open reform agreements are overseen by it).

27. See, e.g., Settlement Agreement at 20–23, *United States v. City of Warren*, No. 12-cv-00086 (N.D. Ohio Jan. 26, 2012), ECF No. 4 (delineating Department of Justice's direct oversight during monitoring, reporting, and implementing Settlement Agreement).

at five years.²⁸ By contrast, cases involving more targeted reforms, like those in Yonkers, New York, and Warren, Ohio, for example, the agreements were set to terminate after two years.²⁹

The framework driving reform, from deadlines to oversight officials, including DOJ and monitor team staff, remain in place until the presiding judge has determined that the department “has fully implemented the terms of the agreement, often including sustained implementation of the agreement for the amount of time agreed upon by the parties (usually two consecutive years).”³⁰ In some cases, like Prince George’s County, Maryland, this has occurred in step with the termination date established by the original agreement.³¹ In others, like Los Angeles and Seattle, oversight has remained in place for an extended period.³² We know relatively little about the end of federal oversight under Section 14141. The process of reaching substantial compliance, the factors that shape the end of a consent decree, and the transition from DOJ oversight to department autonomy deserve much closer attention from scholars. The overarching point to be made, however, is that termination is akin to a declaration of victory, an assertion that the process has effectively addressed the precipitating unlawful conduct and equipped the department with the tools to maintain lawful, accountable policing in perpetuity.

28. Settlement Agreement and Stipulated [Proposed] Order of Resolution at 74, *United States v. City of Seattle*, No. 12-cv-01282 (W.D. Wash. July 27, 2012), ECF No. 3-1 (establishing a deadline for settlement agreement’s implementation).

29. U.S. DEP’T OF JUST., *YONKERS POLICE DEPARTMENT AGREEMENT 23* (Nov. 14, 2016), <https://www.justice.gov/crt/case-document/file/923196/download> [<https://perma.cc/KC3A-6YNF>] (“The Parties envision that YPD can achieve substantial compliance with all the requirements of this Agreement within two years of its Effective Date.”); Settlement Agreement, *supra* note 27, at 22 (mandating city’s compliance with settlement agreement’s terms for two years).

30. C.R. DIV., *supra* note 20, at 35.

31. See *Case Profile: U.S. v. Prince George’s County, Maryland*, C.R. LITIG. CLEARINGHOUSE, <https://www.clearinghouse.net/detail.php?id=5540> [<https://perma.cc/MQR9-BVAC>] (last visited Nov. 10, 2021) (showing that court granted parties’ joint motion to terminate consent decree after ruling police department had fully complied); see also JOSHUA M. CHANIN, *NEGOTIATED JUSTICE? THE LEGAL, ADMINISTRATIVE, AND POLICY IMPLICATIONS OF ‘PATTERN OR PRACTICE’ POLICE MISCONDUCT REFORM* 69 (2011), <https://www.ojp.gov/pdffiles1/nij/grants/237957.pdf> [<https://perma.cc/E4AN-GHNC>] (stating that DOJ in the Prince George’s County, Maryland, case set oversight termination date three years after agreement’s inception).

32. The LAPD settlement was signed in June 2001 and originally set to terminate at five years. The presiding judge lifted federal oversight in May 2013. Joel Rubin, *Federal Judge Lifts LAPD Consent Decree*, L.A. TIMES (May 16, 2013, 12:00 AM), <https://www.latimes.com/local/la-xpm-2013-may-16-la-me-lapd-consent-decree-20130517-story.html> [<https://perma.cc/TP82-K77G>]. The Seattle consent decree was initiated in July 2012 and remains in place as of this writing. See Mike Carter, *Federal Judge to Seattle Officials: ‘Too Much Knee-Jerk, Not Enough Forethought’ on Police Reform*, SEATTLE TIMES (Aug. 10, 2021, 10:16 PM), <https://www.seattletimes.com/seattle-news/federal-judge-to-seattle-officials-too-much-knee-jerk-not-enough-forethought-on-police-reform/> [<https://perma.cc/HG9J-P3ZE>] (commenting that there is “no real end in sight” to Seattle’s federal oversight decree).

Empirical analysis of this assumption has been driven by single-case analysis of reform efforts in Pittsburgh;³³ Los Angeles;³⁴ Washington, DC;³⁵ and Cincinnati.³⁶ In each instance, study authors came away largely optimistic about the effort, but these conclusions were based almost entirely on anecdote and rudimentary assessment of annual trends. Owing to the challenge of accessing appropriate data and other relevant metrics, the focus was necessarily placed on the agencies' implementation of mandated reforms, rather than a more systematic impact evaluation. A clear strength of the initiative is the infrastructure put in place to bring agencies through the consent-decree process,³⁷ yet this body of scholarship suggests an inconsistent relationship between these organizational reforms and the policy outcomes such changes were designed to address. A recent paper tracked Section 1983 suits filed against police in twenty-three jurisdictions experiencing federal intervention to examine the premise that pattern-or-practice reform will reduce police-related civil-rights litigation in the affected jurisdiction.³⁸ The data suggest that the consent-decree process "may contribute to a modest reduction in the probability of Section 1983 filings occurring. . . . [Though t]he protective effects of the consent decree experience may not last in the long term."³⁹

A second paper compared data on police killings occurring between 2000 and 2016 across 962 municipal police departments, including thirty-six agencies that faced federal intervention during that period.⁴⁰ The results suggest that the initiation of a DOJ investigation correlated with a

33. See generally ROBERT C. DAVIS ET AL., TURNING NECESSITY INTO VIRTUE: PITTSBURGH'S EXPERIENCE WITH A FEDERAL CONSENT DECREE (2002); ROBERT C. DAVIS, NICOLE J. HENDERSON & CHRISTOPHER W. ORTIZ, CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING? THE PITTSBURGH CONSENT DECREE (2005); CHANIN, *supra* note 31.

34. See Stephen Rushin, *Competing Case Studies of Structural Reform Litigation in American Police Departments*, 14 OHIO ST. J. CRIM. L. 113, 116–36 (2016) (examining how DOJ used structural reform to facilitate change within LAPD); see generally CHRISTOPHER STONE, TODD FOGLESONG & CHRISTINE M. COLE, POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD (2009), <https://www.hks.harvard.edu/publications/policing-los-angeles-under-consent-decree-dynamics-change-lapd> [<https://perma.cc/NBG2-AAZP>].

35. See generally CHANIN, *supra* note 31.

36. See generally GREG RIDGEWAY ET AL., POLICE-COMMUNITY RELATIONS IN CINCINNATI (2009); GREG RIDGEWAY ET AL., POLICE-COMMUNITY RELATIONS IN CINCINNATI: YEAR TWO EVALUATION REPORT (2006); K. JACK RILEY ET AL., POLICE-COMMUNITY RELATIONS IN CINCINNATI (2005).

37. See generally Joshua Chanin, *On the Implementation of Pattern or Practice Police Reform*, 15 CRIMINOLOGY, CRIM. JUST., L. & SOC'Y 38 (2014).

38. See generally Zachary A. Powell et al., *Police Consent Decrees and Section 1983 Civil Rights Litigation*, 16 CRIMINOLOGY & PUB. POL'Y 575 (2017).

39. *Id.* at 594.

40. See generally Li Sian Goh, *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?*, 37 JUST. Q. 900 (2020).

twenty-seven percent drop in police killings.⁴¹ In cases where the investigation led to a consent decree, jurisdictions that were assigned an independent monitor to oversee the reform saw police killings drop by an additional twenty-nine percent; reforms taking place without a monitor saw no additional reduction.⁴² The data suggest at least two important implications. First, the apparent deterrent effect associated with DOJ's investigative phase is meaningful and worthy of future study. Second, so too is the relative value of independent oversight. This finding is noteworthy given the value of external accountability to organizational reform generally and the DOJ's reliance on an independent monitor in nearly every major reform effort it has initiated. Monitorship is the most significant cost associated with the reform process. A correlation between the use of an independent monitor and reduced incidence of police killing is a strong counter to cost-based criticism. Critically, the paper did not address whether affected departments were able to sustain their lower levels of police killing.

Given what is understood about the challenges associated with institutionalizing organizational reforms, there is good reason to believe that such progress may be transitory. Examples of such backsliding—whether a function of an agency's inability or unwillingness to cement changes brought on by the federal intervention or sustain the cultural ethos embedded in the process—are not uncommon.

Pittsburgh, where the DOJ intervened in 1997 to address “excessive force, false arrests, and improper searches and seizures,”⁴³ is an example of early progress beginning to deteriorate almost as soon as the consent decree was terminated. The reform process was championed by a reform-minded police chief, Robert McNeilly, and buoyed by support from the city's political institutions.⁴⁴ Despite significant opposition from the officer union, the changes appeared to take hold and showed meaningful early returns.⁴⁵ By 2012, seven years after federal oversight was lifted, signs of backsliding had become evident.⁴⁶ McNeilly had been fired, the

41. *Id.* at 921.

42. *Id.*

43. C.R. DIV., *supra* note 20, at 3.

44. See CHANIN, *supra* note 31 at 117 (noting McNeilly's professed dedication to reform); DAVIS, HENDERSON & ORTIZ, *supra* note 33, at 10 (describing city officials' determination to carry out federal consent decree, assisted by implementation committee consisting of police chief and other supportive, high-ranking officials).

45. See DAVIS, HENDERSON & ORTIZ, *supra* note 33, at 10 (noting police union's absence from consent decree's implementation committee); CHANIN, *supra* note 31, at 43 (describing progress by September 2002, five years after consent decree's inception).

