The Seattle Consent Decree: Excessive or Effective Force in Police Reform?

by

Richard A. Rosenthal

Juris Doctor, University of California, Berkeley, 1986

Bachelor of Arts (History & Economics), University of California, Berkeley, 1983

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Declaration of Committee

Name:	**Richard A. Rosenthal**
Degree:	**Doctor of Philosophy**
Thesis title:	**The Seattle Consent Decree: Excessive or Effective Force in Police Reform?**
Committee:	**Chair: Bryan Kinney** Associate Professor, School of Criminology
	David MacAlister Supervisor Associate Professor, School of Criminology
	Curt T. Griffiths Committee Member Professor, School of Criminology
	Sheri Fabian Committee Member University Lecturer, School of Criminology
	Andrea Geiger Examiner Professor, Department of HIstory
	Joshua Chanin External Examiner Associate Professor, School of Public Affairs, San Diego State University

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Abstract

The main objective of this research project was to evaluate and critically analyze the United States Department of Justice's (USDOJ) effort to reform the Seattle Police Department through the use of a "Consent Decree," pursuant to the provisions of 42 U.S.C. Section 14141. By examining the history, origin and use of Section 14141 with respect to other jurisdictions in general and Seattle in particular, an understanding of the effectiveness of this externally mandated reform effort emerged. Data compiled from interviews, court filings, public reports and media accounts support the conclusion that substantive, sustainable reform has been achieved as a result of the adoption of the federal Consent Decree between the City of Seattle and the USDOJ, at least as it relates to updated policies and practices involving police use-of-force, "stop and frisks," and biased policing, as well as investigations of uses-of-force and reviews of those incidents. However, questions remain as to the long-term effectiveness of the reform effort on the culture of the Seattle Police Department and its ability to sustain the reform efforts into the future. Further, the data support that there is great potential for future DOJ externally-imposed reform efforts to be successful if the USDOJ enhances its efforts to engage in a holistic approach to police reform and if the DOJ uses police use-of-force theory in its application and enforcement of Section 14141 investigations, findings and litigation efforts. The research also indicates benefits to USDOJ reform efforts through the creation of a new "Police Reform Section" within the Civil Rights Division to replace the USDOJ's reliance on its Special Litigation Section to enforce Constitutional policing on a systemic level within the United States.

Keywords: police reform; consent decree; use-of-force theory; procedural justice

Dedication

This thesis project is dedicated to the memory of my late wife, Laura Baird Rosenthal, whose untimely death encouraged me to find a new path.

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I would like to thank my sons, Kevin and Sam for their patience and support as this project consumed time and kitchen space for a period of two years. I would also like to thank my fiancée, Patti Baxter, for her emotional support and for providing transportation and logistic support for multiple research trips to Seattle. Also, a thank you to University of Idaho Professor Joseph DeAngelis, my long-time collaborator, for his ongoing advice, consult and encouragement all through my PhD studies. I must also acknowledge the ongoing moral and emotional support I received from the chiefs, officers and fire fighters at the Mission Fire & Rescue Service as I completed this work while also answering calls for service, always under their tutelage and with their support and encouragement.

A final thank you goes to my committee members: David MacAlister for helping to keep me on track, Curt Griffiths for suggesting this topic for my research, and Sheri Fabian for forcing me to shed my consistent reliance on my legal education and encouraging me to look at my research in a more holistic way.

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List of Acronyms

ACLU	American Civil Liberties Union
BWC	Body Worn Cameras
CCU	Seattle Coalition of City Unions
CIC	Crisis Intervention Committee
CJI	Crime and Justice Institute
COPS	Community Oriented Policing Section (USDOJ)
CPC	Seattle Community Police Commission
CRD	Civil Rights Division (USDOJ)
CRS	Community Relations Service (USDOJ)
D.C.	Washington, District of Columbia
DOJ	United States Department of Justice
ED	Executive Director
EIS	Early Intervention System
FIT	Force Investigation Team
FRB	SPD Firearms Review Board
IACP	International Association of Chiefs of Police
IMIM	Incident Management/Intervention Model
IT	Seattle Police Department Information Technology Section
LAPD	Los Angeles Police Department
MCCA	Major City Chief's Association
MEDC	Seattle Minority Executive Director's Coalition
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NIJ	National Institute of Justice (USDOJ)
OIG	Seattle Office of Inspector General
OJP	Office of Justice Programs (USDOJ)
OPA	Seattle Office of Professional Accountability
PARC	Police Assessment Resource Center
PERC	Washington State Public Employee Relations Commission
PERF	Police Executive Research Forum
PGPD	Prince George's County Police Department
PPA	Portland Police Association

PPMIM	Pattern & Practice Management Intervention Model
PRPD	Puerto Rico Police Department
PRS	Police Reform Section (USDOJ Civil Rights Division)
RCMP	Royal Canadian Mounted Police
SLS	Special Litigation Section (USDOJ)
SPD	Seattle Police Department
SPMA	Seattle Police Management Association
SPOG	Seattle Police Officer's Guild
TA	Technical Agreement
U.S.	United States
USDOJ	United States Department of Justice
VCCLEA	Violent Crime Control and Law Enforcement Act

Chapter 1.

Introduction

In 1994, in the aftermath of the beating of Rodney King by Los Angeles police officers, the United States Congress passed legislation that gave the United States Department of Justice (USDOJ or DOJ) the authority to file civil law suits against local law enforcement agencies that were found to have engaged in "a pattern or practice of conduct" that deprived persons of their federal civil rights (42 U.S.C. §14141)[1] (Livingston, 1999; Bobb, 2003; Jerome, 2004; USDOJ, 2017b). Over the next 24 years, the Civil Rights Division of the USDOJ has negotiated twenty "Consent Decrees", and twenty "Settlement Agreements" (also known as "Memorandums of Agreement" (MOA) or "Memorandums of Understanding" (MOU) with a variety of police and sheriff departments nationwide (USDOJ, 2017b).[2] Since the initiation of the first DOJ investigation (in Torrance, California) which did not result in a "pattern or practice" finding, there have been 69 federal investigations completed, with 61% of those

[1] Section 14141 provides in relevant part: "It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers…that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" (Violent Crime Control and Law Enforcement Act (VCCLA), 42 U.S.C. §14141(a) (1994)). Section 14141 has recently been reclassified and renumbered as 34 USC §12601. Due to its long history as Section 14141, this paper will generally refer to the statute as per its prior designation.

[2] See, Appendix A for a list of jurisdictions which have entered into Consent Decrees and Appendix B for a list of jurisdictions which have entered into either Memorandum of Agreement or Memorandum of Understanding with the USDOJ. The USDOJ has defined a "Consent Decree" as "a negotiated agreement that is entered as a court order and is enforceable through a motion for contempt." A "Settlement Agreement" is defined "as an out-of-court resolution that requires performance by the defendant, including a Memorandum of Agreement ("MOA") or Memorandum of Understanding ("MOU") enforcement of which requires filing a lawsuit for breach of contract." U.S. Attorney General Memorandum, "Principals and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Government Entities," signed November 11, 2018, n. 2. Retrieved from https://www.justice.gov/opa/press-release/file/1109681/download.

An article in the UCLA law review offered the following, more dramatic definition of the difference between a Consent Decree and an MOA: "Although both consent decrees and MOA are settlements, there are some important differences between the two instruments. When the DOJ uses a consent decree to settle its 14141 investigation, it files a legal order with the federal district court to approve the Consent Decree. A consent decree serves as a court-ordered and court-enforceable settlement. When an MOA is used to settle the DOJ's claim, there is no judicial oversight. The DOJ must hold out the threat of a future consent decree or litigation to ensure compliance. Essentially, a consent decree is an MOA with teeth" (Silveira, 2004, p. 614).

investigations finding pattern or practice violations of constitutional rights (Devi & Frier, 2020).[3]

The federal legislation authorizing pattern or practice law suits was passed during the Clinton Administration (Democrat "D") with *three Consent Decrees and one MOA* filed during Clinton's presidency (between 1997 and January 2001). *Three Consent Decrees and nine MOAs* were filed under the Bush Presidency (Republican "R") (between January 2001 and January 2009). However, the vast majority of Consent Decrees and Settlement Agreements were filed during the course of the Obama Presidency (D) (*twenty-five* in all, including fourteen consent decrees, one Settlement Agreement and ten MOAs) between January 2009 and January 2018 (USDOJ, 2107b; see also, Civil Rights Division website, at justice.gov/crt).[4]

There has been substantial debate in the United States, and throughout the world, as to the best means to ensure humane and effective policing in democratic societies (Armacost, 2004; Ikert & Walker, 2010; Wolf & Piquero, 2011; Alpert et al., 2017). The passage of the "pattern or practice" legislation took place after the U.S. Congress concluded that internal and external oversight practices being used on the federal and local levels (even in conjunction with the existence of the right to sue police departments for violations of civil rights through the state and federal courts and the existence of the "exclusionary rule" upon a judicial finding of unlawful search and

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[3] A wide diversity of police departments exist within the United States: As noted by Bobb (2003), "indeed there are more than 16,000 local law enforcement agencies in the United States. Of this total, 13,524 are local police departments; the rest are sheriff's departments. There are about 436,000 full-time, sworn officers in these 13,000 police departments, and about 186,000 full-time, sworn employees in the sheriff's departments. Of the 436,000 full-time police officers, slightly more than one-third work in an agency having 1000 or more officers, even though these agencies account for only 0.3% of the total number of police departments. While departments with 100 or more full-time police officers account for only about 4% of the total, they employ three-fifths of the full-time officers. The great majority of the police departments, about 77% (more than 10,000), have fewer than 25 police officers, while about 52% have fewer than 10 officers. There are only about 1300 police departments, about 10%, with more than 50 police officers" (p. 153). Other numbers have been reported as well: 17,000 police departments were reported in 2004 (Jerome, 2004); Walker & Macdonald (2009), reported that "the Bureau of Justice Statistics *estimates* that in 2000 there were 17,784 local, state and special jurisdiction agencies and 2,867 additional federal agencies" (p. 484, *emphasis added*); Rushin, (2015) reported a total of 17,985 state and local polices agencies employing a total of 765,246 officers (at Fig. 1.1). In 2017, the USDOJ reported that "there are more than 18,000 law enforcement agencies across the country" (USDOJ, 2017b, p. 1).

[4] Terms of office for U.S. Presidents can be found at: https://historyinpieces.com/research/presidential-inauguration-dates.

seizure), were insufficient tools to ensure Constitutional and effective policing in the United States (Livingston, 1999).[5]

The initiation of these pattern or practice investigations and lawsuits by the federal government, however, has not been without controversy. In fact, not only did the Trump Administration (R) virtually abandon the use of this legislation as a substantive means of police reform,[6] in 2018, the then-United States Attorney General took the extraordinary step of formally objecting to the issuance of a state-based Consent Decree negotiated between the Illinois State Attorney General and the Chicago Police Department. This was after the U.S. Department of Justice abandoned its own efforts to reform the CPD upon the conclusion of a USDOJ investigation finding a pattern or practice of excessive force.[7] Even so, Settlement Agreements were reached on June 4, 2018, between the Trump DOJ, the Ville Platte Louisiana Police Department and the Evangeline Parish Sheriff's Office, as a result of an investigation concluded by the Department of Justice during the Obama administration, on December 19, 2016.[8]

On July 27, 2012, the USDOJ entered into its eighth Consent Decree; this one involving the Seattle Police Department (SPD). This dissertation project uses original data to evaluate the impact of the Seattle Consent Decree on the Seattle Police Department and its practices, looking to determine to what extent reform efforts have, or have not, been successful overall.

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[5] As noted by Rushin (2015), "Prior to the passage of § 14141, there existed three major mechanisms by which the federal government regulated local police agencies: the exclusionary rule, private civil litigation, and criminal culpability" (p. 18).

[6] See, March 31, 2017, Memorandum from the Attorney General: "Supporting Federal, State, Local and Tribal Law Enforcement." Retrieved from https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html.

[7] Hinkell, D. (2018 October 10). Attorney General Sessions plans to weigh in against Chicago Police Consent Decree. *The Chicago Tribune*. Retrieved from http://www.chicagotribune.com/news/local/breaking/ct-met-sessions-chicago-consent-decree-20181009-story.html.

[8] See, Settlement Agreements, located at https://www.justice.gov/opa/pr/justice-department-reaches-agreements-ville-platte-police-department-and-evangeline-parish. However, those settlement agreements did not include the appointment of a monitor to ensure compliance with their terms which was a key feature of consent decrees and settlement agreements negotiated by Department of Justice under prior Presidential administrations.

On January 10, 2018, US District Court Judge James Robart found the City to be in "full and effective" compliance with the Consent Decree,[9] meaning that the federal monitoring of the SPD was intended to enter into its final phase – ensuring that compliance was sustainable for a two-year period prior to the anticipated dismissal of the federal court's jurisdiction over the agreed-upon reforms.[10] On December 3, 2018, however, Judge Robart, on his own motion, issued an "Order to Show Cause" as to whether the court should find that the City had failed to maintain full and effective compliance. This order was based, in large part, on issues and concerns regarding Seattle's police discipline process that allowed a decision by the Police Chief to terminate an officer for excessive force to be overturned by a private arbitrator.[11] On May 21, 2019, in an unprecedented move, Judge Robart found the City to be partially out of compliance with the Consent Decree as it related to the City's police accountability system, even in the face of opposition from both parties (the USDOJ and the City of Seattle).[12]

Although the City and the DOJ filed a stipulated joint motion to dismiss substantive paragraphs of the Consent Decree on May 7, 2020, that motion was withdrawn by the City on June 4, 2020 after days of protest and civil unrest relating to issues of police accountability as the result of the May 25, 2020 killing of George Floyd by Minneapolis police officers.

The research underlying this paper examined the process under which the reform of the Seattle Police Department took place and evaluates the overall impact of the reform effort on police officers, police managers and policing practices over a period of the 8-year term of the Consent Decree. I then compared the experiences of Seattle to the experiences of other police agencies based upon a review of the existing academic and evaluation literature.[13] After conducting interviews with a diverse group of Seattle

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[9] *SPD Blotter*. Retrieved from http://spdblotter.seattle.gov/2018/01/10/chief-bests-statement-on-spds-compliance-with-the-consent-decree/

[10] See, website of the Seattle Police Monitor at http://www.seattlemonitor.com/overview.

[11] U.S. v. Seattle, Document No. 439, filed January 10, 2018.

[12] U.S. v. Seattle, Document 562 (Court Order filed, 5/21/19).

[13] The jurisdictions previously evaluated and examined using original data include, Pittsburgh (Davis, et al., 2002 & 2005; Chanin, 2012), Los Angeles (Stone, et al., 2009; Rushin, 2015; Phillips & Jiao, 2016), Washington D.C. (Chanin, 2012; Bromwich 2016), Cincinnati (RAND 2005-2009; Chanin, 2012) & Prince George's County, Maryland (Chanin, 2012).

stakeholders, reviewing the available reports relating to the implementation of the Seattle Consent Decree, and comparing Seattle's experience to those of other jurisdictions, I have concluded that, in the future, the DOJ should adopt police use-of-force theories in its enforcement of §14141 and create a new "Police Reform Section," within the Civil Rights Division, using a holistic and multidisciplinary team approach to police reform. Such new practices would help to ensure that any future reforms initiated under the incoming Biden presidential administration would be both effective and sustainable.

1.1. Research Questions & Working Hypotheses

The research in support of this paper examined the history, experiences and substantive results of the Consent Decree process as it relates to the City of Seattle using the following research questions:

- What is the potential, and what are the limitations, of externally-imposed reform efforts on police departments in the United States?
- Are formal Consent Decrees and Settlement Agreements an effective tool for facilitating significant and sustainable reform in United States police departments?
- To what extent has the Seattle Police Department has been able to achieve desirable reform outcomes as a result of the adoption of the federal Consent Decree, despite a police culture that did not reflect core reform values?
- Does it appear that substantive, sustainable reform has been achieved as the result of the adoption of the federal Consent Decree between the City of Seattle, Washington and the United States Department of Justice and at what cost?
- To what extent have the views of police stakeholders and the perceptions of community stakeholders changed over the course of the Seattle Consent decree?

The Seattle data established that the dynamics of City politics and the specific personalities of community, political and police leaders had a direct and substantial impact on reform efforts. In addition, community engagement in Seattle is unusually active and sophisticated and had a substantial and ongoing impact on the ongoing reform efforts pursued by the federal monitoring team and, eventually, the police leadership, over the course of the Consent Decree process. In fact, although the

Community Police Commission (CPC), a body created by the Consent Decree negotiation process and consisting of numerous representatives of activist groups in the city, was denied its request to become a party to the litigation between the USDOJ and the city, on November 26, 2013, the CPC was granted amicus curiae status, which allowed it to become an active participant in the adjudication of the Consent Decree with an agenda that was sometimes different than the named parties.[14]

Over the course of the research project, I paid particular attention to the hypothesis previously suggested by Chanin that sustainability of reform efforts can be determined by three "components:" "(1) the department's ability to sustain changes made to policy and accountability systems; (2) the symmetry between department culture and the goals of the reform effort; and (3) relevant outcomes" (Chanin, 2012, p. v).