46. See Joshua M. Chanin, *Examining the Sustainability of Pattern or Practice Police Misconduct Reform*, 18 POLICE Q. 163, 177 (2015) (“Use of force incidence dropped precipitously in 2008

City had experienced a series of high-profile use-of-force incidents,⁴⁷ and there had been a substantial drop in public confidence in the police.⁴⁸ By 2014, McNeilly's replacement had been indicted on federal corruption charges,⁴⁹ raising in Mayor Bill Peduto's words, "red flags that open up a lot of concern that . . . could allow for federal agencies to come in [again]."⁵⁰

While the decline experienced by other jurisdictions may not have been as precipitous as that in Pittsburgh, the small amount of long-run data that has been gathered shows worrisome signs in Prince George's County, Maryland;⁵¹ Detroit;⁵² and others. Progress in Cincinnati, which has for years been the DOJ's crown jewel⁵³ and the case proponents used to demonstrate the efficacy and sustainability of the process,⁵⁴ has

and 2009, as citizen complaints spiked and remained basically flat until 2012, when the annual total climbed some 23%.”)

47. See *id.* at 172–74 (noting McNeilly's dismissal in early 2006, subsequent annual increase in use-of-force complaints against BPP, and high-profile incidents of alleged police violence against protesters at 2009 G-20 summit).

48. See *id.* at 175 (“[S]uch incidents have had a dramatic effect on police-community relations in the city and continue to negatively affect public perceptions of the Bureau.”).

49. *Former Pittsburgh Police Chief Nate Harper Indicted*, WTAE (Pittsburgh) (Mar. 23, 2013, 12:16 AM), <https://www.wtae.com/article/former-pittsburgh-police-chief-nate-harper-indicted-4/7460424#> [<https://perma.cc/U8YK-XUJN>].

50. Robert Zullo, *Peduto: Pittsburgh Committed to Fixing Police Problems*, PITTSBURGH POST-GAZETTE (July 6, 2014, 9:51 PM), <https://www.post-gazette.com/local/city/2014/07/07/Peduto-Pittsburgh-committed-to-fixing-police-problems/stories/201407070049> [<https://perma.cc/SZDR-FVWD>].

51. See Katie Mettler, *Pr. George's Police Reform Group Calls for More Mental Health Resources, Scrapping Officer Protections in Misconduct Investigations*, WASH. POST (Dec. 4, 2020, 10:30 AM), https://www.washingtonpost.com/local/public-safety/police-reform-recommendations-prince-georges/2020/12/04/3b0bb4e6-3592-11eb-b59c-adb7153d10c2_story.html [<https://perma.cc/4C4S-RPJ3>] (reporting on many of the same issues from twenty years ago); Dominique Maria Bonessi, *Report Details Allegations of Racial Discrimination by Prince George's County Police*, NPR (Feb. 24, 2021), <https://www.npr.org/local/305/2021/02/24/970947069/report-details-allegations-of-racial-discrimination-by-prince-george-s-county-police> [<https://perma.cc/8ANW-B3ZF>] (reporting on release of a report investigating racism in Prince George's County Police Department).

52. See George Hunter & Christine Ferretti, *Federal Oversight Forced Reforms on Detroit's Often Violent Police Department*, DETROIT NEWS (June 9, 2020, 10:51 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2020/06/09/detroit-police-violence-prompted-federal-oversight-reforms/5320917002/> [<https://perma.cc/YK4Q-9YWN>] (noting that despite some signs of improvement—seventy-five percent reduction in police killings—others in community said police department still fell short of properly protecting and serving city's African-American community).

53. See Kevin Grasha, *AG: Cincinnati Police a Nationwide Model*, ENQUIRER (Cincinnati) (May 19, 2015, 6:22 PM), <https://www.cincinnati.com/story/news/2015/05/19/loretta-lynch-visit/27606525/> [<https://perma.cc/T5YP-MW2P>] (“U.S. Attorney General Loretta Lynch . . . said Cincinnati's approach to collaborative policing can be a model for cities across the country.”).

54. See generally Alana Semuels, *How to Fix a Broken Police Department*, ATLANTIC (May 28, 2015), <https://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/> [<https://perma.cc/Y5JZ-2629>].

dropped off recently. In 2017, ten years after the CPD was released from the 2002 agreement, several members of the original team that had worked on the Collaborative Agreement began reviewing the status of the reform.⁵⁵ In a series of reports, the team identified weaknesses in the CPD's use of data and the systems in place to drive officer accountability.⁵⁶

In Washington, DC, where the Metropolitan Police Department (MPD) had shown early promise in its effort to drive changes to its use-of-force and officer accountability infrastructure,⁵⁷ former MPD consent-decree monitor Michael Bromwich conducted a review seven years after the consent decree was terminated and found a mixed bag. Bromwich noted that the MPD continued to embody sound use-of-force policy but over time had lapsed in its effort to maintain top-line use-of-force investigation protocols and best practices in other areas subject to reform.⁵⁸ In a follow-up to the 2016 report, Bromwich closely evaluated four MPD use-of-deadly-force incidents occurring between 2018 and 2019. His review found "serious lapses" in the Department's investigation of these incidents, problems identified in the earlier report that had "grown substantially worse," and a department that "appear[ed] to resist or be unconcerned with remedying them."⁵⁹

The pattern-or-practice initiative is the most powerful tool for driving police reform in the United States. The federal government has investigated dozens of agencies since 1994, finding evidence of systematic misconduct and thus formally intervening in several, including some of the country's most prominent departments. The process has received praise

55. *Collaborative Agreement Refresh*, CITY OF CINCINNATI, <https://www.cincinnati-oh.gov/police/collaborative-agreement-refresh/> [https://perma.cc/M8UX-PQC5] (last visited Dec. 19, 2021).

56. *See generally* SAUL A. GREEN ET AL., *PROGRESS REPORT: CITY OF CINCINNATI COLLABORATIVE AGREEMENT: BIAS-FREE POLICING AND OFFICER ACCOUNTABILITY* (2017) <https://www.cincinnati-oh.gov/sites/police/assets/File/Bias-Free%20Policing%20%26%20Officer%20Accountability%20Progress%20Report%20-%20Saul%20Green%209-21-17.pdf> [https://perma.cc/8QFQ-WXGB].

57. *See* Chanin, *supra* note 46, at 175 (reporting that, according to consent-decree monitor, the Washington, DC, police department had become more sophisticated and a model for reform across the country).

58. *See* MICHAEL BROMWICH ET AL., *THE DURABILITY OF POLICE REFORM: THE METROPOLITAN POLICE DEPARTMENT AND USE OF FORCE: 2008–2015*, at 114–17 (2016), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/> [https://perma.cc/AQ24-72BN] (concluding that MPD had improved from its pre-consent decree practices, but that it must continue working hard to prevent "erosion of important reforms that comes naturally with the passage of time").

59. MICHAEL BROMWICH ET AL., *THE METROPOLITAN POLICE DEPARTMENT AND THE USE OF DEADLY FORCE: FOUR CASE STUDIES 2018–2019*, at xvii (2021), <https://dcauditor.org/report/the-metropolitan-police-department-and-the-use-of-deadly-force-four-case-studies-2018-2019/> [https://perma.cc/GD4N-LSUF].

from academics,⁶⁰ police executives,⁶¹ and various other stakeholders, yet has been subject to relatively little empirical evaluation. What does exist suggests that the consent-decree process has succeeded in promoting technocratic reforms, from changes to policy and training, to the development of internal officer accountability systems, but provides a scant indication that these structural changes either lead to desired outcomes or prompt the sorts of cultural evolution necessary to institutionalize the principles—lawfulness, equity, accountability, transparency—driving the process. The tenuousness of reforms in places like Pittsburgh and Washington, DC, makes clear that something significant must change if Section 14141 is going to match its reputation for bringing change to malfeasant departments and the communities directly affected.

III. SECTION 14141, RACE, AND POLICE LEGITIMACY

In an interview with *Playboy*, former police chief William Bratton argued that police behavior is critically important to race relations in the United States. “If we don’t solve the race issue, we’ll never solve the other issues [with policing]. The police have traditionally been the flash point for so many of America’s racial problems,” said Bratton.⁶² There is much historical evidence to support Bratton’s view. The Kerner Commission identified racial tension and a severe lack of trust between the police and minority communities as a central explanation for the urban upheaval of the 1960s.⁶³ Uprisings during the Civil Rights Era were certainly not the last example of the costly interaction between police behavior and race. Other blue-ribbon commission reports, including that of the Christopher Commission, were formed to evaluate the LAPD in the months following the Rodney King beating,⁶⁴ and they highlighted the

60. See generally William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 781 (2006); Samuel Walker, *The Justice Department’s Pattern-or-Practice Police Reform Program, 1994–2017: Goals, Achievements, and Issues*, 5 ANN. REV. CRIMINOLOGY 6.1 (2021).

61. See generally U.S. DEP’T OF JUST., TAKING STOCK: REPORT FROM THE 2010 ROUNDTABLE ON THE STATE AND LOCAL LAW ENFORCEMENT POLICE PATTERN OR PRACTICE PROGRAM (42 U.S.C. § 14141) (2011), <https://www.ojp.gov/pdffiles1/nij/234458.pdf> [<https://perma.cc/Q6DG-FM2C>]; POLICE EXEC. RSCH. F., CIVIL RIGHTS INVESTIGATIONS OF LOCAL POLICE: LESSONS LEARNED (2013), https://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf [<https://perma.cc/UDT8-BKBL>].

62. Joe Domanick, *Saving Los Angeles*, PLAYBOY MAGAZINE, Feb. 2008, at 70, 72 (quoting Bratton).

63. See KERNER COMM’N REP., *supra* note 7, at 93 (“[To Black Americans] police have come to symbolize white power, white racism, and white repression. And the fact is that many police do reflect and express these white attitudes.”).

64. *Los Angeles: The Christopher Commission Report*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/reports98/police/uspo73.htm> [<https://perma.cc/ALQ7-6JQR>] (last visited Dec. 19, 2021) (noting creation and findings of the Christopher Commission).

intertwinement of race and police abuse, as do more recent incidents involving Michael Brown, Freddie Gray, and George Floyd, among thousands of others.⁶⁵

A significant and related cost is the mistrust of police institutions among Blacks in the United States. According to a Gallup poll, thirty-four percent of Blacks in 1993 said that they had a “great deal” of confidence in police, compared to sixty percent of Whites.⁶⁶ In 2020, the gap was considerably larger: fifty-six percent of Whites reported high confidence in police, while just nineteen percent of Blacks felt the same way.⁶⁷ Similar race-based disparities exist in views of police discrimination⁶⁸ and the use of force.⁶⁹

This is not the proper forum for a comprehensive discussion of the scholarly research examining the relationship between race and policing. Even a cursory review of the voluminous scholarship on the issue makes plain the importance of evaluating police behavior, particularly misconduct, with an eye towards race and the detrimental effect of racialized inequity on police-community relations.⁷⁰ At a minimum, in light of both historical evidence and a preponderance of empirical scholarship, it is difficult to argue with the notion that the vexed and deeply rooted relationship between the police and minority communities greatly affects issues of law and order, crime and justice, and misconduct and accountability across the United States.

65. See, e.g., Weihua Li, *From Michael Brown to George Floyd: What We've Learned About Policing*, MARSHALL PROJECT (June 3, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/06/03/from-michael-brown-to-george-floyd-what-we-ve-learned-about-policing> [<https://perma.cc/DBB2-VHNE>] (tracing reports from the Kerner Commission through recent DOJ reports on police reforms and linking recent police killings of Black men to continued police abuses and systemic racial inequities).

66. Jeffery M. Jones, *Black, White Adults' Confidence Diverges Most on Police*, GALLUP (Aug. 12, 2020), <https://news.gallup.com/poll/317114/black-white-adults-confidence-diverges-police.aspx> [<https://perma.cc/HTX6-ZRJB>].

67. *Id.*

68. Laura Santhanam, *Two-Thirds of Black Americans Don't Trust the Police to Treat Them Equally. Most White Americans Do.*, PBS NEWSHOUR (June 5, 2020, 12:00 PM), <https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do> [<https://perma.cc/YC6B-H36K>].

69. Kat Stafford & Hannah Fingerhut, *AP-NORC Poll: Sweeping Change in US Views of Police Violence*, AP NEWS (June 17, 2020), <https://apnews.com/article/us-news-ap-top-news-racial-injustice-politics-police-728b414b8742129329081f7092179d1f> [<https://perma.cc/PB8M-35KL>].

70. See generally RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* (1998); David Cole, *Discretion and Discrimination Reconsidered: A Response to the New Criminal Justice Scholarship*, 87 GEO. L.J. 1059 (1999); SAMUEL WALKER ET AL., *THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA* (Cengage Learning, 6th ed. 2017); RONALD WEITZER & STEVEN A. TOUCH, *RACE AND POLICING IN AMERICA: CONFLICT AND REFORM* (2006); RACE, ETHNICITY AND POLICING: NEW AND ESSENTIAL READINGS (Stephen Rice & Michael White eds., 2010); Tom R. Tyler, *Trust and Legitimacy: Policing in the USA and Europe*, 8 EUR. J. CRIMINOLOGY 254 (2011).

The analytical convergence of race and police conduct is of particular relevance in the context of Section 14141. In one form or another, race-based inequities have been present in nearly every case brought by the DOJ under this authority. This is true of so-called “first wave” cases initiated by the Clinton and George W. Bush administrations, beginning with the 1994 investigation into alleged racial profiling by the New Jersey State Police.⁷¹ Another early investigation, initiated in April 1996 in Pittsburgh, was sparked by the death of two Black men at the hands of the police and a long string of complaints submitted to the ACLU by Black Pittsburghers alleging disproportionate use of force and a wider pattern of discrimination by PBP officers.⁷² The Pittsburgh Bureau of Police settled these claims in 1997 and remained under federal oversight until 2005.⁷³ A series of stories in the *Washington Post* chronicled the Washington, DC, Metro Police Department’s (MPD’s) high—and racially skewed—rate of police-involved shootings, many of which targeted Blacks, prompting then-Chief Charles Ramsey to request a DOJ investigation in January 1999.⁷⁴ The MPD was under federal control from 2001 through 2008.⁷⁵ In Prince George’s County, Maryland, a well-documented string of police violence and corruption incidents,⁷⁶ together with a litany of complaints of racial bias collected by the NAACP in the early 2000s,⁷⁷ helped to substantiate the DOJ’s claims of systematic, race-

71. Press Release, Off. Att’y Gen. (N.J.), State Police Racial Profiling Consent Decree Dissolved (Sept. 21, 2009), <https://www.nj.gov/oag/newsreleases09/pr20090921a.html> [<https://perma.cc/6VAT-HUQH>].

72. See ROBERT C. DAVIS ET AL., *supra* note 33, at 4–7 (discussing ACLU investigation prompted by tensions between police and Black Pittsburgh community after two Black men were killed in police custody).

73. See Torsten Ove, *Federal Control of Pittsburgh Police Lifted*, PITTSBURGH POST-GAZETTE (Apr. 5, 2005, 11:00 PM), <https://www.post-gazette.com/local/city/2005/04/06/Federal-control-of-Pittsburgh-police-lifted/stories/200504060221> [<https://perma.cc/3B6S-XVNM>] (reporting DOJ and City of Pittsburgh joint motion in 2005 to end 1997 consent decree’s federal oversight of Pittsburgh police).

74. See Roberto Suro & Sari Horwitz, *Justice Department to Assist D.C. Police*, WASH. POST, Jan. 8, 1999, at D01 (recounting *Washington Post*’s eight-month investigation showing police misconduct and prompting Chief Charles Ramsey’s request that DOJ review all fatal police shootings in past decade).

75. See MICHAEL R. BROMWICH, FINAL REPORT OF THE INDEPENDENT MONITOR FOR THE METROPOLITAN POLICE DEPARTMENT 1 (2008), <https://www.clearinghouse.net/chDocs/public/PN-DC-0001-0032.pdf> [<https://perma.cc/SFP6-WYZQ>] (noting federal consent decree for MPD in effect from June 2001 until April 2008).

76. See Craig Whitlock, *FBI to Probe Pr. George’s Police Cases*, WASH. POST (Aug. 3, 2001), <https://www.washingtonpost.com/wp-dyn/content/article/2007/06/21/AR2007062101006.html> [<https://perma.cc/Y83N-GHEA>] (“The FBI has opened civil rights investigations in seven cases in which Prince George’s County police shot or allegedly beat people, bringing to more than 30 the number of federal probes involving county officers in the past two years.”).

77. See Craig Whitlock, *Pr. George’s Police Face Wider Inquiry*, WASH. POST (Apr. 11, 2000),

based misconduct.

The pattern among Obama-era cases takes a similar shape. Several investigations were driven by allegations of discriminatory policing. Racially disparate outcomes were identified in Alamance County, North Carolina;⁷⁸ Meridian, Mississippi;⁷⁹ East Haven, Connecticut;⁸⁰ and Maricopa County, Arizona, among others.⁸¹ In Newark, the DOJ built its consent decree around “stark and unremitting” evidence of race-based disparities.⁸² An investigation of the Baltimore Police Department, initiated after Freddie Gray was killed while in police custody, revealed “a policing strategy that, by its design, led to differential enforcement in African-American communities” and a failure to “prevent discrimination, despite longstanding notice of concerns about how it polices African-American communities in the City.”⁸³ The DOJ’s review of policing in Ferguson, Missouri, revealed what one commentator called a “conspiracy”⁸⁴ against the city’s Black residents:

Ferguson’s own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities. Over

<https://www.washingtonpost.com/archive/politics/2000/04/11/pr-georges-police-face-wider-inquiry/c8d25a13-8894-45ad-ae5c-0a763b27dc97/> [<https://perma.cc/LQ4Z-YYM8>] (reporting that NAACP had collected a list of complaints about Prince George’s County police and pushed for a federal review of the department).

78. *See generally* Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just., to Clyde B. Albright, Alamance Cnty. Att’y, & Chuck Kitchen, Turrentine Law Firm (Sep. 18, 2012), https://www.justice.gov/crt/about/spl/documents/acso_findings_9-18-12.pdf [<https://perma.cc/UNL5-2ZM5>].

79. *See generally* Press Release, U.S. Dep’t Just., Justice Department Releases Investigative Findings Showing Constitutional Rights of Children in Mississippi Being Violated (Aug. 10, 2012), <https://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-showing-constitutional-rights-children> [<https://perma.cc/QV4T-M9NL>].

80. *See generally* Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just., to Hon. Joseph Maturo, Jr, Town of East Haven Mayor (Dec. 19, 2011), https://www.justice.gov/crt/about/spl/documents/easthaven_findletter_12-19-11.pdf [<https://perma.cc/U5XX-SZ36>].

81. *See generally* Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just., to Bill Montgomery, Maricopa Cnty. Att’y (Dec. 15, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf [<https://perma.cc/P5YC-ELLZ>].

82. C.R. DIV., U.S. DEP’T OF JUST., & U.S. ATT’Y OFF., DIST. N.J., INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 16 (2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf [<https://perma.cc/5XVB-GGNB>].

83. C.R. DIV., U.S. DEP’T OF JUST., INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 8 (2016), <https://www.justice.gov/crt/case-document/baltimore-police-department-findings-report> [<https://perma.cc/XU5F-99DP>].