1.2. Findings

Seattle data supported the conclusion that to the extent the Seattle experience was successful, it was the result of a change in Mayoral administration and police leadership that sent a clear message to command staff and the rank and file that compliance with the Consent Decree was a Department priority. In addition, changes to SPD policies, data collection efforts and training appear to have provided a strong foundation for sustainable improvements in the way officers engage in and are supervised in their work.

However, there are also reasons for concern: recent events have shown an inclination for the SPD to revert back to prior poor practices in policing when under

[14] For example, see CPC Motion requesting extension of time for Monitor to approve SPD use-of-force policy (U.S. v. Seattle, Document No. 82, filed August 20, 2013); CPC letter identifying continuing community concerns regarding the SPD at the time of the court's finding of "full and effective compliance" (U.S. v. Seattle, Document No. 421, filed October 13, 2017); CPC Response to Order to Show Cause supporting finding of lack of compliance with Consent Decree (U.S. v. Seattle, Document No. 531, filed February 20, 2019); and, CPC motion for Oder to Show Cause why City should not be found "further out of compliance" with Consent Decree (U.S. v. Seattle, Document No. 622, filed on June 9, 2020).

stress and likely as a result of reform "fatigue" due to the seemingly endless nature of the federal reform effort.[15]

At the same time, however, civilian oversight functions appear to be stronger than ever, with a respected Inspector General conducting audits of police practices,[16] an active and vocal Citizen Police Commission with the ability to broadcast its message broadly[17] and an improved Office of Police Accountability. Finally, continuing pressure from well-organized civil rights groups puts additional pressure on the City Council and the Mayor's Office to ensure both Constitutional and effective policing.

One particular area of weakness was identified, however. For a number of reasons, the SPD rank and file were never sufficiently engaged in the reform effort and many study participants questioned to what extent the reforms truly impacted the culture of the SPD. In one particularly glaring example of concern, the then-police Chief, the first African American female to ever serve in that position, who reportedly had strong

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[15] Although at least four other jurisdictions (New Jersey (9.8 years), Washington D.C. (10.7 years), Detroit (11.1 years) and Los Angeles (11.9 years) have all involved longer periods of reform than Seattle (at least at the time of this writing), virtually all study participants described some form of exhaustion with a process where there is no foreseeable end in sight (See Rushin, 2015, at Fig. 4.2, for "Length of Monitored Reform for Completed Cases").

[16] As of August 2020, the Seattle Office of Inspector General had published one annual report (2019); two "work plans" (2019, 2020); a quarterly review of the Office of Professional Accountability (1st Quarter, 2020); four audit reports ("Firearms Inventory Control Review" (May 23, 2019), "Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code, Collection of Information for Law Enforcement Purposes" (June 21, 2019), "Force Review Board Assessment" (July 31, 2019), and "Audit of SPD Patrol Canine Teams" (June 24, 2020)); an "Interim OPA Auditor Final Report" (May 31, 2019); a "policy" report ("Interim OPA Auditor Final Report" (March 18, 2019); a roadmap to the SPD Disciplinary Process; and eight memoranda designed to make recommendations to the SPD and the City on a variety of issues ("Peer Intervention Program Recommendation" to Chief Best (September 26, 2018), "SPOG Contract Impacts Memo" to Council Member Gonzalez (October 26, 2018), "Crime Stoppers Memo" to Chief Best (April 29, 2019), "SPMA Contract Recommendations" to Mayor, Council and City Attorney (co-authored with OPA Director) (December 5, 2019), "SPOG Contract Negotiations Feedback" to Council Member Herbold (January 27, 2020), "IA Pro Information memo" (May 8, 2020), "Accountability Mass Demonstration" to Mayor, City Council, Chief Best, City Attorney, Court-Appointed Monitor and DOJ (co-authored with CPC, OPA Director and Community Representatives) (June 5, 2020), and "Less Lethal Weapons Usage in Protests" (June 12, 2020). See, website of Seattle Office of Inspector General, located at http://www.seattle.gov/oig.

[17] It must be noted, however, that a number of former members of the CPC strongly believe that the CPC experiment was ultimately a failure and that it was in the process of being co-opted by Mayor Durkan with its recommendations largely ignored and its overall impact on police practices to be minimal.

support amongst the minority communities, complained shortly after the City was found to be partially out-of-compliance with the Consent Decree in 2019 that:

> I don't need another survey or another exit interview to know that one of the issues is that we really need the support of our public officials and our public for the officers… We are losing good people, and we know that it's because they feel like they are not supported.[18]

That statement was ominously similar to the types of statements that were uttered by Chiefs prior to, and immediately after, the DOJ investigation and the implementation of reform and were in accord with statements made by the Seattle Police Guild,[19] a police union commonly referred to as a major impediment to the overall reform process.[20]

With respect to the original research questions, the research data supports the following conclusions:

First, with respect to the potential, and limitations, of externally-imposed reform efforts on police departments in the United States and the question of whether §14141 can be an effective tool for facilitating significant and sustainable reform in United States police departments:

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[18] King5.com (2019, July 15). Seattle City Council 'disappointed' in mayor's approach to police reform. *King5.com.* Retrieved from https://www.king5.com/video/news/local/seattle-city-council-disappointed-in-mayors-approach-to-police-reform/281-74bb7be0-ce36-405e-98d1-41cbc011e793.

[19] See, for example, comments made by Sgt. Rich O'Neill, the Vice President of the Seattle Police Officers' Guild to Q13 Fox TV (KCPQ) that "I have never seen the number of officers who are leaving and the way they are leaving," ["contending many officers are afraid to do their jobs"]. According to O'Neill, "It's just depressing to serve in a place where many City Council members who are coming out at times with negative comments about the police" (Miletich, S. (2018, July 10). Police official disputes officer-exodus claims. *Seattle Times*. Retrieved from www.seattletimes.com).

[20] See, for example, statement of US District Judge James Robart, who declared in court that "[t]he court and the citizens of Seattle will not be held hostage [by the police union] for increased payments and benefits." Also, see, Seattle Police Monitor 1st Semi-Annual report (2013) wherein the Monitor reported that the police unions "thus far have failed to play a constructive role in word and deed (pp. 2-3); the Monitor continued that "[a] part of the SPD, mostly but not exclusively within the union- organized ranks, remains "dug in" and continues to resist the force and implications of the Settlement Agreement" (p. 5). In addition, it was the police union's decision to appeal the disciplinary decision against an officer for a video-taped excessive force incident that ultimately resulted in the SPD being found partially out-of-compliance with the Consent Decree on May 21, 2019 (U.S. v. Seattle, Docket No. 562).

There is great potential for future DOJ externally-imposed reform efforts to be successful if the DOJ enhances its efforts to engage in a holistic approach to police reform. Specifically, it is recommended that the DOJ Special Litigation Section (which enforces the provisions of §14141) use police use-of-force theory in conducting its work. In other words, the Special Litigation Section (SLS) should officially recognize that it will use only that level of force necessary to achieve the goals of reform.

In addition, it would be appropriate for the USDOJ, particularly with the upcoming change in U.S. presidential administrations to have §14141 (now §12601) enforcement switched over to a new "Police Reform Section" (PRS) that would also formally adopt a process of "Collaborative Reform," previously used by the Community Oriented Policing Section (COPS) of the DOJ.[21] Voluntary "collaborative reform" projects could be applied to those agencies that are willing to recognize their deficiencies and cooperate in reform efforts as an alternative to formal §12601 litigation. The new PRS would also need the ability to alternatively use "carrot" and "stick" approaches to police reform, by having the ability to offer financial grants and free or at-cost technical assistance to departments in need.

Just as officers should only use intermediate less-than-lethal weapons or deadly force when no other reasonable options are available, the new PRS should only be using the Section 12601 litigation process when alternative means to reform a police department are unavailable. In addition, just as the police need to be transparent with their communities and engage in community-oriented and problem-oriented policing, the DOJ also needs to be transparent in their work and in their negotiation processes.[22]

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[21] See Cole, Collins, Finn & Lawrence, 2017. The Collaborative Reform Initiative Process. COPS/Crime & Justice Institute; see also, Collins, Cole, Finn & Lawrence, 2017, Assessment of the Collaborative Reform Initiative in the Las Vegas Metropolitan Police Department: A Catalyst for Change, p. 5 ["The Office of Community Oriented Policing Services (COPS Office) at the U.S. Department of Justice launched the Collaborative Reform Initiative for Technical Assistance for Technical Assistance (CRI-TA) in 2012 with the Las Vegas Metropolitan Police Department (LVMPD) as the first site … In sum, we found that the CRI-TA has been an important catalyst for meaningful and sustained change at the LVMPD"].

[22] As discussed in Chapter 7.3, the DOJ's refusal to share the methodology underlying their findings with respect to the SPD investigation report is an example that study participants passionately identified as a transparency and procedural due process violation which negatively impacted early efforts to negotiate and implement the Seattle Settlement Agreement.

Second, in answer to the question of whether the SPD has been able to achieve desirable reform outcomes as a result of the adoption of the federal Settlement Agreement, despite a police culture that reportedly did not reflect core reform values:

Unfortunately, the question of whether the DOJ reform effort was able to actually change the culture of the SPD remains unanswered. Recognizing that it is difficult to even define the amorphous culture that is the SPD, there was a wide disparity of beliefs amongst study participants as to what impact, if any, the Consent Decree had on what has been perceived as a long-standing culture within the SPD to engage in an insular form of policing that does not meet community expectations. And, in fact, even the definition of who should represent the community and whose expectations the SPD should be serving was a question of some debate.[23] The Seattle Police Officer Guild (SPOG) newspaper reportedly continued to publish inflammatory articles by reactionary officers over the course of the Consent Decree process (*Seattle Times*, 2/20/2011,[24] *The Stranger*, 9/23/2015)[25]; and its newly elected President ran on a platform that was unabashedly anti-reform (*Seattle Times*, 1/27/2020, 2/4/2020).[26]

On the other hand, however, the research data do support the conclusion that substantive, sustainable reform has been achieved as the result of the adoption of the federal Consent Decree between the City of Seattle and the USDOJ, at least, as it relates to updated policies and practices involving police use-of-force, "stop and frisks," and biased policing, investigations of use-of-force and reviews of those incidents. In addition, although there is disagreement as to whether the SPD would have been able to be successful in the implementation of a Crisis Intervention Program, with a number of participants suggesting that this success may have been "in despite of" the federal effort,

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[23] See, for example, comments of then-U.S. Attorney, Jenny Durkan to the Seattle Community Police Commission, Footnote 34.

[24] Westneat, D. (2011, February 20). Wary police may step back service. *Seattle Times*. Retrieved from www.seattletimes.com.

[25] Herz, A. (2015, September 23). Seattle's police union newspaper continues streak of anti-reform rhetoric and racism. *The Stranger*. Retrieved from www.thestranger.com.

[26] Miletich, S. & Beekman, D. (2020, January 27). Police union candidates offer differing styles. *Seattle Times*. Retrieved from www.seattletimes.com; Miletich, S. & Beekman, D. (2020, February 4). Seattle police union elects hard-line candidate as president in landslide vote. *Seattle Times*. Retrieved from www.seattletimes.com; See also, Election Ad for SPAG President Mike Solan, November 6, 2019, referring to "the anti-police activist agenda that is driving Seattle's politics" (Retrieved from https://www.youtube.com/watch?v=b6cJQ1XBH8M).

substantial improvements in SPD's handling of persons in crisis have clearly taken place. Finally, the Department now has to tools necessary to evaluate, track and manage use-of-force; tools that did not exist prior to the Consent Decree and which were clearly the result of the federal intervention.

The cost of these reforms, however, was high. The City has paid up to $1 million per year to the federal monitor in conjunction with an overall negative impact on police morale and local perceptions of DOJ aggressiveness and over-reaching (at least at the beginning of the process) and perceptions that the federal court also "over-reached" over the course of consent decree implementation.[27] The City was also required to spend millions of dollars on training, overtime and management information systems to come into compliance with the Consent Decree.[28] Cost savings are also substantial however: the number of uses of force are down without any apparent increase in police injuries or crime (see, Seattle Monitor, 9th Systemic Assessment, 2017) and theoretically, at least, the SPD is much better situated to engage in risk management strategies to reduce liability than it was prior to the time of the Consent Decree.

With respect to the views of police stakeholders and the perceptions of community members, surveys conducted prior to the George Floyd protests supported the conclusion that perceptions of the SPD had improved over the course of the federal reform process (see, Seattle Monitor, Third Systemic Assessment, 2016).

This research project also led to the following conclusions and recommendations:

The DOJ needs to continue its progress in moving beyond short-term litigation strategies in favor of transparency and procedural due process and avoid the use of "unnecessary or excessive force" in imposing police reform;[29]

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[27] See Table 3.5 showing total billed costs to the city from the Seattle Monitoring Team. See Rushin, 2015, Fig. 4.1 for approximate average yearly cost of monitoring services for Seattle and other jurisdictions. However, Rushin's Fig. 4.1 appears to understate Seattle's actual monitoring costs, which were generally about $1 million per year, apparently similar to the costs associated with the monitoring of Prince George's County and Washington D.C.

[28] Although it is arguable that this is money that the city should have been spending in the first place in order to ensure that it was not engaging in unconstitutional policing patterns or practices.

[29] In 2017, the DOJ acknowledged that: "In many cases, police unions have pointed out the link between officer perceptions of a lack of fairness and procedural justice within police accountability and disciplinary systems and the lack of procedural justice in police-community

Prior to publishing the results of any DOJ 14141 investigation, the DOJ should follow the practices described in Government Auditing Standards, Section 8.31,[30] which recommends that "one of the most effective ways to ensure that a report is fair, complete and objective is to obtain advance review and comments by responsible officials of the audited entity and others, as may be appropriate." This does not mean that city officials or police command staff should be given the opportunity to censor the DOJ investigation report; just that they should be given the opportunity to identify factual errors and opine on the report's tone and balance with the DOJ being the ultimate and sole arbiter of the final version.[31]

A holistic approach to police reform, in conjunction with consent decree enforcement should be the public face of the DOJ police reform effort. This should include providing technical assistance from within the DOJ (to include the Community Oriented Policing Section (COPS), Office of Justice Programs Diagnostic Center, Bureau of Justice Assistance, Community Relations Service (CRS) and Office of Justice Programs (OJP), and obtaining technical assistance and support for police departments from groups such as the International Association of Chiefs of Police (IACP), the Police Executive Research Forum (PERF), and the Major Cities Chiefs Police Association (MCCA).

Seattle lesson learned - The DOJ should seek to engage police unions at an early and ongoing stage, without allowing union opposition to hijack the reform process; in appropriate cases, the DOJ may want to join a union in the case as a party.

Seattle lesson learned – Settlement Agreements needs to involve all significant related issues – to avoid allegations of mission creep and ensure a holistic approach to

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encounters. These examples illustrate concretely how incorporating the perspective of police officers has strengthened the Division's reform work" (DOJ, 2017b, p. 12).

[30] Retrieved from U.S. GAO - The Yellow Book.

[31] In the case of Seattle, it appears highly likely that much of the drama that surrounded the release of the DOJ investigation report could have been averted had the DOJ shared a confidential draft of the report with SPD and City leadership and solicited input prior to the public release of the report. This is a widespread practice followed by local and federal auditors in accord with GAO standards. The only argument against following such a practice would be in support of a short-term litigation strategy intended to force a City into a more vulnerable position with respect to Consent Decree negotiations. The Seattle experience, however, appears to support a long-term risk management approach over any short-term benefits that may result from what has been described by Seattle officials as a "surprise attack" from the DOJ.

reform. (It was likely a mistake not to specifically include the issue of "police accountability" in the Seattle Settlement Agreement); and,

The DOJ, court-appointed monitors, and affected cities will need to recognize, respect and embrace the inherent tension between community activists, police reform "professionals," police command and police unions when taking into account community involvement and working to support collaborative solutions to community-police issues.[32]

1.2.1. Police use-of-force theory applied to Section 14141 actions.

Overall, this research project supports the finding that most of the issues and solutions regarding federal oversight of police can be found in policing theory itself, to include use-of-force theory and the multi-disciplinary team approach to reducing and fighting crime. Specifically, I recommend that for future DOJ-sponsored reform efforts, the DOJ apply police use-of-force theory to its application of §14141 (now § 12601) against local law enforcement agencies.

Although the concept of using police use-of-force theory and applying it to the DOJ's §14141 interventions would seem to be a common-sensical approach to externally mandated police reform, it has not been previously applied by any of the many academics and commentators who have studied the application of §14141. Ironically, the closest application of police use-of-force theory to police reform was suggested by the now-former court-appointed monitor for Seattle, who oversaw the reform process from its inception in 2012 through September 2020. Bobb (2003) recommended that jurisdictions considering creating police oversight mechanisms use the "least intrusive" form of oversight required to "assure the integrity of a self-regulating police agency."