84. *See* Conor Friederford, *Ferguson’s Conspiracy Against Black Citizens*, ATLANTIC (Mar. 5, 2015), <https://www.theatlantic.com/national/archive/2015/03/ferguson-as-a-criminal-conspiracy-against-its-black-residents-michael-brown-department-of-justice-report/386887/> [<https://perma.cc/5U7B-E4GN>] (“Ferguson may as well be an elaborate conspiracy against its black residents.”).

time, Ferguson's police . . . practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular.⁸⁵

Investigations into allegations of ostensibly race-neutral yet unlawful conduct, like the use of excessive force or improper search-and-seizure practices, revealed in nearly every case evidence of race-based misconduct. In Seattle, a federal investigation into unlawful use of force and discriminatory policing was precipitated by the police killing of a Native American man⁸⁶ and a video recording of an SPD officer threatening to "beat the fucking Mexican piss" out of a suspect.⁸⁷ The DOJ findings letter described evidence of a "strong perception among segments of Seattle's diverse communities that SPD officers engage in discriminatory policing practices against racial and ethnic minorities . . ." ⁸⁸ This alone did not substantiate a finding that SPD engaged in a pattern or practice of discriminatory policing,⁸⁹ but these findings were framed as being reflective of a long-standing mistrust of the SPD among members of the city's minority communities:

Over the years, SPD has grappled with complaints regarding its treatment of racial and ethnic minorities. The [Office of Police Accountability] Auditor's 2009 Report about SPD's Relationship with Diverse Communities found that 43% of residents and 56% of Blacks believe that racial profiling by the police is a problem in Seattle. . . . This is an area where community perceptions can have significantly detrimental consequences on a police

85. C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/Y35J-XPGF>].

86. See Gene Johnson, *DOJ: Seattle in Compliance with Police Reforms*, AP NEWS (Oct. 13, 2017), <https://apnews.com/article/979ba3fc03724e359dc60f333a567925> [<https://perma.cc/X3H3-Y5MQ>] ("The Justice Department began investigating Seattle police following a series of questionable uses of force, including the unjustified shooting of a Native American woodcarver after he crossed the street in front of a cruiser in 2010.").

87. C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE SEATTLE POLICE DEPARTMENT 27 (2011), https://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf27 [<https://perma.cc/R3Y3E-DMGF>].

88. *Id.* at 25.

89. In fact, it was a lack of quality data. See *id.* at 6:

We further find that SPD's ability to maintain the trust of the community is hindered by SPD's: (1) deficient policies that address the risk of biased policing and or govern pedestrian stops; (2) inadequate supervision and training of its officers on (a) how to avoid biased policing practices, (b) how to conduct proper pedestrian stops, and (c) tactical communications skills; (3) a failure to proactively and consistently engage the community; and (4) the failure to keep meaningful data that would permit SPD to evaluate and take action to address allegations of biased policing.

department's ability to perform its mission, and it is an area where SPD faces real challenges.⁹⁰

The 2010 investigation of allegations that the New Orleans Police Department (NOPD) engaged in systematically unlawful use of force revealed a similar story. Data showed racialized use-of-force patterns: "Of the 27 instances between January 2009 and May 2010 in which NOPD officers intentionally discharged their firearms at people, all 27 of the subjects of this deadly force were African American."⁹¹ Together with what the DOJ called the NOPD's "fail[ure] to take meaningful steps to counteract and eradicate bias based on race, ethnicity, and LGBT status in its policing practices,"⁹² these data only underscore the historical mistrust of the Department among the city's Black and Brown communities.⁹³

In 2014 the DOJ found that the Portland Police Department (PPD) had engaged in a pattern or practice of unlawful use of force and problematic treatment of the city's mentally ill.⁹⁴ And while the settlement, which remains in place, was developed to address those ostensibly race-neutral issues, race and the PPD's relationship with Portland's minority residents undergirds the federal intervention. As was the case in Seattle and New Orleans, the DOJ's Portland investigation revealed belief among "community members . . . that racism exists within the police force" as residents described "incidents over a 20-year time span which informed their perception."⁹⁵

In Yonkers, New York, where an agreement was signed in 2009 to address allegations of unlawful use of force and discriminatory policing, the DOJ drew attention to the corrosive effects such practices have on police legitimacy and community trust:

The YPD should work to improve its relationship with the Yonkers community. Citizen interviews and news reports revealed

90. *Id.* at 25.

91. C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT 39 (2011), https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf [<https://perma.cc/A2HC-HGXU>].

92. *Id.* at v.

93. See Kathy Finn, *New Orleans Struggles to Overcome Mistrust of Police*, REUTERS (Aug. 24, 2011, 6:56 AM), <https://www.reuters.com/article/instant-article/idUKTRE77N3CX20110824> [<https://perma.cc/X9JA-KUD2>] (discussing New Orleans's struggle to win back or overcome community's mistrust of their police force).

94. See Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Just., to Hon. Sam Adams, Portland Mayor (Sep. 12, 2012), https://www.justice.gov/sites/default/files/crt/legacy/2012/09/17/ppb_findings_9-12-12.pdf [<https://perma.cc/7NMY-PZ4K>] (discussing DOJ investigation's findings that Portland Police Bureau engaged in patterns of unreasonable force against those with mental illnesses).

95. *Id.* at 39.

allegations of distrust and fear of the YPD. Deep seated concerns of racial animus impede attempts at reconciliation.⁹⁶

This language makes clear that the DOJ was cognizant of how salient race is to the unlawful activity their investigation uncovered in Yonkers. Similar language used in findings letters in Pittsburgh, Seattle, Baltimore, Ferguson, and nearly every other jurisdiction found to have engaged in a pattern or practice of misconduct, regardless of its specific nature, suggests that the DOJ no doubt understands the connection between race and the systemic problems they aim to remedy.

Their actions, by contrast, suggest that despite its importance, the issue of race is something not to be addressed head on. In nearly every case, settlement agreements refuse to mention the issue by name and take a mostly *laissez-faire* approach to address the tension between police and the communities they serve. Early agreements, like those established in places like Detroit;⁹⁷ Prince George's County,⁹⁸ Washington, DC;⁹⁹ East Haven, Connecticut;¹⁰⁰ Mt. Prospect, Illinois;¹⁰¹ and Villa Rica, Georgia¹⁰² do not mention race, racial bias, or community relations in any meaningful way, despite the centrality of discriminatory policing to the reform effort in these jurisdictions. Steps taken in Los Angeles and Pittsburgh, where the DOJ was more willing to engage with these issues, serve to highlight the tendency to ignore "root causes" in favor of technocratic reforms narrowly tailored to the issues identified by their investigation.

In Pittsburgh, where the DOJ intervened to address a pattern of racialized use of force, the settlement frames the problem as one of "bad apple" officers and chooses to address the problem as such. There is admirable

96. Letter from Loretta King, Assistant Att'y Gen., U.S. Dep't of Just., et al., to Raymond P. Fitzpatrick, Jr., Fitzpatrick & Brown LLP 32 (June 9, 2009), <https://www.clearing-house.net/chDocs/public/PN-NY-0041-0001.pdf> [<https://perma.cc/DJ7D-XLXZ>].

97. *See generally* Consent Judgment Use of Force and Arrest and Witness Detention, United States v. City of Detroit, No. 03-72258 (E.D. Mich. June 12, 2003).

98. *See generally* Memorandum of Agreement between U.S. Dep't of Just. and Prince George's Cnty., Md. and Prince George's Cnty. Police Dep't (Jan. 22, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/pg_memo_agree.pdf [<https://perma.cc/4WKE-775P>].

99. *See generally* Memorandum of Agreement between U.S. Dep't of Just. and D.C. & D.C. Metro. Police Dep't (June 13, 2001), <https://www.justice.gov/crt/memorandum-agreement-united-states-department-justice-and-district-columbia-and-dc-metropolitan> [<https://perma.cc/8V94-S528>].

100. *See generally* Settlement Agreement and [Proposed] Order, United States v. Town of East Haven, No. 12-cv-01652 (D. Conn. Nov. 20, 2012), ECF No. 2-1.

101. *See generally* Memorandum Agreement Between the United States and the Village of Mt. Prospect, Illinois (Jan. 22, 2003), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/mtprospect_moa.pdf [<https://perma.cc/6LZN-HD97>].

102. *See generally* Memorandum Agreement between the United States and the City of Villa Rica, Georgia (Dec. 23, 2003), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/villa_rica_moa.pdf [<https://perma.cc/WP3C-DLWM>].

attention paid to confronting “potential racial bias, including use of racial epithets,” by PBP officers, by mandating chain-of-command audits and the use of other personnel management strategies designed to identify and intervene with problem officers.¹⁰³ And while the effectiveness and sustainability of these individualized, self-regulating strategies may be debated, they offer no means of confronting the sort of agency-level cultural orientation that allows such views to perpetuate. Further, they do little to restore the department’s legitimacy in the eyes of city residents, least of which those who have been directly affected by the agency’s racialized enforcement patterns. To that end, the agreement says little beyond the suggestion that PBP “continue to make every effort to participate in [community] meetings, including meetings organized by or oriented towards minorities.”¹⁰⁴

It is perhaps unsurprising then that a 2003 survey of Pittsburgh residents, taken just two years after the PBP reached full compliance with the consent decree, showed substantial reservoirs of mistrust: “Sixty-three percent of [respondents] reported that Pittsburgh police stop people without a good reason; 51 percent say the police use offensive language, and 67 percent say the police are verbally or physically abusive with citizens.”¹⁰⁵ Black respondents had an even lower view of the PBP; seventy percent felt that excessive force was commonplace¹⁰⁶ and just seventeen percent of Black respondents felt that they are treated either the same or better than Whites.¹⁰⁷

The Pittsburgh settlement does include provisions for strengthening the existing systems for receiving and investigating citizen complaints filed against PBP officers,¹⁰⁸ but seems to overlook the connection between trust in an organization and one’s willingness to lodge a formal complaint against one of its employees. Thirty-two percent of respondents to the same survey felt it was easy to file a complaint against a PBP officer,¹⁰⁹ while forty percent saw the authorities as doing a good job of investigating complaints.¹¹⁰ Black respondents felt even less sanguine: just twenty percent saw filing a complaint as easy,¹¹¹ while twenty-four

103. Consent Decree at 13–14, *United States v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. Feb. 26, 1997).

104. *Id.* at 19.

105. DAVIS, HENDERSON & ORTIZ, *supra* note 33, at 38.

106. *Id.* at 47.

107. *Id.* at 51.

108. See Consent Decree, *supra* note 103, at 23–36 (detailing requirements of process for filing complaints against PBP).

109. DAVIS, HENDERSON & ORTIZ, *supra* note 33, at 49.

110. *Id.* at 50.

111. *Id.* at 49.

percent felt the authorities did a good job investigating complaints.¹¹² Unsurprisingly, given the distrust these data describe and the PBP's rapid reversion to the pre-reform status quo, things continued to decline in Pittsburgh. In a 2020 report, the city's Community Taskforce for Police Reform, created by Mayor Bill Peduto to "lay out a blueprint for real and sustained change and reform,"¹¹³ described the "relationship and trust between police and communities, particularly communities of color" as being "in need of urgent repair."¹¹⁴

The DOJ's oversight of the LAPD, "one of the most ambitious experiments in police reform ever attempted in an American city," developed "[a]fter a decade of policing crises that began with the beating of Rodney King in 1991 and culminated in the Rampart police corruption scandal in 1999,"¹¹⁵ took a similarly indirect approach. Individual officers were required to attend cultural diversity training and had their daily activity reviewed for signs of unlawful behavior.¹¹⁶ The Department was required to publish semi-annual reports on the reform effort and to "continue to utilize community advisory groups [and] . . . meet quarterly with the community they serve."¹¹⁷

As was the case in Pittsburgh, the consent decree in Los Angeles produced minimal gains in the perception of LAPD among city residents. A 2009 evaluation, published eight years after federal oversight was initiated, noted signs of progress and a "cautious optimism" about the changes taking place.¹¹⁸ This framing is complicated by data showing that fifty-one percent of all respondents believed that the police in their community "treat all racial and ethnic groups fairly."¹¹⁹ And though that figure represents an increase from previous survey results, celebrating evidence that half of the city believes that their police department is racist reflects not only how much work remains, but how deeply ingrained the acceptance of race-based policing has become.

A more recent survey suggests that trust in LAPD remains strained in the full population and severely lacking among the city's Black residents. In 2020, forty-two percent of Angelenos felt that "police officers treat all

112. *Id.* at 50.

113. PITTSBURGH CMTY. TASKFORCE FOR POLICE REFORM 3–4 (2020), https://apps.pittsburghpa.gov/redtail/images/11740_Community_Task_Force_on_Police_Reform_October_2020_Report.pdf [<https://perma.cc/AQS8-XZ5N>].

114. *Id.* at 4.

115. STONE, FOGLESONG & COLE, *supra* note 34, at i.

116. *See* Consent Decree at 56–57, *United States v. City of Los Angeles*, No. 00-cv-11769 (C.D. Cal. June 15, 2001) (ordering racial sensitivity training and review of LAPD officers' conduct).

117. *Id.* at 73.

118. STONE, FOGLESONG & COLE, *supra* note 34, at 52.

119. *Id.* at 49.

racial and ethnic groups equally,” a view held by just 17.5 percent of Black respondents.¹²⁰ Just over half of all respondents (52.1 percent) felt that officers “only use the amount of force necessary to accomplish their tasks,” compared to 27.1 percent of Blacks.¹²¹ Among Black respondents, 28.1 percent believed that the LAPD would hold accountable officers who engage in misconduct, substantially lower than the 53.6 percent of the full sample holding that view.¹²² It must be acknowledged that these more recent figures were captured after Michael Brown was killed by a Ferguson police officer, an event that fundamentally changed the way that Americans, particularly those from Black and other minority communities, viewed their relationship to police.¹²³ The study was also conducted in the immediate aftermath of George Floyd’s murder, Breonna Taylor’s death, and in the context of the spotlight those events placed on racialized police violence. This likely means that some of the mistrust they capture is reflective of misconduct in Minneapolis and Louisville.

The Obama DOJ was aggressive in its use of the pattern-or-practice authority and to its credit initiated several investigations into departments alleged to have engaged in racial profiling, disparate use of force, or some other manifestation of bias.¹²⁴ But the settlements negotiated under Attorney General Eric Holder evinced a similar reluctance to engage with a broader, less transactional vision of race or make an effort to address the insidiousness of institutional racism that undergirds so many of the systems they sought to dismantle. However, these agreements did begin to reflect not only a deeper understanding of the importance of police-community relations but increased confidence in the consent-decree process as a means of enhancing trust and legitimacy.

Several tools are deployed to this end, including policy mandates, like the requirement that departments in New Orleans and Newark invest in community-policing strategies while requiring that officers receive training in cultural awareness and community engagement.¹²⁵ In other

120. FERNANDO J. GUERRA & BRIANNE GILBERT, POLICE AND COMMUNITY RELATIONS SURVEY 13 (2020).

121. *Id.*

122. *Id.* at 12.

123. See generally TAMMY R. KOCHER, FERGUSON’S LONG TERM IMPACT ON PUBLIC VIEWS ABOUT POLICE (2015) (discussing impact on public perception of law enforcement following police shooting of Michael Brown).

124. See *Fixing the Force, Investigations*, FRONTLINE, <http://apps.frontline.org/fixingtheforce/> [<https://perma.cc/G52T-AGK7>] (last visited Nov. 9, 2021) (providing information on police misconduct-related investigations).

125. See Supplemental Motion for Consent Decree at 10–13, *United States v. City of Newark*, No. 16-cv-01731 (D. N.J. Apr. 29, 2016), ECF No. 4-1 (requiring training on community engagement); Order Granting Entry of Consent Decree at 2, *United States v. City of New Orleans*, No.

jurisdictions, the DOJ added strategies designed to structure direct engagement with community members. In Baltimore, the police were required to “develop and implement community-engagement plans for creating opportunities for routine and frequent positive interactions between officers and community members, including those critical of BPD.”¹²⁶

The consent decree in Portland, Oregon, mandated the creation of the Portland Committee on Community Engaged-Policing (PCCEP), a citizen-based group designed to serve as a liaison between the Department and the community it serves while advising leadership on strategies for improving police-community relations.¹²⁷ In a similar vein, Seattle’s Community Police Commission was developed to incorporate community voices into the consent-decree implementation process.¹²⁸ Many Obama-era agreements also included survey requirements and other provisions for evaluating and publicizing data measuring police-community relations.¹²⁹

The Ferguson agreement represents the DOJ’s most concerted and comprehensive effort to use the reform process to address police-community relations.¹³⁰ The settlement includes various requirements found in other agreements, including a mandated community-engagement plan,¹³¹ the creation of a community-based committee to oversee the reform implementation and advise FPD leadership,¹³² and the administration of annual surveys used to track progress,¹³³ among others. What sets Ferguson apart from other jurisdictions is the DOJ’s insistence that every FPD officer in the first six months of the reform process “participate in a series of structured small-group dialogues, arranged and led by a qualified neutral facilitator, between police officers and community members and groups”¹³⁴ Critically, the sessions were to proceed “with an emphasis

12-cv-01924 (E.D. La. Jan. 11, 2013), ECF No. 159 (implementing community engagement as required component of consent decree).

126. Consent Decree at 7, *United States v. Police Dep’t of Baltimore*, No. 17-cv-00099 (D. Md. Jan. 12, 2017), ECF No. 2-2.

127. Consent Decree at 42, *United States v. City of Portland*, No. 12-cv-02265 (D. Or. May 15, 2018), ECF No. 171.

128. Settlement Agreement and Stipulated [Proposed] Order of Resolution, *supra* note 28, at 5–6.

129. *See* Consent Decree, *supra* note 127, at 48 (requiring Portland to survey community members regarding their perceptions of and experiences with police department); *see also* Settlement Agreement at 83, *United States v. City of Cleveland*, No. 15-cv-01046 (N.D. Ohio June 12, 2015) (ordering biennial community survey as part of consent decree).

130. *See generally* Consent Decree, *United States v. City of Ferguson*, No. 16-cv-00180 (E.D. Mo. Apr. 19, 2016), ECF No. 41.

131. *Id.* at 4–5.

132. *Id.* at 6.

133. *Id.* at 107.

134. *Id.* at 4.

on community members and groups who previously have not had strong or positive relationships with FPD or the City.”¹³⁵

It will certainly take time to appropriately measure the effects of these investments made to promote trust in the FPD. In an effort to establish a baseline of public opinion, the Ferguson monitor team began recruiting survey participants in April 2019—to frustratingly little avail.¹³⁶ Despite significant public outreach over the course of six months, the monitor was able to recruit just 125 survey respondents, a large majority of whom were not reflective of “the entire demographic makeup of the community of Ferguson, with an overrepresentation of affluent, educated, white residents.”¹³⁷ That less than one percent of the city’s 18,527 residents¹³⁸ were willing to participate suggests a deep cynicism toward the reform process and a lack of trust in the forces driving it. That so few members of Ferguson’s Black community chose to engage makes clear how deep the divide was at the time, and how far the DOJ and the city must travel to approach the sort of trust that can help to drive—and sustain—organizational change.

Data from other jurisdictions overseen by the Obama DOJ further illustrate the complex relationship among reform, local context, and public opinion. In some cases, efforts to improve police-community relations have yet to take hold. In Portland, for example, where the DOJ intervened in 2013, 2019 data showed that the “perception exists [among Portland residents] that PPB [Portland Police Bureau] enforces laws selectively and with bias, leading to community cynicism, mistrust and discomfort when interacting with PPB,”¹³⁹ despite six years under federal oversight. Data gathered from hundreds of Baltimore city residents between 2018 and 2019 described a relationship characterized by low levels of satisfaction and trust in the BPD. Respondents described BPD officers as “disrespectful,” with a majority reporting that they had “personally observed BPD engaging in racial profiling, engaging in excessive force, and using verbally abusive language towards civilians.”¹⁴⁰ It would be unfair to

135. *Id.* at 4–5.

136. See Independent Monitor’s Winter 2020 Semiannual Report at 12, *United States v. City of Ferguson*, No. 16-cv-00180 (E.D. Mo. Jan. 31, 2020), ECF No. 128 (detailing City of Ferguson’s progress after implementing consent decree).