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[32] Seattle research participants discussed ongoing conflicts between the CPC and the City, to include conflicts with the DOJ, the Monitor and the Court as reason to believe that there was a lack of understanding of the role of the CPC and how it should be involved in the Consent Decree process. See, Miletich, S. (2019, August 9). Citizen panel rejects Durkan plan to address SPD accountability flaws. *Seattle Times*; Kamb, L. (2019, September 21). Mayor accused of interfering with Panel. *Seattle Times*; Carter, M. (2013, December 12). Durkan: Commission's police-reform role is limited. *Seattle Times*. [Wherein then-U.S. Attorney Durkan told the CPC: "You don't own the community … And you are not the only people getting community input"]; Herz, A. (2015, June 30). Federal Judge, Decrying Attempts to 'Grab Power' Says He's the Boss of Police Reform. *The Stranger*; Miletich, S. (2015, July 7). Judge's Review Board Harangue on Video. *Seattle Times*. Retrieved from https://www.seattletimes.com & https://www.thestranger.com.

Bobb's application of police use-of-force theory in that regard was explained as it related to the creation of civilian oversight for a police agency:

> …for any particular situation, all the alternatives should be considered, and only the most fitting alternative selected. In some sense, the prescription advocated here mirrors the best practice in the use of force by the police: force employed by the police should be narrowly and precisely calculated to overcome the resistance of the suspect. In some instances, that amount of force may be minimal, just enough to handcuff the suspect. In other cases, e.g., where the suspect wields a gun, the force used may need to be more severe. Just as an officer confronted with a resistant suspect needs to carefully select a level of force commensurate with the situation presented, the response to a law enforcement agency's resistance to accountability and responsibility for managing the risk of misconduct needs to be carefully measured, and overcome by the least intrusive option that works. (p. 165)

Bobb's recommendation in this regard was subsequently used by Deangelis, Rosenthal and Buchner (2016) to suggest that

> [j]ust as the police are expected to use only that amount of force that is proportionate, necessary and reasonable to accomplish their task, so it can be argued that jurisdictions creating or reforming an oversight function should similarly accomplish the feat of ensuring police accountability. (pp. 11, 52)

In this paper, I take the concept to its next logical step by concluding that both police oversight agencies and the USDOJ, as an agency that uses external control mechanisms to ensure constitutional policing, can use police use-of-force theory as a means to ensure a better understanding of its methods and tactics and also ensure more effective communication with the police community.

One of the best current applications of police use-of-force theory is visualized by Canada's Royal Canadian Mounted Police (RCMP) in its "Incident Management/ Intervention Model" (IMIM) which "is a visual aid that helps [an] officer picture an event and explain why the officer used the intervention methods he or she did." As further described by the RCMP, "[t]he RCMP's IMIM aligns with the Canadian Association of Chiefs of Police (CACP)'s National Use of Force Framework and contributes to a common vocabulary approach to the use of force by police agencies across Canada."[33]

[33] A description of the IMIM model can be found at: https://www.rcmp-grc.gc.ca/en/incident-management-intervention-model-imim. The RCMP further describes the IMIM as "the framework

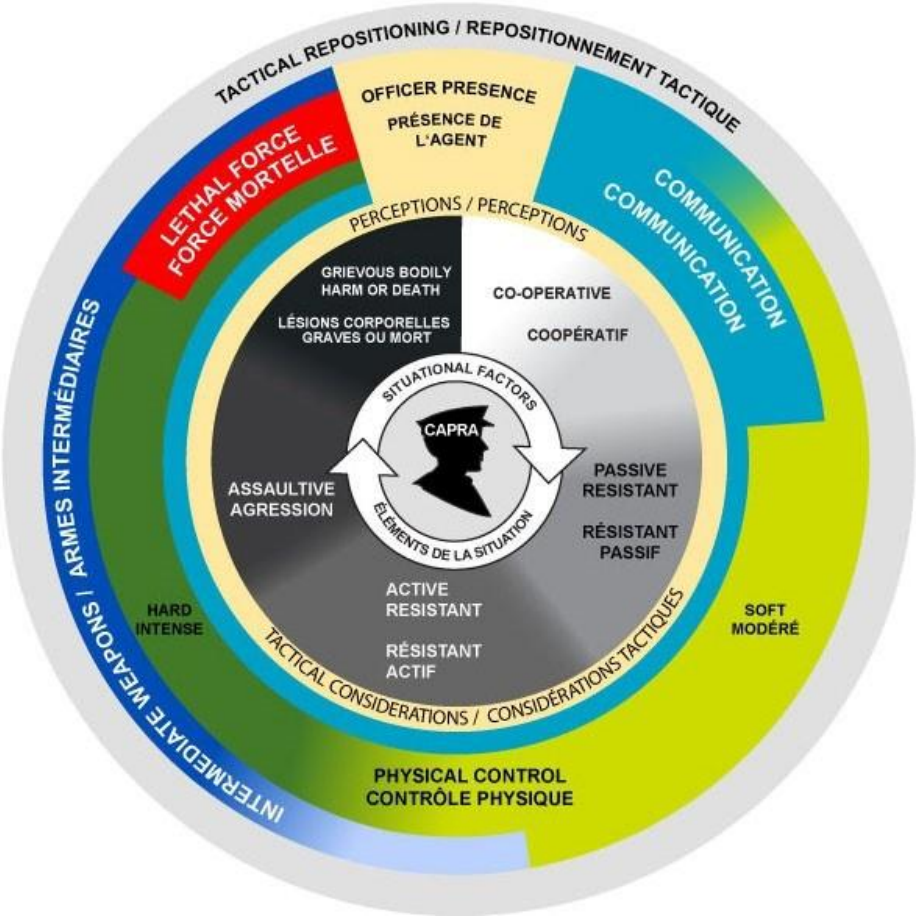

Figure 1.1. RCMP "Incident Management/Intervention Model" Graphic

A version of the IMIM could be used by the DOJ as described herein and will be referred to hereafter as the "Pattern & Practice Management Intervention Model" (PPMIM). The PPMIM can be used as a visual aid that can help the USDOJ and affected police departments picture a DOJ intervention and explain why the USDOJ used specific intervention methods. The model can be used as an aid for impacted cities to understand how their reaction to a UDDOJ Pattern & Practice investigation will impact DOJ follow-up actions where patterns & practices of violations of constitutional law have been identified.

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that RCMP officers use to assess and manage risk through justifiable and reasonable intervention. The IMIM builds from the actual situation outward. The circular representation of the graphic is designed to reflect the rapidly evolving and dynamic nature of police work. Unlike a continuum or linear pathway, the IMIM does not lead the officer through a stepped progression of intervention options. The officer instead selects an appropriate option to control the situation, based on the situation."

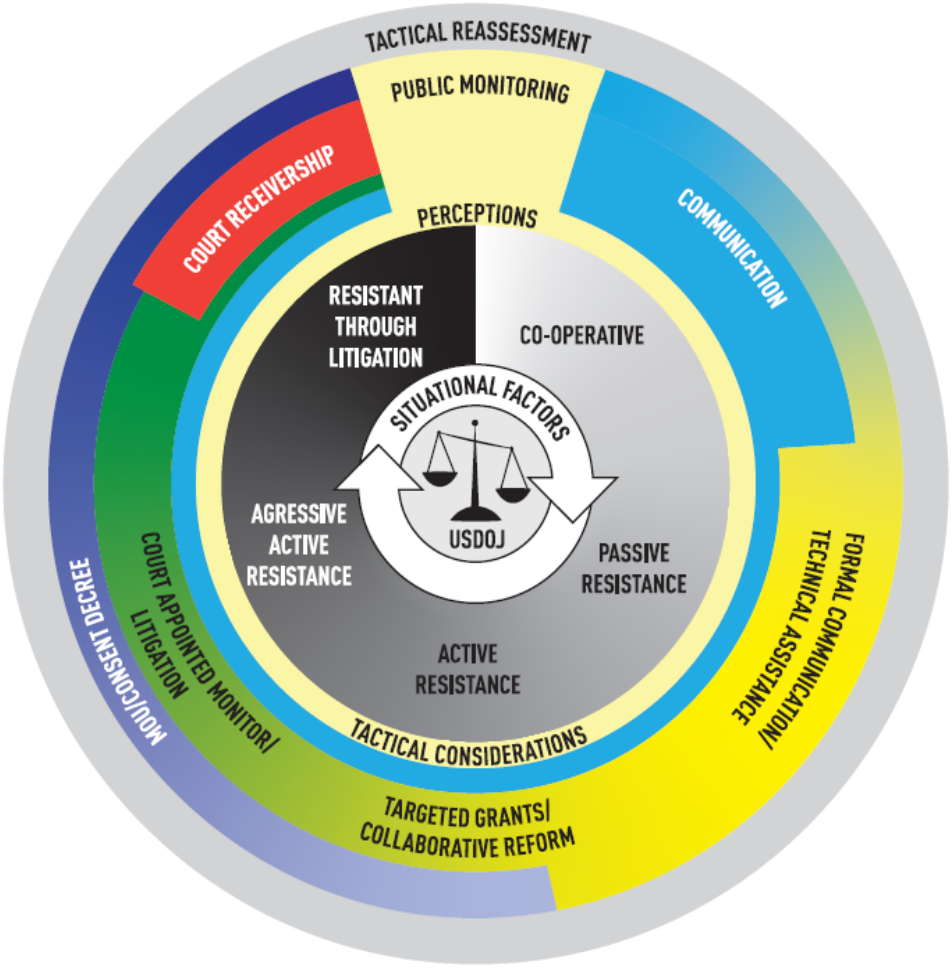

Figure 1.2. Pattern & Practice Management Intervention Model Graphic
Graphic Design by Greg Holoboff | SFU Centre for Educational Excellence

The PPMIM can be used as a framework to assess and manage risk through justifiable and reasonable intervention as it relates to unconstitutional policing practices exercised by state and local police agencies. The PPMIM builds from the actual situation outward. The circular representation of the graphic is designed to reflect the evolving and dynamic nature of police reform. Unlike a continuum or linear pathway, the PMIM does not attempt to lead the USDOJ through a stepped progression of intervention options. USDOJ personnel would instead select amongst the appropriate options to best manage the local situation and support a sustainable reform effort.

Just as police officers are expected to explain intervention strategies chosen to manage a use-of-force incident, the USDOJ should be transparent in how it uses its police reform tools in a reasonable and proportional way. Any DOJ action must take into account the entire situation, including:[34]

- "Tactical considerations," such as: the level of public engagement, support for police reform amongst the community and the level of organization and engagement by civil rights organizations;
- The USDOJ's perceptions, based on media accounts and meetings with the public and police officials and members of the police rank-and-file;
- "Situational factors," such as: the state of the local economy, the adequacy or inadequacy of the local police budget, and the level of equipment and training currently available; and,
- "Subject behavior," such as: the level of cooperation amongst local and police officials, and the level of resistance or support from police unions and rank & file officers.

As described in Chapter 7.3 and Chapter 9 of this paper, the issues of police use-of-force and USDOJ enforcement of §14141 are remarkably similar in that they involve the same issues and concerns of those upon whom the force is used; to include expectations that the amount of force used will be "appropriate, reasonable and proportionate,"[35] and that an officer or agency provide procedural due process and transparency in their enforcement of the law. Further, cities that become subject to §14141 enforcement can reasonably expect that the USDOJ will act in accordance with

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[34] The PPMIM model described herein replicates the following description provided by the RCMP to describe explanations required to describe use-of-force intervention strategies by police officers: "The RCMP Police officers are also expected to explain the intervention strategies chosen to manage an incident. The explanation must take into account the entire situation, including:

- tactical considerations, such as: low light, presence of backup, availability of cover, distance from the subject.
- the officer's perceptions, such as: the size of the person, weapons nearby, previous encounters with the person, the person's emotional state.
- situational factors, such as: weather, time of day, location, number of people present compared to number of police officers present.
- subject behavior, such as: cooperative, resistant, assaultive."

See, https://www.rcmp-grc.gc.ca/en/incident-management-intervention-model-imim.

[35] See, http://www.thealiadviser.org/policing/proportional-use-force/

USDOJ expectations that police departments engage in "Community Oriented Policing"[36] and Problem Oriented Policing.[37] Specifically, in order to obtain the type of cooperation necessary to achieve sustainable reform, the USDOJ needs to work "in a proactive partnership with [the affected department] to identify and solve problems," and engage in "identification of [] specific problem[s], through analysis to understand the problem[s], the development of a tailored response and an assessment of the effects of the response" (see, footnotes 38 & 39).

The research supporting organizational and culture change and the application of §14141 litigation to affect change commonly identifies the importance of collaboration in order to obtain sustainable change (Livingston, 1999; Simmons, 2008; Walker & Macdonald, 2009; Simmons, 2010; Chanin, 2014; Rushin, 2015). In those exceptional cases where there is no willingness on the part of a law enforcement agency to engage in Constitutional policing,[38] the USDOJ would be justified in using force over and above that required in cases where collaboration and cooperation would otherwise be possible.[39]

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[36] "Community Oriented Policing" has been defined as "a philosophy of full service personalized policing, where [police] work[] in a proactive partnership with citizens to identify and solve problems" (Ferreira, 1996, [Defining Community Policing], Retrieved from ncjrs.gov, https://www.ncjrs.gov/policing/use139.htm).

[37] "Problem-orientated policing (POP), also known as problem solving policing, is an approach to tackling crime and disorder that involves the identification of a specific problem, thorough analysis to understand the problem, the development of a tailored response and an assessment of the effects of the response." Retrieved from College of Policing website https://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=47#:~:text=Problem-orientated%20policing%20%28POP%29%2C%20also%20known%20as%20problem%20solving,an%20assessment%20of%20the%20effects%20of%20the%20response.

[38] See, for example, the case of the Maricopa County Sheriff's Department (Harmon, 2012, pp. 48-50; Chanin, 2014, at n. 2; Rushin, 2014, at footnotes 289 & 290; Rushin, 2015, pp. 15-16; Chanin, 2017a, pp. 254-255 (also describing opposition to USDOJ reform efforts by the Sheriff of Alamance County, NC); Walker, 2018, at n. 156 (describing opposition to USDOJ efforts by Maricopa and Alamance Counties);

[39] The "lethal force" option of the proposed PPMIM model [described as "receivership" would be reserved for jurisdictions, such as possibly Oakland, California, which has an established record of failure in the face longstanding attempts at reform, through a third-party litigation-induced Consent Decree that has lasted for more than 15 years (PERF, 2013, p. 2; Rushin, 2017a, pp. 234, 240; Walker, 2018, n. 168; Jaio, 2020, p. 5).

1.3. Contribution to Existing Literature

Although there have been a substantial number of articles about §14141 litigation published in legal and academic articles,[40] comprehensive evaluation studies have been limited to those conducted as a result of the Pittsburgh and Los Angeles Consent Decrees. With respect to those evaluation studies: the first related to a Consent Decree imposed on the City of Pittsburgh in 1997 conducted by the Vera Institute of Justice (Davis et al., 2002) with a follow-up report three years later (Davis et al., 2005); and the second related to a Consent Decree imposed on the Los Angeles Police Department in 2001 conducted by the Harvard-Kennedy School (Stone, Foglesong & Cole, 2009).

In addition to the aforementioned evaluation studies, two PhD dissertations have been published relating to consent decree experiences and results (Chanin, 2012; Rushin, 2015). Both dissertations included stakeholder interviews which provided additional data as to implementation efforts in Pittsburgh, Washington D.C., Cincinnati, Prince George's County and Los Angeles. Chanin primarily discussed and compared the Consent Decree experiences in Pittsburgh, Washington D.C., Cincinnati and Prince George's County MD. Although Rushin discussed consent decree experiences in multiple cities, he subsequently placed an emphasis on the experiences of the Los Angeles Police Department. Additional evaluations of consent decree experiences through the use of original data (with publications by Chanin and Rushin leading the pack) are discussed in Chapter 4.

In this dissertation, I have used methodologies similar to those used by Davis, et al. (2002), Stone et al. (2009), Chanin (2012) and Rushin (2015), relying on original stakeholder interviews, court filings, monitoring reports and media articles to provide a basis for evaluation of the successes and failures that can be attributed to the Seattle consent decree reform process.

The results of these evaluation studies can be used to evaluate the extent to which the Consent Decree process has been used effectively by the federal government in other cities and has been compared to the experiences in Seattle. As such, this

[40] Clarke (2011) reported "more than 80 articles about § 14141 litigation hav[ing] been published in legal and other academic journals" as of the time of its publication in September 2011 (p. 6).

dissertation has built upon prior research involving the implementation of federal §14141 interventions in multiple cities and is intended to bring the research up-to-date.

1.4. Dissertation Organization

Chapter 2 of this dissertation thesis I identify the data sources used in this project, how the data were evaluated, as well as ethical considerations and the challenges and limitations faced over the course of this research project. Data sources used included interviews with key stakeholders, extensive media reports relating to the Seattle Police Department and efforts at police reform in Seattle, reports published by the court-appointed Monitor, and court filings by the parties and amicus to the litigation between the City of Seattle and the USDOJ.