137. *Id.*

138. *QuickFacts Ferguson City, Missouri*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/fergusoncitymissouri/POP010220#POP010220> [<https://perma.cc/7ALE-Z7YD>] (last visited Nov. 9, 2021).

139. CORAGGIO GROUP, PORTLAND POLICE BUREAU: STRATEGIC INSIGHTS REPORT 11 (2019), <https://www.portlandoregon.gov/police/article/725900> [<https://perma.cc/3AMP-4TTV>].

140. NATASHA C. PRATT-HARRIS & RAYMOND A. WINBUSH, THE COMMUNITY’S EXPERIENCES AND PERCEPTIONS OF THE BALTIMORE CITY POLICE DEPARTMENT SURVEY

draw any firm conclusions at such an early stage, but these data certainly indicate that after two years, the consent decree has done little to repair the strain that existed at the start of the process.

In other jurisdictions, like Newark, tangible gains have been made. Survey data from 2020 showed a bump from the 2018 survey in the share of respondents who reported having positive encounters with the NPD, and those who experienced NPD officers being “helpful, even when [they] didn’t have to be.”¹⁴¹ This improvement appears to have accrued disproportionately among White Newarkers. Thirty-six percent of Black respondents and forty-one percent of Hispanic respondents reported never having had “a positive experience” with the NPD, compared to twenty-eight percent of White respondents.¹⁴² Even more pronounced were the racial disparities in confidence in the NPD’s investigation of complaints filed against its officers: sixty-seven percent of Whites reported being “very satisfied,” while just eleven percent of Black complainants felt the same way.¹⁴³

As with Baltimore, the process in Newark must be given time to develop before being judged. At a minimum, the early findings highlight the salience of race to one’s experiences with and perceptions of the police, and that reforms designed to promote trust and confidence must be implemented in a nuanced and sincere, race-conscious manner.¹⁴⁴ The City of Seattle’s experience reveals a related point: citizen views of the police and their willingness to engage with police institutions are unstable and heavily affected by exogenous events,¹⁴⁵ tending to recede in the wake of police misconduct, scandal, or other high-profile negative

REPORT 3 (2020), <https://issuu.com/morganstateu/docs/dojpolicereport?fr=sYzIxMzEyNTEzNzg> [<https://perma.cc/2XJ6-DALV>].

141. Fifteenth Quarterly Report at 5, *United States v. City of Newark*, No. 16-cv-01731 (D. N.J. Jan. 28, 2021), ECF No. 208-1.

142. *Id.*

143. *Id.* at 6.

144. See Thomas C. O’Brien, Tom R. Tyler & Tracey L. Meares, *Building Popular Legitimacy with Reconciliatory Gestures and Participation: A Community-Level Model of Authority*, 14 *REGUL. & GOVERNANCE* 821, 822 (2019) (“Thinking about one’s community in relation to authorities may create an intergroup dynamic that is reflected in the way that police departments address communities as a group, beyond individual interactions.”); see also Thomas C. O’Brien, Tracey L. Meares & Tom R. Tyler, *Reconciling Police and Communities with Apologies, Acknowledgements, or Both: A Controlled Experiment*, 687 *THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI.* 202, 212–13 (2020) (arguing that transforming police relationships with communities will require sincere gestures by police departments that acknowledge responsibility for why communities distrust them).

145. See Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 *AM. SOCIO. REV.* 857, 858 (2016) (“Previous research shows that negative encounters with law enforcement, as well as high-profile cases of police misconduct, contribute to the spread of legal cynicism within black communities.”).

incident.¹⁴⁶ In 2016, three years after the consent decree was signed, 62.9 percent of respondent Seattleites reported holding positive perceptions of the Seattle Police Department, a figure substantially higher than the 51.1 percent who described holding positive views of police generally.¹⁴⁷ By 2019, the share of residents who felt positively about the SPD had dropped to 54.4, still higher than the 49.3 percent who reported positive views of police generally, but reflective of a pretty clear change in attitude.¹⁴⁸

To summarize, early settlements alluded to the importance of police-community relations but made very few proactive steps toward incorporating this set of goals into the reform instruments of that era. There is precious little information to help assess the strength of these early efforts, but evidence from Pittsburgh and Los Angeles suggest at a minimum that deep mistrust remains in communities of color. The Obama DOJ made a much grander commitment to strengthening trust in police and certainly did more to manifest this agenda. As the agency noted in a 2017 review of the initiative, “Nearly all of the Division’s current generation of reform agreements require law enforcement agencies to develop a plan for institutionalizing community engagement.”¹⁴⁹ The instruments used varied by location and seemed to follow no real discernable logic, with some jurisdictions, like Yonkers, facing relatively low-level intervention, while mandates in others, like Ferguson, were much heavier handed. The DOJ continued to avoid confronting the issue of race, however, choosing instead to frame the issue of mistrust and illegitimacy in race-neutral terms despite obvious evidence to the contrary. It is far too early to gauge the success of these efforts in many cities, but the experiences of places like Seattle and Portland, where federal oversight has been in place for several years, suggest that progress can be elusive and difficult to sustain.

IV. DISCUSSION

Despite the obvious ways in which they are intertwined, the Department of Justice has thus far chosen not to draw an explicit connection between racial tension—both historically rooted and recently surfaced in

146. See Ronald Weitzer, *Incidents of Police Misconduct and Public Opinion*, 30 J. OF CRIM. JUST. 397, 406 (2002) (“[C]elebrated incidents of police misconduct, like scandals regarding other institutions, may color citizens’ attitudes toward the police. Attitudes appeared to be negatively influenced by well-publicized brutality and corruption events.”).

147. SEATTLE POLICE DEP’T, SURVEY RESULTS DASHBOARD, <https://www.seattle.gov/police/information-and-data/mcpp-about/survey-results-dashboard> [https://perma.cc/G37L-BZEC] (last visited Dec. 20, 2021).

148. *Id.*

149. C.R. DIV., *supra* note 20, at 29.

the wake of a high-profile event—and the police misconduct they aim to remedy. Instead, the DOJ’s diagnosis—and thus necessarily, its prescriptions—are purely technical in nature, geared toward addressing unlawful behavior in isolation, as if it existed in an environmental-contextual vacuum. Taken on its own merits, the substance of pattern-or-practice settlement agreements seems to suggest that the DOJ believes the most effective remedy for long-standing, systematic police misconduct, from which in many cases racial tension cannot be severed, is to strengthen the department’s policies, oversight systems, training protocols, and managerial capacity, without any acknowledgment of race—and largely a nominal, laissez-faire engagement with the issue of police legitimacy and community relations.¹⁵⁰ The argument that this changed wholesale under the Obama Administration is belied by the inconsistent and somewhat hesitant use of the pattern-or-practice authority, which has yet to match the rhetorical championing of the consent-decree process as a means of promoting “police-community engagement” in affected departments.

This apparent disconnect begs a series of important questions. Assuming that the DOJ’s initial investigation demonstrates a racial component to the pattern or practice of abuse (e.g., racial profiling, use of force disproportionately against minorities, etc.), should the settlement agreement’s prescriptions attempt to address directly the community’s broader issues of racial tension and mistrust? How would this be done? Is the pattern-or-practice initiative the most appropriate mechanism for achieving these kinds of nebulous sociological goals? Would such a formal acknowledgment result in more effective and more durable remedial reforms?

Several powerful arguments justify doing so, beginning with the reality that the status quo has not led to sustained, lasting change. As has been discussed, the roster of pattern-or-practice interventions is littered with cities and departments that find themselves in the same position they were prior to the DOJ’s initial investigation.¹⁵¹ Anecdotal evidence has shown

150. Feasibility is also certainly part of the DOJ’s calculus. Attempting to address longstanding racial tension between police and minority groups through the enforcement of Section 14141 presents several obvious logistical challenges, many of which may result in threatening either the legality of the initiative and/or the technical capacity of the reforms implemented pursuant to such a wide-ranging settlement.

151. *E.g.*, POLICE REFORM WORK GRP., RE-IMAGINING POLICING IN PRINCE GEORGE’S COUNTY, REPORT AND RECOMMENDATIONS 8 (2020), <https://www.princegeorges-countymd.gov/DocumentCenter/View/33304/Police-Reform-Work-Group-Final-Report-and-Recommendations> [<https://perma.cc/2LFM-4B2A>] (outlining police reform work group’s objective in 2020—thirteen years after consent decree’s termination—to “repair relationships with the community where trust has been compromised”); PITTSBURGH CMTY. TASKFORCE FOR POLICE REFORM, *supra* note 113, at 4 (identifying key areas for policing reform, eighteen years after Pittsburgh’s

that the DOJ's structural reform template has in some cases produced a stronger, more capable accountability system and a more lawful, transparent style of policing. But evidence of such changes correlating over the longer term with sustained, measurable improvements in relevant outcomes like traffic-enforcement disparities and use-of-force incidents is rare. There is similarly little data indicating that things like changes to the use-of-force policy or the development of an early-intervention system have the ability to shift perceptions of the department among minority communities.

If the problems of police misconduct are inextricably related to racial tension, purely administrative reforms are insufficient. Little more evidence is needed than the long list of impotent policy reports, study groups, and blue-ribbon commissions that dot the histories of Pittsburgh; Baltimore; Washington, DC; New Orleans; Cincinnati; and nearly every other jurisdiction that has confronted a pattern-or-practice settlement. Police organizations are among the most visible and most palpable embodiments of the country's history of institutionalized racism. There is undeniable tension borne out of this history, and every time a young Black man is killed by police, every time a report shows racial disparities in traffic-stop patterns, mistrust of police metastasizes in Black and Brown communities. If race indeed underlies police-community tension and contributes to the kinds of patterns of police abuse that motivate DOJ intervention, then an appropriate solution must address the root causes rather than focusing exclusively on developing the most sophisticated treatment of symptoms. No matter how effective the technical solutions, racial tension left unaddressed will inevitably render police department administrative reforms vulnerable to the next high-profile shooting or other incidents of misconduct. There is a good argument to be made that those investments in police-community relations, particularly those driven by concerted outreach to Black and Hispanic communities, will help to insulate departments from wild swings in public opinion and in the process work to sustain the structural and managerial changes made pursuant to a settlement.

The case of Cincinnati demonstrates both the feasibility and the potential of this idea. The Cincinnati Collaborative Agreement (CA) is a private, class-action settlement agreement developed in 2001 by the City of

consent decree ended); D.C. POLICE REFORM COMM'N, *DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION* 10–11 (2021), <https://dccouncil.us/police-reform-commission-full-report/> [<https://perma.cc/NZ5J-GS8X>] (tracing history of DC police-community relations and citing “significant backsliding within MPD” post-consent decree).

Cincinnati and representatives for the ACLU, the United Black Front, and the city's police union, among others, to "resolve social conflict, to improve community-police relationships, to reduce crime and disorder . . . and to foster an atmosphere throughout the community of mutual respect and trust among community members including the police."¹⁵² The CA was negotiated and implemented alongside the City's pattern-or-practice settlement, with compliance overseen by the same monitor team and presiding federal judge. Whereas the federal intervention focused on policy and managerial changes, the CA emphasized strategic reform premised on the use of Community Problem Oriented Policing (CPOP) to involve the community in operational decision-making. To wit,

The City of Cincinnati, the plaintiffs and the FOP, shall adopt problem solving as the principal strategy for addressing crime and disorder problems. Initiatives to address crime and disorder will be preceded by careful problem definition, analysis and an examination of a broad range of solutions. The City of Cincinnati will routinely evaluate implemented solutions to crime and disorder problems, regardless of the agency leading the problem-solving effort. The City will develop and implement a plan to coordinate the City's activities so that multi-agency problem solving with community members becomes a standard practice.¹⁵³

The substance of the CA is no doubt central to the argument here. The use of CPOP was designed to draw on community expertise in identifying public-safety problems and incorporates community insight into the development of solutions.¹⁵⁴ The development and operation of this strategy rely heavily on trust and legitimacy, particularly among members of the city's minority communities. The CA begins by defining in broad terms the nature of the conflict undergirding the driving litigation, suggesting that "the social conflict necessitating this Agreement arises out of a cultural context much broader than police community relationships."¹⁵⁵ The point is driven home through the use of explicitly racialized terms to define the plaintiffs' class:

152. Collaborative Agreement at 3, *In Re Cincinnati Policing*, No. 99-cv-03170 (S.D. Ohio Aug. 5, 2002), <https://www.cincinnati-oh.gov/police/department-references/collaborative-agreement/collaborative-agreement1/> [<https://perma.cc/6PNT-32XH>].

153. *Id.* at 4–5.

154. See JOHN E. ECK, THE STATUS OF COLLABORATIVE PROBLEM SOLVING AND COMMUNITY PROBLEM-ORIENTED POLICING IN CINCINNATI 1 (2014), <https://cintimha.com/wp-content/uploads/2020/06/SOL-2020-1008-Attachment-K-The-Status-of-Collaborative-Problem-Solving-6.pdf> [<https://perma.cc/DU9G-2RAY>] ("For problem-solving efforts to work, the police must enlist the active collaboration of the community groups and individuals, other government agencies, and non-governmental organizations.").

155. Collaborative Agreement, *supra* note 152, at 4.

All African-American or Black persons and people perceived as such who reside, work in and/or travel on public thoroughfares in the City of Cincinnati, Ohio either now or in the future and who are stopped, detained, or arrested by Cincinnati Police Officers or their agents, and citizens of any race who have been or will be subjected to a use of force by Cincinnati police officers and their agents.¹⁵⁶

The process of developing these terms is just as important. Simply the involvement of civil-society groups like the United Black Front provides a voice, albeit indirect, for minority residents, and is thus a means to that end. Much more powerful, however, was the year-long process of dialogue between plaintiffs' attorneys and members of the community in an effort to incorporate citizen views into the content of the CA. According to co-counsel for the United Black Front,

The collaborative terms grew out of extensive community meetings with all those stakeholders and with all the questionnaires we did, and with the 10,000 ideas that were catalogued. . . . [W]e combined the collaborative effort with an effort [by the Cincinnati Enquirer] called Neighbor-to-Neighbor, where we had community meetings in houses where police officers and citizens met and talked over contemporary issues, and we combined it also with something called Study Circle, which had various focus curriculum that groups met and talked through in churches and in social committees.¹⁵⁷ And those of us developing the core enforceable class-action settlement gleaned and mined all the good ideas from all these different community-based efforts and then made sure we reported back to all those groups.¹⁵⁸

As the name of the settlement suggests, the CA makes police-community relations a clear priority by taking specific steps to address bias in policing and to promote cooperation through the use of collaborative problem-solving strategies. The CA's inclusive, bottom-up process gave minority residents ownership over the terms of the settlement, which contributed to sustaining changes made pursuant to the CA as well as the federal intervention. This process appears to have paid dividends. A 2009 evaluation by the RAND Corporation found "promising" improvement in police-community relations:

Cincinnati's black residents reported improvements in perceived police professionalism, although their level of trust in the police

156. *Id.* at 3.

157. "Neighbor-to-Neighbor was designed to bring diverse communities and people together to have frank discussions about racial issues." Kevin Aldridge, *Dialogue on Race Difficult, but Worth It*, CINCINNATI ENQUIRER (July 20, 2016), <https://www.cincinnati.com/story/opinion/contributors/2016/07/20/dialogue-race-difficult-but-worth/87291398/> [<https://perma.cc/2SBB-PSTM>].

158. Telephone interview with Al Gerhardstein, Counsel, United Black Front (Apr. 19, 2010).

is still significantly below that of white residents. Although the city's black residents believe that police often use race in deciding their course of action, the perception of racial profiling is on the decline.¹⁵⁹

As noted, in 2017 the city revisited the CA, voluntarily subjecting itself and the CPD to an independent “audit” by a team led by Saul Green, the independent monitor hired to oversee implementation of the original reform. The process included a review of CPD use-of-force and traffic-stop data and other accountability systems, as well as a close look at CPD's application and evaluation of the CPOP model at the center of the settlement. Green's team found some issues with the collection and dissemination of data, but nothing of serious concern, at least compared to their assessment of CPOP, which was scathing. Their report suggested that CPD's ambivalence toward CPOP and the lack of commitment to the principles underlying the CA amounted to “unilateral[] withdraw[al]” from the agreement.¹⁶⁰ Survey data continued to show a wide gulf between Black and White respondents' trust in the CPD, and in the belief that CPD officers “care about everyone's well-being.”¹⁶¹

Diagnosing what went wrong in Cincinnati involves a deep dive into the effects of shifting political and organizational leadership, the influence of exogenous factors like the state of the local economy, and the death of Michael Brown, among many other potentially salient factors. That is work for another day. The point is not to emphasize the erosion of the CA, but to highlight that the Collaborative Agreement—on the strength of the initial investment in relationships with members of the city's minority community and, critically, with key stakeholders, including religious and non-profit organizations—was the basis for the recent review. Critically, the CA also serves as the template for the ongoing CA “refresh” and the reinvestment in police-community relations at the heart of the effort.

Expanding the scope of the DOJ's current efforts to include measures like those included in the Cincinnati CA, including extensive pre-

159. GREG RIDGEWAY ET AL., POLICE-COMMUNITY RELATIONS IN CINCINNATI, *supra* note 36, at xvii.

160. See SAUL A. GREEN ET AL., PROGRESS REPORT: CITY OF CINCINNATI COLLABORATIVE AGREEMENT: THE STATUS OF COMMUNITY PROBLEM ORIENTED POLICING STRATEGY 1 (2018), <https://www.cincinnati-oh.gov/sites/police/assets/File/Community%20Problem-Oriented%20Policing%20-%20Progress%20Report%20-%20Saul%20Green%20et%20al%201-04-18.pdf> [<https://perma.cc/B6ZM-8EBZ>] (reporting on the status of the community problem-oriented policing strategy).

161. CINCINNATI COMMUNITY PERCEPTION SURVEY REPORT SUMMARY 10, 18 (2017), <https://www.cincinnati-oh.gov/sites/police/assets/File/summaryofsurveyreport2017.pdf> [<https://perma.cc/X2UC-XF49>] (showing survey results on community trust in the Cincinnati Police Department).

settlement discussion with community stakeholders, organized interests, and individual minority community members, would likely increase the time needed to develop the content of the settlement agreements and may raise the costs of an intervention. That the process in Ferguson has included similar meetings suggests that such investments are feasible under the right conditions.

Mandating the use of community meetings to incorporate the views of minorities should not add considerable cost or delay to an already very expensive and time-consuming investigative, negotiation, and monitoring process. In fact, DOJ staff have in the past interviewed community leaders and individual citizens as part of their fact-finding investigations. Expanding that process and taking steps to solicit ideas from community residents does not seem beyond the capacity of DOJ attorneys or their subject-matter experts. What is more, the legal authority granted to the DOJ pursuant to Section 14141 is open ended with respect to means of enforcement.¹⁶²

Until recently, the case of Cincinnati represented the notion that a pattern-or-practice agreement targeting underlying racial tension using a more inclusive process, and by incorporating specific settlement provisions designed to improve police-community relations, is not only feasible but offers the prospect of several positive outcomes. Furthermore, the potential benefits of using the resources of the federal government and the strength of the pattern-or-practice statute to address issues as profound as race and policing in American far outweigh whatever costs are incurred by doing so. This point is underscored by the DOJ's stated goal of addressing "issue[s] common to many law enforcement agencies" and those "represent[ing] an emerging or developing issue, such that reforms could have an impact beyond the primary objective of eliminating constitutional violations in the specific law enforcement agency."¹⁶³

Counterarguments exist as well. The Cincinnati Collaborative Agreement did not formally involve the DOJ and in many ways is a unique agreement with limited applicability to the more typical pattern-or-practice settlement. Aside from the legal arguments against it, which would

162. The language of the statute establishes that the Attorney General "may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice." 42 U.S.C. § 14141(b) (2012) (currently codified at 34 U.S.C. § 12601(b)). Clearly, challenges to the DOJ's incorporation of a race-based solution to patterns of misconduct would be based on the argument that such strategies are not "appropriate." Though this is little more than pure conjecture, it seems to me that these kinds of arguments would be defeated by a clear demonstration by the DOJ of a plausible connection between jurisdictional racial tension and the established pattern or practice of unlawful police behavior. In other words, if the DOJ convinces a reviewing court that the police department's problems are at least in part about race, then most courts would likely sanction the DOJ's chosen remedial approach.