In Chapter 3, I discuss the legislative history and application of §14141, the history of consent decree monitoring efforts and provide a detailed description of consent decree monitoring experiences in jurisdictions throughout the United States.

In Chapter 4, I summarize the literature on police reform, to include U.S. Commission reports and their discussions of the causes and consequences of police misconduct. I further evaluate police conduct control mechanisms, as they currently exist, to include external and internal control mechanisms. I also include discussions of "de-policing" as a limit to police reform efforts, the sustainability and costs of police reform, the importance of city and police leadership in reform efforts, the significance of community and constituency engagement, and USDOJ resourcing limitations. I conclude Chapter 4 with a discussion of consent decree "success stories" and future research needs.

In Chapter 5, I compare the arguments for and against policing-related structural reform litigation, and apply police reform theory and the police use-of-force theory used during this project to evaluate the legitimacy of the USDOJ reform effort in Seattle.

In Chapter 6, I discuss some of the primary challenges faced to externally mandated police reform due to resistance from police unions, police cultures that tend to support the status quo, and the lack of USDOJ resources to enforce systemic reform in U.S. policing.

In Chapter 7, I use interview and court data to evaluate and discuss the Seattle consent decree implementation process. I include an introduction into the history and context of police practices in Seattle and summarize the DOJ investigation into the SPD as well as the negotiation of the Seattle consent decree. I compare the academic literature to the Seattle implementation experience, and then describe the implementation experience from the perspective of the different stakeholders involved in the implementation process.

In Chapter 8, I assess the sustainability of the Seattle reform effort and compare the Seattle experience to implementation experiences in other jurisdictions.

And finally, in Chapter 9, I identify the implications of the Seattle reform effort on future efforts by the USDOJ to reform police through structural reform litigation and make recommendations on how to approach externally driven police reform in the coming years.

Chapter 2.

Methods & Methodology

As with the evaluations (Davis, et al., 2002; Davis, et al., 2005; Stone, et al., 2009), dissertations (Chanin, 2012; Rushin, 2015), and research projects (Chanin, 2014; Chanin, 2015; Chanin, 2016), referenced above, this project involved the completion of individual stakeholder interviews, reviews of litigation filings, public reports from the court-appointed monitor, citizen and officer survey results, media reports and reviews of evaluations of SPD data relating to use of force, arrest rates and complaints. Although this dissertation research, when first proposed, included focus groups (to obtain additional input from community members, SPD commanders and rank and file officers), that portion of the research effort had to be abandoned as a result of the COVID-19 pandemic.[41]

Prior to beginning my research, underlying evaluations of Seattle Police Department data had already been completed by Seattle's court-appointed monitor using both qualitative and quantitative assessment methods. This study built on these analyses and conclusions by conducting individual interviews with a diverse group of stakeholders and comparing those reports with court filings and media reports.

In addition, a review of the academic and professional literature and public reports relating to other consent decrees assisted in answering my research questions regarding the effectiveness of consent decrees and settlement agreements in general and applying those facts, more specifically, to the Seattle reform process.

2.1. Data sources

Data were drawn from the following sources:

[41] The U.S. Canadian Border was closed as of March 21, 2020, making cross-border travel for this project impossible (Morello, V. (2020, September 6). Land border between Canada and the U.S. to remain closed until October 21. *Radio Canada International.* Retrieved from Land border between Canada and the U.S. to remain closed until Oct. 21 – RCI | English (rcinet.ca).

1. Seven semi-annual reports, filed by the Independent Monitor from 2013 through 2016;[42]

2. Ten Systemic Assessment Reports, filed by the Independent Monitor from 2015 through 2017;[43]

3. Annual Monitoring plans filed by the Monitor from 2014 through 2016;[44]

4. 239 court filings, filed by the Parties (and amicus curiae) to the Civil Action initiated by the Department of Justice against the City of Seattle, to include court orders, and select transcripts of court proceedings conducted during the course of the implementation of the Consent Decree (as made publicly available by the US District Court);

5. A review of the results of community surveys conducted from 2013 to 2016;[45]

6. Policies and Training plans initiated as the result of the implementation of the Seattle consent decree;

7. Three hundred and eleven (311) news articles relating to community perceptions and the actions of the Seattle Police Department before and during the course of the investigation by the Department of Justice and the implementation of the Consent Decree (between June 1999 and January 2021), forty-nine (49) national (U.S.) news reports relating to the application of consent decrees in multiple jurisdictions, to include Seattle (between July 2009 and July 2020), twenty-eight (28) news articles relating to the tenure of Seattle Police Chiefs (between June 1985 and August 2020), and five (5) news articles relating to allegations of "depolicing" in Seattle (between June 2001 and November 2011); and,

8. Academic and professional literature relating to the investigation, application, and underlying theory of policing-related structural reform litigation (including three (3) comprehensive evaluation studies and two (2) PhD dissertations), as well as academic literature relating to organizational change challenges in policing.

In addition, targeted semi-structured interviews were conducted with forty-three stakeholders, to include: members of present and past City and police leadership, relevant City government personnel, court-appointed monitors, attorneys involved in the

[42] Retrieved from: http://www.seattlemonitor.com/reports-resources/.

[43] Retrieved from: http://www.seattlemonitor.com/reports-resources/.

[44] Retrieved from: http://www.seattlemonitor.com/reports-resources/.

[45] Retrieved from: http://www.seattlemonitor.com/reports-resources/.

Seattle investigation and litigation, and community leaders of organizations actively involved in the reform process.

2.2. Data evaluation

The federal monitor, Merrick Bobb, was appointed by U.S. District Court Judge James Robart after he was nominated to act in that capacity by the parties. The Monitor's role was to act as an objective evaluator of SPD compliance with the Consent Decree. As such, the documents filed by the Monitor were used to evaluate the progress of reform over the reporting period. However, criticisms and concerns of participants were taken into consideration while reviewing and evaluating these reports and they were also evaluated with an eye towards identifying any areas where the Monitor and/or the Department of Justice may have been coopted by the police due to possible "regulatory capture" (Chanin, 2012, p. 139, citing, Bernstein, 1955; Kohlmeier, 1969), resulting from sometimes collaborative work between the parties and the Monitor and/or where honest opinions of the parties and the Monitor may have diverged.

Pleadings filed by the parties, amicus curiae filed by the Community Police Commission, and statements made to the media by various stakeholders assisted in evaluating the objectivity and accuracy of the Monitor's reports and assisted in better understanding the positions taken by the City and the Department of Justice within the context and over the period of the Consent Decree.

The Consent Decree and a MOU between the Department of Justice and the City of Seattle identified certain qualitative and quantitative thresholds necessary for the Seattle Police Department to come into compliance with the agreements and engage in sustainable Constitutional policing practices. These data became the starting point for determining the extent to which the Seattle consent decree may have had a positive (or negative) impact on policing in Seattle and, as such, a review and evaluation of the following Systemic Evaluations conducted by the federal Monitor was required:[46]

1. Hybrid Quantitative-Qualitative Analysis of Force Investigation & Reporting (First Systemic Assessment – September 2015 & Seventh Systemic Assessment – January 2017);

[46] Systemic reports retrieved from http://www.seattlemonitor.com/reports-resources/.

2. Qualitative Analysis of Force Review Board Policies and Practices (Second Systemic Assessment – November 2015);

3. Qualitative Assessment of Public Confidence (Third Systemic Assessment – January 2016);

4. Hybrid Quantitative-Qualitative Analysis of Administrative Investigations of Internal and Public Complaints Against the Police (Fourth Systemic Assessment – January 2016);

5. Qualitative and Quantitative Analysis of Use of Force in Crisis Incidents (Fifth Systemic Assessment – February 2016);

6. Qualitative Analysis of Officer Supervision (Sixth Systemic Assessment – December 2016);

7. Qualitative Analysis of SPD Early Intervention System (Eighth Systemic Assessment – March 2017);

8. Quantitative Assessment of SPD Use-of-Force Data (Ninth Systemic Assessment – April 2017); and,

9. Quantitative and Qualitative Evaluation of SPD Compliance with the legal and policy requirements related to stops, searches, and seizures (Tenth Systemic Assessment – June 2017).

Media reports (print, online and television) relating to the SPD reform effort were identified by gaining access to the online archives of the *Seattle Times* and searching for relevant newspaper articles using a variety of search words. In addition, I searched the *Seattle Times* database and conducted "Google" searches for news articles relating to significant dates where the court, the DOJ, the Monitor or City officials took actions or made statements, to find additional news resources.[47]

Media reports were used to identify community perceptions over the course of the period of the implementation of the Consent Decree. In addition, an evaluation of news reports assisted in determining to what extent the media may have played a role in influencing public opinion (as well as Department of Justice and Court positions) with

[47] I was able to identify a total of 341 news articles specifically related to the Seattle reform process from a variety of news sources, with the *Seattle Times* articles constituting a majority of those articles. When I compared the *Seattle Times* articles to data from the Monitor's reports, court filings and interviews, I found that the articles appeared to be highly reliable and accurate representations of what took place over the course of the decree to include comprehensive statements made by a diverse group of public stakeholders.

respect to the initial investigation and over the course of the Consent Decree implementation efforts.

I was also granted access to the Seattle City Attorney's *Sharefile* database which, as of January 6, 2021, contained all 652 docket items filed in the case of the U.S. v. Seattle, which initiated the Seattle consent decree reform process.

I researched the history of reform at the SPD by accessing the City Archives online to locate the Seattle commission reports identified in Chapter 7.1 and by reviewing the *Seattle Times* archives. I supplemented that research with an interview of an SPD officer who was an expert in the history of the SPD and have made extensive references to a book written by a former Seattle prosecutor as it related to the history of the SPD (Bayley, 2015).

2.3. Interviews

I conducted semi-structured interviews among multiple stakeholders involved in the Seattle Consent Decree reform process. These stakeholders included representatives of civil libertarian and police accountability groups, members of the Seattle Police Department (to include command staff and supervisory officers), elected and appointed officials from the City of Seattle, lawyers involved in the Consent Decree litigation, and members of the federal monitoring team. While some participants were still working on the Consent Decree and/or were still employed in similar positions from which they were involved in the reform process, others had retired or were employed in new or different positions.

In-person interviews were preferred and phone interviews were only conducted when a participant was no longer located in the Seattle metropolitan area and, towards the end of the data collection period, after the U.S.-Canadian border was closed.

Forty-three (43) participants were interviewed (all participants were stakeholders directly involved in issues relating to the implementation of the Seattle consent decree). Thirty-two (32) in-person interviews were conducted between January 7, 2020 and March 12, 2020. In addition, over that same period of time, three (3) telephonic interviews were conducted with participants who were no longer living in the Seattle

metropolitan area. An additional eight (8) interviews were conducted by telephone subsequent to the U.S.-Canadian border closure.

The interviews were conducted with the assistance of an Interview Protocol (see Appendix C.) The interview questions were designed to be open-ended so that they did not limit response options available to the participants. Leading questions were avoided and the opportunity to provide simple “yes” or “no” answers was avoided (see, Jacob & Furgerson, 2012). Probing follow-up questions were required where stakeholders appeared to have personal biases or interests that may have affected the extent to which they may have represented a more general population. In some cases, when a participant expressed an opinion that appeared to be inconsistent with the facts collected, published reports or other objective criteria, the participants were presented with those facts and given an opportunity to explain their positions or opinions.

The interview process began by asking participants about their general experiences with respect to the Consent Decree and then delved into participant opinions regarding the successes and failures of the reform effort overall. Given that the questions were generally open-ended I was able to allow the individual participant responses to guide the interview process. Depending on the participant’s answers, I allowed the participants to drive the interviews and did not generally ask all the questions in the protocol, instead asking those questions that were most related to the issues identified as important by the individual participant.

The interviews generally took approximately one-hour each; however, in some cases, relating to participants who had particularly central roles in the process, the interviews continued for up to three hours. Three interviews were conducted with a group of participants from the same agency, at the interviewees’ request. I did not find those interviews any less robust than the one-on-one interview format used in the vast majority of cases.

A large diversity of opinions was obtained, and some opinions were unexpected depending on the roles of each individual participant. For example, some SPD officers diverged from the Department’s position that a consent decree was not needed to ensure reform. In addition, some community members opposed DOJ intervention techniques that might otherwise have been expected to garner community support

and/or were supportive of SPD efforts towards reform even in the face of public criticism of those efforts.

Interviews were not recorded to better ensure participants would feel comfortable sharing potentially confidential information and personal thoughts and impressions. This decision meant there was no potential for word-for-word transcription of the interviews. To satisfy the need to ensure accuracy, I took copious notes at the time of each interview and then edited and supplemented those notes within a few hours after each interview. Particularly interesting quotations were transcribed word-for-word.

Some stakeholder interviews led to the identification of additional individuals who needed to be interviewed to include additional police, government or community stakeholders.[48] The variety of participants, each with different roles and (potentially) values, allowed for identification as to where stakeholders tended to be in general agreement or where divergent opinions or values existed.

Given that many of the participants were still employed in positions of trust and sensitivity, *all* participants were promised confidentiality. Participants were assured that they would not be identified as having participated in the research and that I would not use any quotes or comments that could be attributed to any one specific person.

The individual interviews provided data to determine the impact of the Consent Decree on the culture (and perceived culture) of the Seattle Police Department. Questions related to opinions on the culture of the SPD; to what extent the culture was (or is) dysfunctional and resistant to change; to what extent officers and the public have (and have had) confidence in the supervision and internal discipline of the organization; and, officer and public perceptions of the leadership of the Department over the course of the Consent Decree. Part of the research effort considered the extent to which the culture of the police department has actually changed or if the SPD is likely to revert back to prior practices based on philosophies and beliefs that have been maintained, even in the face of the external pressure of the Court, the Monitor and the Department of Justice. Further, the research identified to what extent positions or viewpoints of

[48] As such, the project involved “snowball sampling:” “sometimes referred to as network, chain referral, respondent driven or multiplicity sampling” which was used, as necessary, to ensure sufficient data was collected via the proposed targeted interview methods (Palys & Atchison, 2014, p. 115).

stakeholders have changed over time. Perceptions relating to culture change and the sustainability of reforms were used to measure to what extent the impact of the Consent Decree was good, bad or indifferent.

In general, I concluded that the robust data available allowed for data triangulation by "employing multiple methods to overcome the deficiencies and biases that may result form employing a single method approach" (Palys & Atchison, 2014, p. 392).

2.4. Coding and Analysis

Data analysis was conducted using *NVivo* software. With respect to reviews of the academic and professional literature, news reports and court documents, those portions of the text that contained information relevant to the research questions were highlighted and coded. Similarly, the notes of each participant interview were individually highlighted, reviewed and coded. With respect to the participant interviews, comparisons were made amongst and between the opinions of a diverse group of police, community and governmental representatives (to include many parties to the litigation) and representatives of the Monitoring Team.

Seven data sources[49] were individually coded, identifying relevant nodes for each data source as appropriate (see, Appendix D). Using an interative process, the data sources were coded using a mixed approach of *a priori* coding ("where codes are created beforehand and applied to the text") and *emergent* coding ("where codes are drawn from the text" (Blair, 2015, p. 16). Data were compared to identify similar and dissimilar themes and ideas. I first organized the information and then conducted "qualitative thematic analysis,"[50] applying text to nodes (for support for this technique, see, Rossman & Rallis, 1997, Chapter 10, pp. 227-263).

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[49] 1) Consent Decree Literature; 2) Organizational Change Literature; 3) Seattle Consent Decree Court Documents; 4) Seattle News Reports; 5) National News Reports; 6) Evaluation Studies; and, 7) Participant Interviews.

[50] Defined as "a common general approach to analyzing qualitative data that does not rely on the specialized procedures of other means of analysis such as grounded theory methodology, discourse analysis, and semiotic analysis. In this exploratory approach, the analyst codes (marks or indexes) sections of a text (e.g., a transcript, field notes, and documents) according to whether they appear to contribute to emerging themes" (Schwandt, 2007, p. 290).

I chose to first identify and code the academic and professional literature relating to consent decrees followed by the public reports and court filings that related specifically to Seattle. I used an “open coding” process, as described by Blair (2015), to allow themes to emerge from the data and then used those themes to inform my interview protocol. I subsequently coded the participant interview data, using themes similar to those identified in the literature and then used my knowledge of the literature and news reports to further refine my interview protocol. As noted by Glesne, 2011, subsequent to the interviews, I went back to re-code the literature material as new themes were identified; this allowed for “categories [to] emerge from the data” (Fabian, 2010, p. 101).

2.5. Reflexivity & Dealing with Bias

It is well established that personal biases may influence the research process, to include how interviews are conducted and then evaluated (Rubin & Rubin, 2012, pp. 19-38). As such, I attempted to take on a “stance of neutrality,” and avoid attempting to “set out to prove a particular perspective or manipulate the data to arrive at predisposed truths” (Patton, 1990, p. 55).

I spent 15 years as a civilian oversight of law enforcement practitioner and I have served as a member of a federal monitoring team working to reform the Cleveland Division of Police since 2015. I also have had professional working relationships with members of the Seattle monitoring team as well as some Seattle city officials and oversight professionals. Consequently, prior to evaluating the Seattle consent decree reform effort, I had preconceived opinions as to “best practices” in police reform and had already developed personal opinions as to the abilities and credibility of some Seattle reform participants.

As such, in conducting my interviews, I tried to be aware of my potential biases and ensure they would not influence how I entered into or later evaluated any particular interview. I generally found I listened carefully to the different perspectives expressed and tried to understand each perspective, even when that perspective was inconsistent with my own professional world-view. I reflected on those opinions and found myself persuaded in a number of areas that surprised me and changed my initial thoughts regarding what I would find as a result of the interviews. To remain reflective throughout

the project, I documented my own insights and concerns within my interview notes shortly after each interview and considered those notes as I coded each interview.

2.6. Ethical Considerations

As required by Simon Fraser University, I obtained human ethics research approval from the Office of Research Ethics approval for this project prior to conducting any interviews.

Signed consent was required from all Seattle participants. This type of consent was deemed appropriate given that most of the participants were government officials or police officers and community stakeholders who were generally sophisticated members of the community and who had visibly involved themselves in the reform of the SPD. All participants were informed of their right to request the withdrawal of their data at any time; and, in fact, none of the participants did so. Consent forms included the research questions for the project and a brief explanation of the topics to be covered and were emailed to each participant at least forty-eight hours before each interview. Further, signatures were obtained on each consent form prior to beginning each interview. Finally, each participant was aware that I was taking copious notes during the interview process as I had my laptop exposed and in use during in-person interviews and I announced that fact with respect to all telephonic interviews.

Specific interview questions were not shared with participants prior to any interview and none of the participants requested the specific questions ahead of time. Although many of the participants had suffered stress as a result of their participation in the Consent Decree process, many of those participants expressed that the interview itself had been cathartic; as such, there was no reason to be concerned that the interview could have a traumatic impact on the participants.

Many of the participant-stakeholders were bound by rules of confidentiality, and potentially liable for any intentional or inadvertent disclosure of confidential information. However, due to the very public nature of the reform process (to include the filing of a multitude of public reports and court briefs), the vast majority of the data needed to analyze and evaluate the process was already in the public realm and subject to fair public comment. Even so, during interviews, I was careful not to facilitate the production

of confidential information and did not find that the failure to obtain such information interfered with the project given that almost all of the information needed was publicly available in one way or the other.[51]

I did not seek specific approval from the City of Seattle, the Department of Justice or the Seattle Police Department on behalf of any research participant. Instead, participants were contacted and assured confidentiality with respect to their participation in the study. To the extent that government and police participants were required to obtain approval from their appointing authority, each participant was expected to be aware of such requirements and then expected to decide for themselves to what extent they would obtain approval from their appointing authorities. Over the course of the project, however, it became clear that high-level members of the City and the SPD were aware of the participation of members of their Departments and, in fact, appeared to condone their participation.

I was, of course, aware that participation in the study may have resulted in participants providing opinions on certain potentially controversial subjects which, if made public, could impact their professional or personal reputation or even their employment status. In addition, as previously mentioned, the governmental actors had access to confidential information relating to police department personnel histories and practices as well as decision-making processes that, if shared could have subjected them to civil liability as well as loss of employment. Although the risks of participating in this study were no greater than the normal risk faced by these employees in the course of their continuing employment, I was careful not to disclose the participation of any participant in this study and have tried to ensure that no quotation in this paper obtained from a participant interview can be attributed to any particular person. In cases where the information provided was publicly available (which was the case with respect to many high-profile SPD incidents), such information was attributed to the public record as opposed to an individual participant.

[51] As noted by more than one participant, “the city leaks like a sieve.” This fact meant that almost all information that might have been confidential at some point in time was eventually publicly reported in the media and was the subject of fair comment by research participants.

2.7. Challenges & Limitations

A principal challenge in conducting this research was obtaining the cooperation of the necessary stakeholders, particularly given that, even though the City had been found in initial compliance, the Seattle consent decree was still in place at the time of data collection and the conduct of interviews. Since interviews were conducted prior to the dismissal of the DOJ lawsuit against the City, there was some hesitancy (particularly with respect to currently serving elected and appointed officials) in cooperating with the project or providing honest appraisals of the process, the status of compliance, and the sustainability of the reform effort. However, the fact that this dissertation was not expected to be published until after the anticipated date of dismissal of the law suit seemed to help ameliorate these potential concerns on the part of some of the parties and the police.[52] In addition, as I was an experienced professional in the area of police oversight,[53] my past professional relationships with some city officials and members of the Monitoring team allowed for introductions that appeared to increase the willingness of some governmental, community and institutional stakeholders to participate in the research.

As previously noted, promises of confidentiality were required to ensure the cooperation of some of the participants, to the extent that some participants were concerned about the publication of their points-of-view or potential criticisms of the reform process and its ultimate sustainability. As anticipated, however, as a result of the recent and ongoing public debate regarding the USDOJ's use of the Consent Decree reform process, stakeholders ultimately appeared to have a strong interest in having

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[52] At the time the interviews were conducted, there was an overall belief that the City would be found in overall compliance with the Consent Decree shortly thereafter; although it was recognized that the status of issues relating to police discipline and accountability were still open to question.

[53] I am a former Los Angeles County Deputy District Attorney who worked in the Special Investigation Division, investigating and prosecuting police and public officials, to include being involved in the investigation of the LAPD "Rampart Scandal" in 1999-2000. I also worked as a civilian oversight of law enforcement practitioner, having served as the Director of the Independent Police Review Division of the Portland City Auditor's Office (2001-2005), the Independent Monitor for the City and County of Denver (with jurisdiction over the Denver Police and Sheriff Departments) (2005-2012) and the Chief Civilian Director of the Independent Investigations Office of British Columbia (2012-2016). I have also been a Deputy Monitor for the City of Cleveland's Monitoring Team since 2016. My biographical information is easily accessible on the internet and a number of participants commented that they had "Googled" me prior to participating in their interview.

their point-of-view represented in this research study. Even so, the study results are limited by my inability to specifically identify participants and their potential interests or biases when presenting their perceptions or points-of-view regarding consent decree implementation.

Chapter 3.

Section 14141: Consent Decree Monitoring & Experiences

This chapter uses the academic and professional literature relating to police reform and compares that literature with Seattle data to discuss and compare consent decree monitoring experiences nation-wide. Section 3.1 covers the origin of federal police pattern and practice enforcement, the history of the use of Section 14141, the scope and coverage of Consent Decrees in general and evaluation metrics used to determine the success or failure of reform efforts. Section 3.2 presents issues specific to Consent Decree monitoring, identifying issues and concerns regarding court appointed monitors, the selection of the monitor and the composition of the monitoring teams, the role and importance of the monitors, and challenges with respect to monitoring and measuring consent decree compliance. Finally, Section 3.3 summarizes other City experiences based on a review of the academic and professional literature and news reports as they relate to consent decree enforcement activities on a nation-wide basis.

3.1. Legislative History & Application of Section 14141

The legislative history of Section 14141 gives some insight into the origin of the legislation and its application over the years provides further insight into the extent to which these decrees have been successful or unsuccessful.

3.1.1. The Origin of Federal Police Pattern and Practice Enforcement

Section 42 U.S.C. §14141, which finally gave the United States Department of Justice the authority to civilly sue local law enforcement agencies for engaging in "patterns or practices" of violations of civil rights, was passed in 1994 as part of the Violent Crime Control and Law Enforcement Act (VCCLEA). §14141 made it

> unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

The statute gave the United States Attorney General the power to file a civil action to require departments to change practices that led to ongoing violations of the statute.[54]

Although the statute has been referred to as "the most important legal initiative of the past twenty years in the sphere of police regulation" (Stuntz, 2006, p. 798), §14141 garnered little media attention at the time of its passage (Rushin, 2015, p. v).[55] This lack of public attention was even though the passage of this new provision amounted to a "dramatic shift in policing law." (Rushin, 2015, p. 48)[56]

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[54] "Prior to the enactment of 14141, police abuse experts had frequently charged that the Justice Department 'plays virtually no active role in holding local police accountable for abiding by the Constitution'" (Gilles, 2000, n. 81, citing Skolnick & Fyfe, 1993, p. 211).

[55] Although Section 14141 would go on to be one of the most impactful long-term provisions of the Violent Crime Control and Law Enforcement Act of 1994, it was the other, more law enforcement friendly provisions of the Act (which included an Assault Weapons Ban, funding for 100,000 new community police officers, funding for new prison construction ($9.9 billion), funding for federal law enforcement agencies ($2.6 billion), as well as "truth in-sentencing" rules, life sentences for repeat violent offenses, additional penalties for "hate crimes" and an extension of the death penalty, that garnered national headlines. The VCCLEA also included provisions banning assault weapons and banning juvenile ownership of handguns. (Rushin, 2014, p. n. 183, citing Windlesham, Politics, Punishment, and Populism (1998), Shahidullah, Crime Police in America: Laws, Institutions, and Programs (2008) and Meiners, Right to be Hostile, Schools, Prisons, and the Making of Public Enemies (2007)). Section 14141, however passed "undebated by Congress" and "uncommented upon by the press" even though the Section "greatly augmented the power of the federal government to fight systematic misconduct within local police departments" (Miller, 1998, p. 150). See, also, Rushin, 2015, p. 32, ["Even the legislative record from the VCCLEA includes no significant mentions of SRL"]. "The overall tone and content of the VCCLEA was remarkably conservative and punitive… [Section 14141] was one of the few politically progressive measures that found its way into the final version of the VCCLEA" (Rushin, 2015, p. 37).

[56] In his 2015 Dissertation, Rushin offered two reasons for how Section 14141 became part of the VCCLEA legislation with so little recognition: "First, many of the other initiatives in the VCCLEA were tied to pricey investments. For example, the VCCLEA required additional investment in prisons at a price tag of around $10 billion dollars. [Structural Reform Litigation] SRL creates no clear financial beneficiaries, nor does it come with the same sort of astronomical price tag as many of the other components of the VCCLEA. This had a couple possible consequences. It meant that there were few groups with a strong financial stake to lobby and testify before the Congress about the measure. It also made the measure more palatable as a comparatively low cost add-in to the VCCLEA to gain some additional support from liberal legislators. Second, the perceived risk of passing SRL was relatively low. The measure did not put any affirmative duty on all police agencies broadly, but instead gave the DOJ a limited right of action against only agencies engaged in a pattern or practice of misconduct. Major police agencies likely viewed the perceived risk of SRL post-VCCLEA as relatively low. Combined, these two conditions allowed Congress to pass the VCCLEA with relatively little fanfare and no public debate" (Rushin, 2015, p. 47).

Prior to the passage of §14141, the federal courts had blocked USDOJ attempts to sue police departments to address systemic issues of police misconduct. In the late 1970s, during the Democratic administration of President Jimmy Carter, the U.S. Department of Justice conducted an investigation into allegations of systemic corruption on the part of the Philadelphia Police Department. The DOJ ultimately concluded that

> Philadelphia police officers engaged in widespread abuses, including physical abuse and brutality, unjustified shootings, illegal stops, searches, seizures, arbitrary arrests, forced confessions, and verbal abuse, including racial slurs. Further, the Justice Department claimed that the policies and practices of the police department … deliberately encouraged such practices. (Hoffman, 1993, at p. 1502)

After the USDOJ filed a pattern and practice lawsuit to enjoin the Philadelphia police from engaging in unconstitutional policing, the federal courts found that the Justice Department lacked the authority to bring such an action without specific statutory authority to do so.[57] The court found that

> Congress had three opportunities between 1957 and 1964 to authorize the Attorney General to bring [pattern and practice] lawsuits []. It refused on each occasion because this authority would permit a dramatic and unnecessary shift of power from state and local governments to the Attorney General. (644 F.2d 187, 197 (1980); Hoffman, 1993, at n. 197; see also, Miller, 1998, pp. 157-161)[58]

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[57] United States v. City of Philadelphia, 644 F.2d 187, 190 (3d Cir. 1980).

[58] Shortly after the Philadelphia decision was published, "[i]n 1981, the U.S. Commission on Civil Rights identified *City of Philadelphia* as establishing a gap in the regulatory approach to police misconduct. The Commission recommended the adoption of legislation to remedy the judicial limitations placed on the use of structural police reform. The Commission observed that 'the volume of complaints of police abuse received by the Commission has increased each year . . . and . . . [p]atterns of complaints appear to indicate institutional rather than individual problems.' The Commission also recognized that one of the best possible ways to address these institutional problems was through some type of structural reform litigation that would incentivize police departments to change their behavior. The Commission reached this conclusion in part because previous attempts to file for injunctive relief against American police departments had failed. With that in mind, the Commission recommended the enactment of pattern or practice litigation similar to § 14141, stating that 'Congress should enact legislation specifically authorizing civil actions by the Attorney General of the United States against appropriate government and police department officials to enjoin proven patterns and practices of misconduct in a given department.' Thus, the Commission saw this proposed measure as a novel way to address systemic wrongdoing in police agencies. Nonetheless, the Commission did not offer model language, nor did it thoroughly expound on the proposal. This novel proposal did not gain traction in Congress until the following decade" (Rushin, 2014, pp. 50-51).

Over a decade after the Philadelphia decision, and shortly after the beating of Rodney King and the publication of the *Christopher Commission* Report in July 1991 (Christopher, 1991, [finding systemic use of excessive force by Los Angeles police officers]), the U.S. House of Representatives passed the Omnibus Crime Control Act of 1991, which contained provisions "nearly identical" to §14141.[59] However, the Act was not ultimately approved by the Senate and failed to become law (Levenson, 2001).

Prior to the introduction of §14141 into the VVCLEA, the House Subcommittee on Civil and Constitutional Rights had held two days of hearings. These hearings collected evidence specifically relating to the beating of Rodney King in Los Angeles in 1991,[60] as well as alleged misconduct within the Boston and New York police departments. The clear goal of the legislation was "to fill in gaps in the ability of existing laws to address the underlying policy problems in police departments" (Levenson, 2001, at 26).[61]

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[59] A committee report accompanying the 1991 proposed legislation discussed the Rodney King incident and the subsequent findings of the *Christopher Commission* as a background for the passage of the proposed new authority for the U.S. Attorney General (Livingston, 1999, n. 5).

[60] "As President Bush told the nation, he immediately directed the U.S. Attorney General to send lawyers from the Justice Department's Civil Rights Division to Los Angeles, but in 1992 these lawyers did not yet have the power to sue the city or the Department to stop any pattern of misconduct. All the Justice Department could do then was to seek criminal indictments against the individual police officers for violating Rodney King's civil rights. And that is what they did, winning convictions against two of the four officers, including the supervising sergeant, in April 1993" (Stone et al., 2009, p. 4).

[61] As noted by a USDOJ report entitled: *Taking Stock – Report on the 2010 Roundtable on the State & Local Law Enforcement Police Pattern or Practice Program*, "A number of events preceded enactment of 42 USC § 14141 as part of the 1994 Crime Act. The Kerner Commission report in 1968 highlighted the need for change in police practice involving citizens. A number of other commissions and reports focused on police practices, culminating in the 1981 publication of *Who is Guarding the Guardians? A Report on Police Practices by the Civil Rights Commission*. The Commission put forward recommendations to improve law enforcement in the United States and suggested the need for federal law to facilitate change in police agencies similar to the federal laws and litigation that had changed other social institutions such as education and corrections. This sentiment gained momentum subsequent to the 1991 Rodney King incident and the riots that followed in Los Angeles. A series of congressional hearings regarding police misconduct garnered testimony from around the country, and it became apparent that the federal government had limited capability to address civil rights violations by police agencies. In *United States v. City of Philadelphia* (644 F.2d 187 (3d Cir. 1980), on appeal the Third Circuit ruled that the government had no standing to litigate allegedly unconstitutional police practices. In *Los Angeles v. Lyons* (461 U.S. 95 (1983)), the U.S. Supreme Court ruled that an individual was not entitled to prospective injunctive relief because it was not possible to demonstrate that he or she would be the subject of excessive force again. These and other events led to the introduction of federal legislation referred to as the Police Accountability Act of 1991 (H.R. 2972). Some provisions of the bill were incorporated in the Crime Act of 1994 in an effort to fill the gap in

An important distinction between §14141 and the 1991 legislation, however, was the omission of any provision that would allow third parties, other than the U.S. Attorney General to seek injunctive relief under its provisions (Miller, 1998). Congress' decision to preclude private plaintiffs from taking advantage of the provisions of §14141 would later require the USDOJ to balance the needs for community involvement against the government's role in objectively advocating for the community, but not necessarily acting as an advocate for community-held expectations or desires.[62]

The passage of §14141 was a recognition by Congress that individual prosecutions of police officers were an inadequate tool in addressing systemic patterns of police misconduct. There was also a recognition that the use of the exclusionary rule to enforce police behavior and the ability of victims of police abuse to sue individual officers for damages were not adequately controlling police actions.[63]

3.1.2. History of Use of Section 14141

After the passage of §14141, the DOJ put the responsibility for pattern or practice enforcement in the Special Litigation Section (SLS) of the Civil Rights Division. It was not until January of 1997, "following a year-long investigation," that the DOJ made its first formal finding of a police pattern or practice violation, against the Pittsburgh (Pennsylvania) Police Department (DOJ, 2017b, p. 3).