163. C.R. DIV., *supra* note 20, at 6.

likely center on jurisdictional limitations, there are several questions about the desirability of having the federal government drive such a policy. Opponents would surely argue that federalism concerns outweigh any benefits along these lines. If a local jurisdiction wants to develop policies to address racial tension, then it is the local government that should craft and implement such an effort, not the federal DOJ. After all, the effort in Cincinnati was led by local civil-rights attorneys and civil-society groups without any involvement from Washington.

Relatedly, there is an argument to be made that expanding the scope of the DOJ's task vis-à-vis Section 14141 would have undesirable side effects. Most acutely, incorporating a focus on race may run the risk of overwhelming the process, hindering the DOJ's ability to develop and implement the kinds of technical changes at the heart of the current approach. Unrestrained ambition and administrative overreach have certainly derailed promising initiatives before.¹⁶⁴

Incorporating racial justice into a process that already draws the ire of police leaders and their rank-and-file officers has the potential to further enflame local law enforcement. Concerns over possible downstream effects of such a reaction are not to be ignored, particularly in light of how important officer support is to successful reform. The notion of de-policing should not be dismissed, despite limited evidence tying such shirking behavior to pattern-or-practice reform.¹⁶⁵ Research has shown that officers believe they face unfair criticism from the public,¹⁶⁶ particularly in the context of race and the use of force,¹⁶⁷ with dissatisfaction increasing

164. See MARTHA DERTHICK, *NEW TOWNS IN-TOWN: WHY A FEDERAL PROGRAM FAILED* 91 (1972) (“[T]he program’s failure . . . was that federal officials had stated objectives so ambitious that some degree of failure was certain.”).

165. See Joshua Chanin & Brittany Sheats, *Depolicing as Dissent Shirking: Examining the Effects of Pattern or Practice Misconduct Reform on Police Behavior*, 43 CRIM. JUST. REV. 105, 117–18 (2018) (noting lack of causal relationship between DOJ investigations and declines in arrest rates); see also Stephen Rushin & Griffin Edwards, *De-Policing*, 102 CORNELL L. REV. 721, 758–59 (2017) (suggesting that any uptick in crime following external regulations tends to taper off in subsequent years and that “external regulation may come with growing pains”).

166. See Justin Nix, Scott E. Wolfe & Bradley A. Campbell, *Command-level Police Officers’ Perceptions of the “War on Cops” and De-policing*, 35 JUST. Q. 33, 33 (2018) (summarizing findings that many police officers surveyed believed a “war on cops” had ensued over prior two years).

167. See Rich Morin et al., *Police Views, Public Views*, PEW RSCH. CTR. (Jan. 11, 2017), <https://www.pewresearch.org/social-trends/2017/01/11/police-views-public-views/> [https://perma.cc/G2G4-AWHJ] (“Police and the public describe the recent fatal incidents involving blacks and the police in very different ways. Roughly two-thirds of the police (67%) say these deadly encounters are isolated incidents, while about three-in-ten (31%) say they are signs of serious problems between law enforcement and the black community. But when the public is asked to consider these incidents, the result is virtually reversed: Six-in-ten say these encounters are signs of a broader problem, while 39% describe them as isolated incidents.”).

since the murder of George Floyd.¹⁶⁸

At least one additional argument resonates: the assumption that the federal DOJ would be able to identify and develop workable remedies for a problem as nebulous as racial tension or police-community animosity is an uncertain one. One of the perceived strengths of the current approach is the specificity with which settlement language is able to describe both means and ends. The goals of settlement implementation are clear, and the steps to achieving them are carefully articulated as several very precise steps to reform. A critic would no doubt suggest that the goal of racial harmony seems to belie such precision and would run the risk of setting up the process for failure.

V. CONCLUSION

Timothy Thomas was shot and killed by a Cincinnati police officer just over twenty years ago. His death sparked a days-long uprising and led directly to a reform effort that forced deep changes to the department's key policy and training regimes and its internal and external accountability infrastructure. Alongside the federally led effort was a private settlement originating from the same series of events that reimagined the city's approach to public safety. Where the federal reform was top-down and largely unilateral, the collaborative agreement was built from the bottom up, based on community input and the voices of organized stakeholder groups, including groups representing the city's Black community and its police union.

Taken together, the federal settlement and the collaborative agreement represent one of the most ambitious—and aggressive—police reform efforts in recent memory. The fate of the intervention also shows how complex and how wicked the problem of systemic police misconduct remains. To intervene and attempt reform is to run against several powerful and long-standing forces of inertia. Police agencies, like all complex organizations, are defined by a network of rules, norms, and subcultures. To attempt reform is to interrupt patterns of thinking and behavior that have been entrenched over decades. The same is true among members of the political class, who may feel beholden to powerful police unions or other majoritarian constituencies that oppose changes that may upset the status quo or increase fear that crime or disorder will harm their businesses or increase in their neighborhoods. Efforts at police reform are often met with cynicism in Black and Brown communities, as well, for reasons that

168. See *Survey on Police Workforce Trends*, POLICE EXEC. RSCH. F. (June 11, 2021), <https://www.policeforum.org/workforcesurveyjune2021> [<https://perma.cc/28GL-RNQ8>] (noting differences in workforce trends between April 2019–March 2020 and April 2020–March 2021).

should be clear.

The DOJ's pattern-or-practice initiative offers a powerful, but temporary, disruption. The legal mandate that enables the process and the external accountability that drives it to disappear when the settlement is terminated. Released from the threat of extended oversight or the embarrassment of a contempt order, police departments have little to motivate adherence to a more challenging approach to the job.

Steps taken during the Obama administration to build community engagement and support for the process were designed not only to promote trust and legitimacy but to build a more robust community-based accountability infrastructure. The DOJ has been too conservative along these lines, however, incorporating community-based tools in select jurisdictions and doing so in a selective, piecemeal fashion. Apart from the crime-related benefits of such an investment, committing fully to this effort has the potential to help sustain the organizational changes brought on by the federal intervention. The Cincinnati CA is a useful reference point for what such a program might look like. The CA's explicit effort to reach out to members of Cincinnati's Black community is central to what makes this example so valuable. There are others, including local efforts in Pittsburgh;¹⁶⁹ Charlotte, North Carolina;¹⁷⁰ Chicago;¹⁷¹ and Dayton, Ohio,¹⁷² to name a few. The work being done by the National Initiative for Building Community Trust and Justice is another initiative worth highlighting. The organization is currently evaluating "existing and newly developed interventions informed by implicit bias, procedural justice, and reconciliation" in six jurisdictions, including both Pittsburgh and Minneapolis.¹⁷³ There are many others worthy of emulation or partnership.

169. See PITTSBURGH CMTY. TASKFORCE FOR POLICE REFORM, *supra* note 151 at 23–24 (noting efforts to recruit more members of Black community to join police force).

170. See Tom Foreman, Jr., *Why a Charlotte Barber Champions Race Relations with Cops*, CHRISTIAN SCI. MONITOR (July 18, 2015), <https://www.csmonitor.com/USA/Society/2015/0718/Why-a-Charlotte-barber-champions-race-relations-with-cops> [<https://perma.cc/LFG2-NV28>] (describing creation of "Cops and Barbers" program to foster positive relationships between members of Black community and police officers).

171. See Mark Guarino, *Oversight of Chicago Police Handed to New Civilian Commission After Years of Public Pressure*, WASHINGTON POST (July 21, 2021, 3:19 PM) https://www.washingtonpost.com/national/oversight-of-chicago-police-handed-to-new-civilian-commission-after-years-of-public-pressure/2021/07/21/51614514-ea21-11eb-ba5d-55d3b5ffcaf1_story.html [<https://perma.cc/F4C5-LA2C>] (noting creation of Chicago's Community Commission for Public Safety and Accountability).

172. See *Working Group Recommendations*, DAYTON, OHIO, <https://www.daytonohio.gov/933/Recommendations#engagement> [<https://perma.cc/N54J-R7X8>] (last visited Dec. 21, 2021) (noting police training requirements focused on community engagement).

173. *Pilot Sites*, NATIONAL INITIATIVE FOR BUILDING COMMUNITY TRUST & JUSTICE, <https://trustandjustice.org/pilot-sites> [<https://perma.cc/Y45Z-D9ZN>] (last visited Dec. 21, 2021).

Members of the Black Lives Matter movement have worked hard over the last few years to keep the issue of race and policing in the national conversation. Governments at all levels have struggled to meet the moment, with many floundering in the face of political pressure from the left and right, from protesters and police. The Civil Rights Division sits on an opportunity to engage and lead, to use its strongest tool to help in the pursuit of meaningful, lasting solutions. In a 2017 report documenting their work enforcing Section 14141, the Civil Rights Division noted that since the program's inception, a "focus on fixing broken systems and building police-community trust remain[s] the consistent themes of the Division's pattern-or-practice police reform."¹⁷⁴ More aggressively emphasizing the latter, particularly by reaching out to members of the Black and Brown communities, will help to sustain changes made in pursuit of the former.

174. C.R. DIV., *supra* note 20, at 4.