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existing law and require DOJ to hold law enforcement agencies responsible when individual officer actions formed a 'pattern of misconduct' or were part of 'systematic practices underlying the misconduct'" (Clark, 2010, pp. 1-2).

[62] Both before and after the passage of Section 14141, numerous academics and commentators have argued that Congress needed to grant private parties the equitable right (or a limited equitable right subject to DOJ review) to bring forth 'pattern or practice' suits when appropriate (Hoffman, 1993; Gills, 2000; Rushin, 2014). It has been suggested that allowing third parties to file such suits, which then can be reviewed and dismissed by the DOJ, as appropriate, would allow for a more robust use of the legislation, particularly given the lack of DOJ resources to prosecute pattern or practice cases (Gilles, 2000, pp. 1417-1418; Rushin, 2014, p. 3241).

[63] The academic literature is replete with examples and findings identifying the weaknesses in non-equitable means for controlling police misconduct. (See, Jeffries & Rutherglen, 2007, at 30, noting that civil "[d]amage[] actions are notoriously unsuccessful in vindicating police abuse;" See, Silveira, 2004, pp. 604-605, noting that Section 14141 was passed as the result of Congress' realization that the provisions of 42 U.S.C. 1983, which allow victims of police misconduct to sue police officers in federal court, was not effective in controlling police misconduct; See Jerome, 2004, p. 3, which noted that federal criminal prosecutions pursued under 42 U.S.C. Sections 241 and 242 "address only the misconduct of the individual officers prosecuted, and do not address systemic agency problems"; See, also, Chanin, 2012, p. 14.

Over the course of the next 14 years, the DOJ initiated "more than 125 preliminary inquiries, [and] pursued investigations of more than 56 state and local law enforcement agencies" (Clark, 2010, p. 1). By 2009, the DOJ had entered into six Consent Decrees[64] and ten "Memorandums of Agreement"[65] with a diverse group of local (and one state) law enforcement agencies (USDOJ, 2017a, p. 25).[66]

According to a recent review of DOJ pattern and practice litigation,

> [s]ince the first pattern or practice investigation … in 1997, the CRT [the DOJ's Civil Rights Division] has opened 69 formal investigations. Of those investigations, 41 have resulted in reform agreements between the federal government and the local agency and 21 resulted in consent decrees. (CJI, 2019, p. 40)

The application of §14141, however, has not been consistent and has been greatly impacted by federal politics and the political philosophies of the various presidential administrations. While the statute was passed during the presidential administration of William Clinton, the DOJ took some time to be able to staff up and determine how best to use the law as an enforcement tool (Rushin, 2015, n. 145). By the second term of the Bush administration, a more collaborative approach to enforcement of the statute began to take place, with a preference on issuing technical assistance letters at the conclusions of investigations rather than taking more formal enforcement

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[64] Involving the Pittsburgh Police Department (1997), the Steubenville OH Police Department (1997), the New Jersey State Police (1999), the Los Angeles Police Department (2001), the Detroit Police Department (2003), and the Prince George's County (MD) Police Department (2004).

[65] Involving the Montgomery County (MD) Police Department (2000), the Highland Park (IL) Police Department (2001), the Washington D.C. Metropolitan Police Department (2001), the Cincinnati Police Department (2002), the Buffalo (NY) Police Department (2002), the Columbus (OH) Police Department (2002), the Mount Prospect (IL) Police Department (2003), the Villa Rica (GA) Police Department (2003), the Prince George's County (MD) Police Department (2004) [in addition to a Consent Decree], and the Cleveland Division of Police (2004).

[66] As reported by the DOJ: "Since [the enactment of the Violent Crime Control and Law Enforcement Act of 1994], … the Special Litigation Section (SPL) of CRT has initiated more than 125 preliminary inquiries, pursued investigations of over more than 56 state and local law enforcement agencies, provided technical assistance, and entered into a number of settlement agreements (including memorandums of agreement and consent decrees) in which law enforcement agencies agreed to implement changes to remedy alleged patterns or practices of police misconduct" (Clark, 2010, p.1). "Since § 14141's enactment, SPL has officially initiated more than 50 investigations resulting in nine memorandums of agreement (MOA), two letter agreements, and eight consent decrees. Of the total, eight investigations were closed after providing the jurisdiction with technical assistance; 15 were closed after investigations concluded that the allegations could not be sustained, and 16 investigations were ongoing at the time of this meeting" (Clark, 2010, p. 3).

actions.[67] However, after President Obama took office, a more aggressive approach was used, with the number of 14141 investigations increasing over time as well as the appointment of more federal monitors at the conclusion of DOJ investigations (Rushin, 2014; *Frontline*, 11/13/2015).[68]

The use of §14141 (now 34 USC §12601) was largely been brought to a halt by the Trump administration, which took office in 2017.[69] Although implementation

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[67]As explained by *Frontline* in 2015: "The investigations can have a number of different outcomes. Officials may issue technical assistance letters recommending voluntary reforms during the investigation and close the case without any formal findings. That was often the approach during the George W. Bush administration, which opened roughly the same number of investigations as other administrations, but shied away from forcing reforms, preferring a more collaborative approach to inquiries and the agreements it brokered" (Frontline, 2015).

In an essay entitled: *Police Reform, A Job Half Done*, Richard Jerome, a former Deputy Associate Attorney General, commented that by 2005 (nearing the end of President Bush's first term in office), "the only new actions listed on the [DOJ's] website were the technical assistance letters sent to the Virgin Islands and two small police departments (Beacon, NY, Police Department and Alabaster, AL, Police Department). If any new investigations were opened in 2005, they have not been made public. Another telling sign is that the number of lawyers assigned to the Justice Department's Civil Rights Division section bringing these cases has dropped dramatically since the beginning of 2005." Jerome also pointed to a change in the time periods of the agreements reached by the Bush administration, as opposed to those reached by the Clinton Administration: "Early agreements [under Clinton] had a termination provision to end the Consent Decree or Memorandum of Agreement (MOA) in five years, but only if the agency was in substantial compliance with the agreement's provisions for at least two years. This was changed in later agreements to a definite five-year term, with early termination if there was substantial compliance for two years. The most recent agreements were entered with the Prince George's, MD, Police Department, where both a consent decree and a separate MOA terminate after only three years, with no requirement that substantial compliance be reached" (Jerome, 2005, at p. 6 & n. 7).

As noted by Walker & Macdonald (2009), "Under the Bush Administration, the Special Litigation Section made greater use of Letters rather than consent decrees or MOAs, and to a large extent the investigation of law enforcement agencies virtually ceased" (p. 503).

[68] Kelly, K., Childress, S. & Rich, S. (2015, November 13). What Happens When Police are Forced to Reform? *Frontline*. Retrieved https://www.pbs.org/wgbh/frontline/article/what-happens-when-police-are-forced-to-reform/.

[69] See for example, police reform efforts in Chicago and San Francisco:

San Francisco: "In early 2018, [] the Attorney General of California agreed to serve as the Monitor of a settlement agreement involving the San Francisco Police Department. The settlement agreement was the result of a Justice Department Collaborative Reform investigation of the police department that could not be implemented when the Trump Administration cancelled the Collaborative Reform program … The Mayor of San Francisco and the Chief of Police were determined to pursue reform of the department and, consequently, requested that the State Attorney General serve as the Monitor of the implementation process" (Walker, 2018, p. 1789).

Chicago: In December 2015, the Obama DOJ opened an investigation into the Chicago Police Department (DOJ, 2017b, p. 48). A report finding the CPD subject to the provisions of Section 14141 was published on January 13, 2017 (https://www.justice.gov/opa/file/925846/download), one week before the inauguration of the Trump administration. In August 2017, the Attorney

processes have continued under Consent Decrees and Settlement Agreements reached during the Obama Administration (and already under the jurisdiction of federal judges),[70] only one new investigation has been undertaken and two settlement agreements reached, without the appointment of any third-parties to monitor or audit compliance with those agreements (*Washington Post*, 5/14/2019).[71] Shortly after taking office, in a memo dated March 31, 2017, Trump's first Attorney General, Jeff Sessions, ordered a review of the Consent Decree process, which ultimately resulted in a November 7, 2018 memo outlining new "Principles and Procedures for Civil Consent Decrees and Settlement Agreements" to ensure that police-related Consent Decrees were only to be used in "limited circumstances" and instructing federal prosecutors to "exercise special caution" before entering into such agreements (Sessions, 11/7/2018).[72]

In 2019, the Trump administration took the extraordinary action of attempting to block a Consent Decree agreement between the City of Chicago and the Illinois Attorney

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General of Illinois, recognizing that the Trump administration did not intend to pursue an action under Section 14141, sued the Chicago police department to obtain federal court jurisdiction over the reforms identified in the USDOJ investigation report (Smith, M. (2017, August 29). Illinois Attorney General sues Chicago over police practices. *New York Times*, retrieved from https://www.nytimes.com). A consent decree was negotiated and eventually approved by a U.S. District Court Judge on January 31, 2019 (https://www.chicago.gov/content/dam/city/depts/cpb/supp_info/ConsentDecreeComplete.pdf).

As recognized by Walker (2018), "[i]n seeking its own consent decree with the Chicago Police Department, the Illinois Attorney General stepped into the void created by the termination of the pattern or practice program by the Trump Administration" (p. 1789).

[70] Specifically, in Seattle (2012 Agreement), New Orleans (2013 Agreement), Puerto Rico (2013 Agreement) [although the first Puerto Rico court-appointed monitor resigned in 2019 alleging misspending and a failure on the part of either the DOJ or the court to act (Coto, D. (2019, May 14). Official Over Puerto Rico Police Reform Resigns in Protest. *Washington Post*. Retrieved from https://www.washingtonpost.com/], Portland, OR (2014 Agreement), LA County Sheriff (2015 Agreement), Albuquerque NM (2015 Agreement), Cleveland OH (2015 Agreement), Miami (2016 Agreement [although the court-appointed monitor resigned in 2019 after being elected as Mayor of Tampa, FL and was "replaced" by a DOJ lawyer, [Iannnelli, J. (2019, September 6). Justice Department Appoints New Police-Misconduct Monitor to Oversee Miami PD, *The Miami New Times*, retrieved from https://www.miaminewtimes.com/], Ferguson MO (2016 Agreement), Newark, NJ (2016 Agreement), and Baltimore MD (2017 Agreement).

[71] Lowery, W. & Zapotosky, M. (2019, May 14). Democrats demand documents on Justice Dept. Police reform efforts under Trump. *Washington Post.* Retrieved from https://www.washingtonpost.com/.

[72] Retrieved from https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and. Although this memo was eventually rescinded by the Biden administration in a memo dated April 16, 2021 by Attorney General Merrick Garland. Retrieved from full.pdf (nyt.com).

General's Office (Associated Press, 10/10/2018;[73] New York Times, 6/13/2020[74]) which was based on findings made by the Civil Rights Division against the Chicago Police Department upon completion of a §14141 investigation on January 13, 2017, one week before Trump took office.[75]

Of all of the DOJ interventions, only two instances exist where local agencies refused to enter into Settlement Agreements with the DOJ: the Maricopa County Sheriff's Office, led by the notorious Sheriff Joe Arpaio, who was ultimately convicted of criminal contempt of court for refusing to cooperate with the DOJ investigation (and later pardoned by President Trump) (ABC News, 8/25/2017)[76] and the Alamance County Sheriff (North Carolina) who won his litigation against the DOJ in federal District Court, but eventually settled the case with the DOJ while that dismissal was on appeal (Rushin, 2016).[77]

Although the DOJ's limited application and underutilization of §14141 has been criticized, applying its provisions to only "a small fraction" of all police departments in the United States (see, Jerome, 2005; Harmon, 2009; Rushin, 2014), it has also been recognized that by applying §14141 to some of the largest police departments in the country, "nearly *one in five Americans* lives in a jurisdiction that is served by a law enforcement agency that has been subject to a §14141 investigation" (Rushin, 2015, pp. 32-33; see also, Walker, 2017).[78]

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[73] Trump administration opposes Chicago police reform plan. (2018, October 10). *Associated Press*. Retrieved from https://www.cbsnews.com/news/trump-administration-opposes-chicago-police-reform-plan/

[74] Dewan, S. & Baker, M. (2020, June 13). Rage and Promises Followed Ferguson, but Little Changed. *New York Times*. Retrieved from https://www.nytimes.com/2020/06/13/us/unrest-ferguson-police-reform.html.

[75] See investigation report, at: https://www.justice.gov/opa/file/925846/download.

[76] Kelsey, A. (2017, August 25). Trump pardons controversial former Arizona Sheriff Joe Arpaio, *ABC News*. Retrieved from https://abcnews.go.com/Politics/controversial-arizona-sheriff-joe-arpaio-pardoned-president-trump/story?id=49426093.

[77] See Settlement Agreement, dated August 17, 2016, between the United States and Alamance County Sheriff Terry Johnson. Retrieved from https://www.justice.gov/crt/file/886406/download.

[78] In 2009, Harmon noted that: "Since 1994, the Justice Department has conducted thirty-three public full investigations under § 14141. The relative frequency investigation for large police departments is therefore 1.4% over those fifteen years" (Harmon, 2009, p. 21). However, as noted by Rushin (2015), "many of the nation's largest police agencies have undergone, or are currently undergoing, SRL via § 14141. Combined, the police departments that have been subject

3.1.3. Scope and Coverage of Consent Decrees

With respect to the Consent Decrees and Settlement Agreements reached by the Special Litigation Section, although they have varied in scope and substance, they have usually covered issues relating to the use of excessive force, unlawful search and seizure, unlawful or inappropriate arrests and/or interrogations, biased policing and management and supervision of officers (Jiao, 2020). Over the course of the Obama years, however, biased policing issues were expanded to include gender bias and sexual orientation. Agreements also began to include interactions with persons with mental illness and by-standers' rights to observe and record officer conduct (PERF, 2013; DOJ, 2017a; DOJ, 2017b; Jiao, 2020).

As noted by Walker (2018),

> The learning curve of the SLS [USDOJ Special Litigation Section] … ended with an entirely different vision of accountability-related police reform than the one that the Section began with in 1997 with the Pittsburgh consent decree … [which] was strictly limited to matters related to a then-conventional view of reform: the management and control of officer conduct, particularly with regard to use of force, searches, traffic stops, racial bias, citizen complaints, officer performance evaluations, and "community relations." The second generation of SLS settlements, … by contrast, sweep broadly into a host of new issues: far greater detail regarding the reporting and review of uses of force, the need to build greater public understanding of police problems and the reform process, the need to develop formal arrangements for formal community input into police policy-making, the need for engagement with community social service agencies on relevant social problems, and the need for greater involvement of rank-and-file officers and their unions in police policy-making. (p. 1818)

In 2017, the USDOJ provided a list of the areas covered by Consent Decrees up to that point in time which are summarized in Table 3.1:

to some sort of DOJ action via § 14141 serve a combined population of over 56 million Americans" (p. 32).

Table 3.1. DOJ Areas of Reform 1997-2017 (DOJ, 2017a)*

Area of Reform	Number of Consent Decrees & Years of Implementation
Handling Public Protests & Demonstrations	4 Agreements between 2013 & 2017 (DOJ, 2017a, p. 11)
Continuous Improvement of Policies & Procedures	9 Agreements between 2003 & 2017 (DOJ, 2017a, p. 14)
Comprehensive Training Reform	17 Agreements between 1997 & 2017 (DOJ, 2017a, p. 15)
Citizens Recording Videos, Observing & Commenting on Police Activities	7 Agreements between 2012 & 2017 (DOJ, 2017a, p. 17)
Specialized Teams & Officers to Handle Mental Health & Crisis Intervention	8 Agreements between 2012 & 2017 (DOJ, 2017a, p. 20)[79]
Crisis Intervention Training	11 Agreements between 2001 & 2017 (DOJ, 2017a, p. 21)
Collaboration with Community Mental Health Services	5 Agreements between 2013 & 2017 (DOJ, 2017a, p. 22)
General Policies & Training Relating to Use of Force	19 Agreements between 1997 & 2017 (DOJ, 2017a, p. 28)
Reporting & Data Collection Re: Use of Force	19 Agreements between 1997 & 2017 (DOJ, 2017a, p. 29)
Investigating & Reviewing the Use of Force	20 Agreements between 1997 & 2017 (DOJ, 2017a, p. 30)
De-escalation & Proportionality	19 Agreements between 1997 & 2017 (DOJ, 2017a, p. 31)
Use of Retaliatory Force	5 Agreements between 2015 & 2017 (DOJ, 2017a, p. 32)
Use of Chokeholds & Neck Holds	12 Agreements between 2002 & 2017 (DOJ, 2017a, p. 33)
Use of Firearms	13 Agreements between 2001 & 2017 (DOJ, 2017a, p. 34)
Use of Tasers & Electronic Controlled Weapons	9 Agreements between 2012 & 2017 (DOJ, 2017a, p. 35)
Use of Pepper Spray (OC or Oleo Capsicum)	8 Agreements between 2001 & 2017 (DOJ, 2017a, p.36)
Use of Canines (Police Dogs)	5 Agreements between 2001 & 2016 (DOJ, 2017a, p. 37)
Head Strikes	7 Agreements between 2003 & 2016 (DOJ, 2017a, p. 38)
Treatment of Handcuffed Suspects	9 Agreements between 2012 & 2017 (DOJ, 2017a, p. 39)

[79] A typographical error in the DOJ report resulted in a failure to specifically identify the 2017 Settlement Agreement with Baltimore as containing these provisions.

Area of Reform	Number of Consent Decrees & Years of Implementation
Vehicle Pursuits	2 Agreements between 2013 & 2015 (DOJ, 2017a, p. 40)
SWAT/Tactical Units	4 Agreements between 2001 & 2015 (DOJ, 2017a, p. 41)
Giving Medical Help After the Use of Force	9 Agreements between 2001 & 2017 (DOJ, 2017a, p. 42)
General Policies for Bias Free Policing	15 Agreements between 1997 & 2017 (DOJ, 2017a, p. 43)
Reducing Gender Bias in Policing	5 Agreements between 1997 & 2017 (DOJ, 2017a, p. 44)
Policing and the LGBTQ Community	3 Agreements between 2013 & 2017 (DOJ, 2017a, p. 45)
Reducing Language Barriers in Policing	5 Agreements between 2012 & 2016 (DOJ, 2017a, p. 46)
General Policies for Reducing Stop, Search, Arrest Practices	16 Agreements between 1997 & 2017 (DOJ, 2017a, p. 48)
Reporting & Data Collection Re: Stops, Searches & Arrests	16 Agreements between 1997 & 2017 (DOJ, 2017a, p. 49)
Officer Wellness and Support	9 Agreements between 1997 & 2017 (DOJ, 2017a, p. 50)
Enhancing Transparency	13 Agreements between 1999 & 2017 (DOJ, 2017a, p. 51)
Systems to Improve Officer Supervision	17 Agreements between 1997 & 2017 (DOJ, 2017a, p. 54)
Early Intervention Systems	21 Agreements between 1997 & 2017 (DOJ, 2017a, p. 55)
Body Worn Cameras	5 Agreements between 2015 & 2017 (DOJ, 2017a, p. 56)[80]
In Car / Dashboard Cameras	8 Agreements between 1999 & 2017 (DOJ, 2017a, p. 58)
Recruitment, Hiring & Promotions	6 Agreements between 2013 & 2017 (DOJ, 2017a, p. 60)
Complaint Systems	22 Agreements between 1997 & 2017 (DOJ, 2017a, p. 62)
Civilian Independent Oversight & Review	10 Agreements between 2001 & 2017 (DOJ, 2017a, p. 63)
Officer Disciplinary Systems	17 Agreements between 1997 & 2017 (DOJ, 2017a, p. 64)
Data Collection, Compliance Reviews & Internal Audits	14 Agreements between 1997 & 2017 (DOJ, 2017a, p. 65)

[80] Although the Seattle Settlement Agreement did not specifically cover the issue of Body Worn Cameras, the federal monitor aggressively pushed for their implementation by the SPD (Seattle Monitor, Seventh Systemic Assessment, 2017, p. 2).

Area of Reform	Number of Consent Decrees & Years of Implementation
Community and/or Problem-Oriented Policing	13 Agreements between 1997 & 2017 (DOJ, 2017a, p. 67)
Community Outreach Plans	14 Agreements between 1997 & 2017 (DOJ, 2017a, p. 69)
Community Committees and Councils	10 Agreements between 2001 & 2017 (DOJ, 2017a, p. 71)
Community Surveys	9 Agreements between 2012 & 2017 (DOJ, 2017a, p. 73)
Community Mediation Programs	3 Agreements between 2013 & 2017 (DOJ, 2017a, p. 75)

* Areas included in 15 or more Agreements highlighted in **bold**)

As acknowledged by the DOJ in 2017, and commented on by academics, a "learning curve" developed whereby settlement agreements changed over time, growing more detailed and taking on more areas of concern (Walker & Macdonald, 2009, p. 516; USDOJ, 2017b; Walker, 2017; Walker, 2018; Jiao, 2020). In addition, while the first consent decrees emphasized the need to improve substantive use of force policies, later agreements recognized the importance of ensuring agency force investigations were robust. These later consent decrees also included requirements for appropriate accountability enforcement processes (Walker, 2013).

While excessive force issues "remain[ed] front and center" with respect to the "second generation" of consent decrees, more recent decrees included provisions relating to community-oriented policing, problem-oriented policing and community engagement. In addition, later decrees included specific requirements for outcome measures and compliance conditions (Walker, 2018; Jaio, 2020).

Starting with Seattle in 2012, DOJ consent decrees with larger police departments have also addressed issues of "community engagement." "Community engagement provisions required the creation of structures involving the community for the purpose of assisting with the Monitoring and reform of police departments during the Consent Decree process" (Patel, 2016, p. 816; Walker, 2017).[81] In addition, as noted by

[81] See for example: Seattle Settlement Agreement, filed July 7, 2012, Section I.A (creating Seattle Community Police Commission); Portland Settlement Agreement, filed December 17, 2012, Section IX (creating Community Oversight Advisory Board); New Orleans Consent Decree, filed January 11, 2013, Section X ("Community Engagement") and Section XVIII (creating Police-Community Advisory Board); Puerto Rico Settlement Agreement, filed July 17, 2013, Section XII

Chanin (2017a), Obama-era settlement agreements involved a "concerted effort to adopt a more publicly minded approach" resulting in an increase of agreements requiring departments to adopt community-oriented policing strategies and to create community based committees to assist in implementation of the settlement agreements (p. 258). Obama-era agreements also required jurisdictions to conduct public satisfaction surveys (p. 258). These agreements were also "more likely to include provisions to address departments' approaches to handling interactions involving people experiencing mental health crises" (Chanin, 2017a, p. 259).[82]

Also, noted by Chanin (2017b), was the fact that "[t]hough the reform process is clearly designed to address officer misconduct, the DOJ has recently begun to use the process to promote other outcomes, including 'increased [department] transparency,' 'community–police partnerships,' and 'community confidence in law enforcement'" (p. 263, citing, USDOJ, Civil Rights Division, Special Litigation Section website).[83]

At the same time, although the DOJ has actively solicited input from various community and police stakeholders relating to the content of negotiated consent decrees, there has been substantial criticism that those important stakeholders have not been given a "place at the table" during the course of those negotiations (Simmons, 2008, p. 494; Chanin, 2012; Patel, 2016).[84]

Although many of the more recent consent decrees provided for community engagement strategies and involved representatives of affected communities and police rank and file in the implementation process, the negotiation process has traditionally only

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(creating Community Interaction Councils); Albuquerque Settlement Agreement, filed November 14, 2014, Section XII (creating Community Policing Councils and Civilian Police Oversight Agency); Cleveland Settlement Agreement, filed May 26, 2015, Section III (creating Community Police Commission and District Policing Committees); Ferguson Consent Decree, filed April 9, 2016, Section III (creating the Neighborhood Policing Steering Committee, continuing the Ferguson Youth Advisory Board and creating Apartment Neighborhood Groups); and Baltimore Consent Decree, filed January 12, 2017, Section III ("Community Policing & Engagement").

[82] The Seattle Settlement Agreement contained both public survey provisions and requirements to reduce the risk of use of force against people in crisis (See Section B. ("Crisis Intervention") and MOU paragraph 13).

[83] Located at: https://www.justice.gov/crt/conduct-law-enforcement-agencies.

[84] Chanin (2012) recommended that the DOJ "include union representatives and key civil rights organizations in the settlement negotiation process." In addition, Chanin recommended using focus groups and conducting community outreach "to develop settlement content," and "include union and community group representatives in the implementation process by inviting group leaders to regular status meetings" (Chanin, p. 351).

involved community and police unions through their consultation with the DOJ. In Portland, Oregon, however, the court also conducted a "fairness hearing" to give community and police stakeholders the opportunity to comment on whether the settlement agreement was "fair, adequate, and reasonable."[85]

3.1.4. Evaluating Success

The §14141 process has been "criticized for, among other reasons, intruding into local police governance, imposing extreme financial costs on local governments, polarizing rather than resolving local police-community relations, and (in the view of its critics) failing to demonstrate its effectiveness" (Walker, 2018, p. 1782). In addition, the length of the Monitoring terms has been problematic, with some cases lasting more than a decade (See Table 3.2 below) and questions regarding whether shorter terms have actually resulted in sustainable reforms (see, Chanin, 2012, [questioning whether there was true reform as a result of the Prince George's County Settlement Agreement].[86]

Table 3.2. Examples of Length of Monitoring Terms in Selected Cases

Jurisdiction	Length of Monitoring	Dates of Monitoring
Cincinnati	5.0 years	April 12, 2002- April 12, 2007
Washington D.C.	6.8 years	June 13, 2001 – April 2008
Prince George's County	7.5 years	Jan. 22, 2004 – Jan. 13, 2009
Steubenville, OH	7.5 years	Sept. 3, 1997 – March 3, 2005
Seattle, WA	8.0 years	July 27, 2012 - Current
New Jersey State	9.8 years	Dec. 29, 1999 – Oct. 26, 2009
Detroit, MI	11.1 years	July 18, 2003 - August 25, 2014
Los Angeles, CA	11.9 years	June 15, 2001 – May 15, 2013

See Rushin, 2015, at Figure 5, for "Length of Monitored Reform for Completed Cases;" Seattle & Detroit information added; Washington D.C. information supplemented (DOJ, 2017b).

[85] Patel (2016) suggested that the Portland fairness hearing increased the legitimacy of the process within the community by giving all stakeholders the opportunity to be heard (pp. 843-844).

[86] "In Prince George's County, an approaching deadline appears to have prompted the monitor team to find the Police Department (PGPD) in substantial compliance and terminate the agreement, despite signs that the department may not have been ready to operation without DOJ oversight" (Chanin, 2014, p. 45).

Even so, at least in the short term, monitoring reports have often been effusive in their declarations of success at the conclusion of their terms.

- In Washington D.C., six years after the reform period began, the Monitor reported that the department had become "substantially reformed" and recommended the termination of the MOA (Final Report of the Independent Monitor for the Metropolitan Police Department, June 13, 2008).[87]

- In New Jersey in 2007, it was reported that the New Jersey State Police had become "self-monitoring and self-correcting" (Monitor's 16th Report, August 2007)[88] [see, also, Walker & Macdonald, 2009, p. 480; Walker, 2012, pp. 63-64].

- After seven years of monitoring, even after a rocky start, the Cincinnati Monitor reported that the Section 14141 reform in that city was "one of the most successful police reform efforts ever undertaken in this country" (PERF, 2013, p. 3).

- In Los Angeles, the final monitoring report concluded that "[w]e believe the changes institutionalized during the past eight years have made the LAPD better at fighting crime, at reaching out to the community, in training its officers, in its use of force, in internal and external oversight, and in effectively and objectively evaluating each of the sworn members of LAPD" (Clark, 2010, p. 9).

There have been questions of sustainability, however. In Pittsburgh, where an independent evaluation found that mandated reforms were successfully implemented, the City elected a new Mayor, two years after the termination of the Consent Decree, who immediately fired the reform-minded Chief who led the implementation effort, with the support of the police union which "had aggressively opposed the Consent Decree" (Walker & Macdonald, 2009, p. 525). Moreover, by 2015, Chanin found that advances in Pittsburgh had "eroded" since the implementation of the reform agreement (Chanin, 2015, p. 170). Chanin also noted concerns regarding the sustainability of reform in Prince George's County concluding that: "[t]aken together, the existing quantitative and qualitative information seems to suggest a wide gulf between where Prince George's

[87] Retrieved from http://www.policemonitor.org/MPD/reports/080613reportv2.pdf. It was also reported that "Attorney General Ashcroft [a Republican appointee] observed that 'these reforms have been implemented without impairing the ability of the police department to fight crime. In fact, last year we saw a decline in the number of murders and in the crime indexed in the District of Columbia'" (Kim, 2002, p. 777).

[88] Retrieved from https://www.nj.gov/oag/monitors-report-16.pdf.

County appears to be and where the Justice Department would have wanted them to be seven years after the MOA was signed" (Chanin, 2016, p. 101).

On a positive note, however, Chanin's study also concluded that the reforms in Cincinnati had accomplished "significant and lasting change within the CPD," and noted that the agency had "experienced little or no backsliding, a finding supported by consistent reductions in undesirable outcomes, including use of force incidence and allegations of abusive or unlawful behavior" (Chanin, 2015, pp. 179-180).

As observed by Rushin "successful organizational reform requires continual support from municipal leaders, dedication by executives within the targeted agency, and buy-in by frontline officers" (Rushin, 2015, pp. vi & 1; see, also, Walker & Macdonald, 2009). In recognition of the issues and concerns raised about issues of sustainability, the DOJ has included provisions in consent decrees to create programs to replicate the mission of the DOJ and court appointed monitors in order to increase the potential for reforms to continue in the long term.[89]

Ultimately, in 2017 Walker, reached the following conclusion:

> for the most part, court-ordered settlements of DOJ investigations have been successful in transforming seriously troubled law enforcement agencies. The phrase "for the most part" is deliberately used here to allow for the variations in outcomes that exist. It would be unreasonable to expect that all settlements would be completely successful. There are, however, no cases where a consent decree is believed to have completely failed. (Walker, 2017, p. 4)

3.1.5. Evaluation Metrics

The question as to how to evaluate compliance has challenged DOJ, the involved agencies and the court-appointed monitoring teams since the time of the first attempts to implement §14141 reform processes. Early on in the process, it was noted that:

[89] See, for example, the creation of the Inspector General's Office in Cleveland (Cleveland Consent Decree, Section X.A.), the Civilian Police Oversight Agency in Albuquerque (Albuquerque Settlement Agreement, Section XII.D.) and the LAPD Audit Unit (Los Angeles Consent Decree, paragraph 124) (DOJ, 2017b).

> the Justice Department's general approach appears to focus remedial relief upon the implementation of particular policies rather than the attainment of statistical goals… Nothing in either decree [Pittsburgh & Steubenville] specifically requires the defendants to reduce the frequency of rights violations by their police officers. Thus, in order to terminate the decrees, the defendants must demonstrate not that they have reduced the number or frequency of rights violations, but that they have in good faith installed and implemented the required procedures. (Miller, 1998, p. 190)

And, given the DOJ's core responsibilities, it is not surprising, that the DOJ "frames each agreement in legal terms, using the language, goals and enforcement strategies typical of a binding contract in order to bring the affected department into compliance with the law" (Chanin, 2012, p. 108). The result of this legalistic point-of-view, however, has the potential to minimize the need for there to be accompanying cultural change and achievement of specific outcome-based goals.

Interestingly, Chanin's review of the Pittsburgh, Cincinnati, Prince George's County and Washington D.C. reform efforts noted that "despite some variation in their data collection and oversight method, each monitor team applied the 95% substantial compliance threshold very similarly, regardless of the substantive nature of the provision under review or the considerable subjective authority maintained by each team" (Chanin, 2012, p. 110). In Seattle, however, the Monitor chose only to use the 95% substantial compliance threshold in his systemic assessments but only in conjunction with more subjective evaluation criteria.[90] The Seattle Monitor also evaluated compliance through a review of systemic metrics, including police uses of force, citizen complaints, and detention and arrest rates. As recognized by Chanin "these kinds of indicators are perhaps the most effective means of evaluating whether the changes brought on by the reform effort have yielded desirable performance levels" (Chanin, 2012, p. 234).

A 2013 PERF study concluded that "[d]efining compliance is difficult," particularly when attempting to evaluate areas that "do not lend themselves to evaluation on a numerical scale" (for example, the quality of an investigation). However, PERF noted that "a number of consent decrees have defined substantial compliance as showing that

[90] See section 3.2.6 for a discussion of challenges with measuring compliance and section 7.3.2 for relevant portions of Seattle Monitor reports explaining criteria used to determine "full and substantial compliance."

a given requirement is met 95 percent of the time" over a period of time (PERF, 2013, p. 7).[91]

By 2017, the USDOJ publicly addressed its progress in more effectively measuring outcomes:

> In more recent years, the Division has built outcome measures into its police reform agreements in order to measure not only whether the processes required by the Division's reform agreements are actually implemented but also whether those processes lead to improvements in the quality of policing and reductions in patterns of misconduct … Outcome measures vary from case to case, as they are tailored to the particular outcomes the reform agreement is trying to reach in that place. But certain outcome measures can be found in almost every reform agreement. For example, the Division routinely incorporates a community survey into its reform agreements to establish a baseline for and, over the course of reform, to measure improvements in community trust and how changes in police culture are reflected in the responses of affected communities. (DOJ, 2017b, p. 24)

[91] "In Pittsburgh, the monitor interpreted "substantial compliance" to require 95 percent compliance with all terms in the Consent Decree. Monitors in other cities that entered consent decrees after Pittsburgh, including Los Angeles, Cincinnati, and Washington, DC, adopted the 95-percent compliance standard. Detroit adopted a 94-percent compliance standard" (PERF, 2013, p. 32). The PERF report went on, however, to quote the Deputy Chief of the Special Litigation Section (Christy Lopez) as making the following comments regarding the 95% requirement: "Substantial compliance requires a department to have to have a policy in place, to train people, and to make sure that the policy is implemented and practiced. A very widely accepted auditing practice to ensure that something is done is to demonstrate compliance 95 percent of the time, plus or minus 5 percent. That is how I believe the 95-percent requirement started. It is not a perfect application in every context. It works very well for some things, but not well for others. So yes, I agree [] that it would not make sense to say it's good enough if 95 percent of your officer-involved shootings are properly investigated and 5 percent are not. DOJ's more recent decrees focus on outcome measurements, rather than process measurements. And we are making efforts to be more qualitative than quantitative" (PERF, 2013, p. 33).

The DOJ went on to describe specific outcome measures used for common issues addressed in recent Settlement Agreements:

Stop, Search and Arrest Outcome Measures (In agreements addressing stops, searches, and arrests, the Division typically tracks data such as:

- The rate of stops, searches and arrests, including by location and by the subject's race, ethnicity, gender, and age;
- "Hit rates" – i.e., how often stops and searches lead to citations, arrests, or the discovery of contraband;
- How often stops, searches, and arrests are accompanied by sufficient documentation of suspicion;
- The number of civilian complaints regarding stops, searches, and arrests and how often those complaints are sustained or substantiated;
- How often prosecutors decline to prosecute charges following arrests.

"For such data, the Division's reform agreements require that the Monitor develop a methodology for tracking such data and analyzing it in a manner that controls for factors that could explain or justify certain rates of stops, searches or arrests.

The Division's reform agreements also may track qualitative data to allow the independent monitor to assess how often stops, searches, and arrests are supported by the required level of reasonable suspicion or probable cause"

(DOJ, 2017b, p. 24).

Use of Force Outcome Measures (In agreements addressing use of force, the Division typically tracks data such as):

- The rate of use of force—overall, by type of encounter (i.e., street stop, traffic stop, arrest, call for service); by type of force; by location; and by subject's race, ethnicity, gender, and age;
- The number of civilian complaints regarding use of force and how often those complaints are sustained or substantiated;
- How often force reviews reveal that a use of force violated agency policy or the law;
- The number of officers who have had more than one instance of force found to violate agency policy or the law;
- How often officers or members of the public are injured during police encounters.

"As with stop, search, and arrest data, the Division's reform agreements require that the monitor develop a methodology ensuring that analysis of such data controls for factors that could explain or justify certain rates of force".

(DOJ, 2017b, p. 25)

[T]he Division's current generation of reform agreements focuses on defined outcome measures to ensure that the court and the independent monitoring team have concrete, objective benchmarks for assessing whether a law enforcement agency has effectively implemented an agreement. Those outcome measures are designed to eliminate guesswork and reduce subjectivity in the determination of whether an agency's reform efforts are resulting in constitutional policing. They are also designed to validate the reforms mandated by an agreement, and ensure that new policies, training, and organizational change accomplish the underlying goals of eliminating patterns of police misconduct
(USDOJ, 2017b, p. 35).

Given the DOJ's recognition of the need for objective, defined outcome measures, Settlement Agreements reached after 2012 have generally included requirements for the court-appointed monitor to conduct outcome assessments as part of their evaluation of Consent Decree compliance.

> For example, the 2016 Newark, New Jersey agreement requires the Monitor team to review department data on officer pedestrian and traffic stops, post stop searches and arrests, and use of force, in an effort to assess the effectiveness of each policy change (Newark Consent Decree, 2016, para. 174). This development is an attempt to address the criticism that early pattern or practice agreements overlooked the importance of substantive evaluation. (Chanin, 2017a, p. 259, citing, Chanin, 2012; PERF, 2013; Clark, 2010)

In addition, the Cleveland Consent Decree requires "qualitative and quantitative assessments to measure whether implementing the Agreement has resulted in constitutional policing."[92]

In a 2017 article, the federal Judge overseeing the New Orleans consent decree, in collaboration with the Deputy Superintendent of the NOPD Compliance Bureau and the NOPD Director of Analytics, wrote an article praising the use of "data-driven management" as a means to evaluate NOPD progress with its §14141 reform process. In the article the authors commented that:

> In New Orleans, the reform process started slowly as the court and the court's monitors struggled with identifying and quantifying the reforms mandated by the 492 paragraphs of the decree and determining how to measure incremental compliance over time. The first measurable progress

[92] Cleveland Consent Decree, at paragraph 367. Retrieved from https://perma.cc/4FBT-VPG5.

> was noted when the Monitors began developing audits, often using checklists, to identify with specificity what was expected of the NOPD in a particular area, such as photographic lineups, and using the audit results to gauge compliance. (Morgan et al., 2017, p. 276)

Morgan et al. (2017) went on to explain how the department began to use "a more holistic data-driven management framework to address all facets of management." This included updating the NOPD's Comstat model to include data relating to accountability, not just crime. As such, data were added to include consent decree compliance, misconduct trends and measurements, uses of force, and community policing (p. 287).

Even with the move towards more objective compliance measures, it is still true that "there is [still] no universal measure of compliance or sustainability" (Alpert et al. 2017, p. 243).[93] In addition, it has been recently noted that "[m]easurement criteria used to measure police compliance with [] consent decree[s] remain inadequate…" (Jaio, 2020, p. 6). Defining "compliance" continues to be difficult, as many consent decree issues cannot be evaluated using quantitative measures (PERF, 2013; Jaio, 2020). Jaio argues that "[r]ecent consent decrees have included outcome measures but they have not been empirically determined or widely accepted" (Jaio, 2020, p. 6).

3.2. Consent Decree Monitoring

In the cases in which the DOJ identifies serious systemic issues and concerns relating to unconstitutional policing practices, the DOJ will often obtain the appointment of an "independent monitor" to provide technical assistance to the impacted agency and monitor and report on the agency's progress towards implementation of the reforms required by a Consent Decree or a Memorandum of Understanding. In 2017, the DOJ reported that "the appointment of an independent monitor – or, more accurately, an independent monitoring team – is a nearly universal feature of the Division's reform agreements. Of 18 currently open reform agreements, all but four are overseen by independent monitoring teams" (USDOJ, 2017b, p. 21).

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[93] Even though numerous Obama-era Settlement Agreements include provisions requiring independent monitors to conduct outcome assessments as part of their evaluations of compliance. (For example, Seattle Consent Decree, retrieved from https://perma.cc/N425-DPB8; Ferguson Consent Decree, retrieved from https://perma.cc/AXP6-DMFG; Cleveland Consent Decree, retrieved from https://perma.cc/4FBT-VPG5; and, New Orleans Consent Decree, retrieved from https://perma.cc/T5FZ-XXPB).

A review of all consent decrees, MOA's and Settlement Agreements, however, tells a slightly different picture. Out of the 40 agreements previously identified, 26 (67.5%) involved the appointment of some form of outside monitors or auditor ("Monitor" (n=18), "Auditor" (n=2), "Researcher" (n=2), "Compliance Expert" (n=1), "Compliance Officer" (n=1), "Consultant" (n=1), and "Technical Compliance Advisor" (n=1). Two agreements required the jurisdiction to assign an "Internal Compliance Officer." Another twelve agreements provided for either DOJ monitoring, access to information, or self-reporting by the involved agency.[94]

While the criteria for the decision to require an independent monitor (or monitoring team) appears to change over the course of the various Presidential administrations (with Republican administrations tending towards reaching agreements that were more informally monitored and Democratic administrations tending towards the appointed of independent monitors), those cases involving the appointment of independent monitors appear to involve departments that the USDOJ does not believe are capable of achieving reform without formal assistance and ongoing public reporting.[95]

Table 3.3, below, shows, for each Presidential term in office, the number of investigations, negotiated settlements and monitors appointed. As previously discussed, the Clinton (D) administration used its first term to open investigations and its second term to pursue the first generation of consent decrees and settlement agreements. While

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[94] Although there has been criticism of the Bush administration for not aggressively pursuing Section 14141 and the Obama administration for being overly aggressive in pursuit of cases (see e.g., Jerome, 2005; Harmon, 2009; Rushin, 2015; and, Walker, 2018), the wide variety of dispositions, particularly during the Obama administration (See Table 3.4), appears to suggest that, as of 2017, the USDOJ was already on the road to the type of holistic approach to police reform that is suggested in this paper.

[95] As observed by Walker, "Among critics of the Justice Department's pattern or practice program, judicial enforcement of settlements has been a major issue … with respect to two law enforcement agencies, Cleveland, Ohio, and Miami, Florida, the SLS initially investigated and resolved the investigations with non-enforceable Findings Letters. In both cases, police abuses continued, and the Section returned several years later to investigate again and reached judicially enforced consent decrees" (Walker, 2018, n. 159).

In Seattle, the DOJ insisted on a formal consent decree with a court-appointed monitor; this position appeared to based, at least in part, on the fact that the then-United States Attorney for the Western District of Washington had previously participated in two different citizen commissions whose reports and recommendations had previously failed to bring about the necessary reforms (See, infra, Chapter 7.2 ["The DOJ Investigation & Negotiation of the Seattle Consent Decree"].

the Bush (R) administration opened a similar number of investigations as the Clinton administration, the percentage of monitors appointed to oversee settlement agreements dropped, in support of a less intrusive form of enforcement of the agreements. Under President Obama, however, the number of Section 14141 investigations, negotiated settlements and court-appointed monitors increased noticeably over and above prior Presidential administrations.

Table 3.3. DOJ Investigations, Negotiated Settlements and Appointment of Monitors[96]

Administration	Investigation	Negotiated Settlements	Monitors Appointed
Clinton – Term 1[97] (Jan. 1993 – Jan. 1997)	10	0	0
Clinton – Term 2 (Jan. 1997 – Jan. 2001)	12	3	3
Bush – Term 1 (Jan. 2001 – Jan. 2005)	13	11	7
Bush – Term 2[98] (Jan. 2005 – Jan. 2009)	8	0	0

[96] Table 3.3 based upon Rushin, 2015, Figure 3.3, DOJ ACTION UNDER §14141 BY PRESIDENTIAL ADMINISTRATION; supplemental Obama Term 2 and Trump Term 1 information obtained from Rushin, 2017a, Table 3.4 & https://www.justice.gov/crt/conduct-law-enforcement-ag.encies. The figures in this table differ slightly from Rushin, 2015, Figure 3.3, and Rushin 2017a, Table 3.4, in that I have included all external Monitors, Auditors, Consultants, Reviewers, Compliance Officers and Experts in the "Monitors Appointed" column.

[97] Section 14141 became law in 1994. As noted by Rushin, however, "[t]he lack of negotiated settlements and monitor appointments before 1997 probably does not represent any administrative unwillingness to use these remedies. After § 14141's passage, the DOJ needed time to develop internal implementation strategies after the passage of § 14141. Enforcement was not fully underway until about a year after Congress passed the VCCLEA. See, e.g., Interview #14, supra note 209, at 5 (stating that 'it's hard getting a new statute implemented' and detailing the challenging process facing the DOJ in implementing the statute initially in 1994 and 1995). This likely explains the lack of negotiated settlements and monitor appointments during the first Clinton Administration" (Rushin, 2014, n. 294). See also, Rushin, 2015, Chapter 3, for an excellent chronical of the administrative implementation of Section 14141, [Rushin included interviews of DOJ Civil Rights Division personnel as part of his research. In detailing the start-up required for the DOJ in Section 14141 enforcement, he quoted one DOJ litigator as saying: "'there really hadn't been much structural reform litigation [of any kind] involving police departments' before the passage of §14141 in 1994." Rushin noted that "[t]his lack of previous structural reform litigation against police departments was due in part to court decisions in the *Lyons* and *City of Philadelphia* cases, where a federal circuit court and the U.S. Supreme Court blocked attempts by private litigants and the DOJ to intervene into problematic police agencies. Thus, the DOJ had to develop a plan to enforce § 14141 from scratch. This took time" (Rushin, 2015, p. 67).

[98] No Settlement Agreements were signed during the second term of President Bush (between 2005 and 2008) (Rushin, 2017, citing USDOJ, 2017b).

Administration	Investigation	Negotiated Settlements	Monitors Appointed
Obama – Term 1[99] (Jan. 2009 – Jan. 2013)	12	8	6
Obama – Term 2 (Jan. 2013 – Jan. 2017)	5	16	8
Trump – Term[100] (Jan. 2017 – Jan. 2021)	1	2	1[101]

Table 3.4 shows the jurisdictions with court-appointed Monitors and Auditors and highlights, using color coding, which Presidential administration was resonsible for entering into each Consent Decree (or MOU/MOA), as well as the identity and title of each court-appointment monitor/auditor. Once again, this Table reflects that the Obama administration used Section 14141 more aggressively than prior Presidential administrations.

[99] "[T]he Obama DOJ appears to have been significantly more aggressive than previous administrations in interpreting evidence to support a pattern or practice finding" (Chanin, 2017a, p. 259).

[100] According to Walker: "The Trump Administration is not the first presidential administration to back away from Justice Department efforts to investigate civil rights violations by local police departments and seek judicially enforced settlements. The administration of President George W. Bush, following its conservative agenda on civil rights issues, substantially reduced the Justice Department pattern or practice program between 2001 and 2009, reducing the number of investigations and reaching no new settlement agreements between 2004 and 2008 ... In short, Democratic Party presidents (Bill Clinton and Barack Obama) have pursued accountability-related police reforms, while Republican Party presidents (George W. Bush and Donald J. Trump) have not" (Walker, 2018, n. 6).

[101] Although the Baltimore Monitor was appointed on October 3, 2017, well after the beginning of the Trump administration (https://www.bpdmonitor.com/), the Baltimore Consent Decree was entered into on January 12, 2017, eight days before Trump's inauguration (https://perma.cc/9Z7J-JM87), placing the case within the jurisdiction of the federal court and precluding the Trump administration from abandoning it without the support of the City of Baltimore and the approval of the assigned federal judge (See, Stolberg, S. & Lichtblau (2017, April 3). Sweeping Federal Review Could Affect Consent Decrees Nationwide. *New York Times*, retrieved from https://www.nytimes.com [for statements made by the Mayor of Baltimore indicating the belief that the Trump DOJ was attempting to interfere with the implementation of the Baltimore Consent Decree]; see also, Op-Ed piece by then Attorney General Jeff Sessions: "," commenting on an increase in violent crime in Baltimore and a reduction of arrests and arguing against the overall usefulness of consent decrees) (Sessions, J. (2017, April 17). Our first priority must be to save lives and restore public safety, *USA Today*, retrieved from https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/.

Table 3.4. Jurisdictions with Court Appointed Monitors/Auditors[102]

[Clinton Term II, Bush Term I, Bush Term II, Obama Term I, Obama Term II, Trump Term I]

Jurisdiction	Year	Name & Title of Monitor
Pittsburgh PD, PA	1997	Dr. James Ginger, **Monitor** (Consent Decree)
Steubenville PD, OH	1997	Charles Reynolds, **Auditor** (Consent Decree)
New Jersey State Police	1999	Dr. James Ginger & Alberto Rivas, **Monitors** (Consent Decree)
Montgomery County PD, MD	2000	"**Consultant**" per MOA
Highland Park PD, IL	2000	DOJ provided access to documents and records to ensure compliance (MOA)
Washington D.C. PD	2001	(Michael Bromwich, **Monitor**) (MOA) http://www.policemonitor.org/MPD/MPDindex.html
Los Angeles PD, CA	2001	Michael Cherkasky, **Monitor** (Consent Decree)
Cincinnati PD, OH	2002	Alan Kalmanoff (2002) > Saul Green (2002-2008), **Monitor** (MOA)
Buffalo PD, NY	2002	**Reviewer** appointed per MOA
Columbus PD, OH	2002	DOJ provided with "access" to ascertain compliance (MOA)
Detroit PD, MI	2003	Sheryl Wood (2003-2009) > Robert Warshaw (2009-2016), **Monitor** (Consent Decree)
Mt. Prospect PD, IL	2003	Semi-annual status reports required (MOA)
Villa Rica PD, GA	2003	Independent **Monitor** per MOA
Prince George's County	2004	Eduardo Gonzales, **Monitor** (MOA)
Cleveland PD, OH	2004	DOJ provided access to assess compliance (MOA)[103]
Virgin Islands PD	2009	Fried, Frank, Harris Shriver & Jacobson, LLP, Independent **Monitor** (Consent Decree) http://www.policemonitor.org/VI/VIindex.html
Beacon PD, NY	2010	DOJ provided with "reasonable access" to ascertain compliance (MOA)

[102] For information on federal monitors, see: Rushin, 2012, Table 6; Rushin, 2014; USDOJ, 2017b; Rushin, 2017a, Appendix A & B; and, https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#police. List of cities where DOJ investigations resulted in a Consent Decree or MOA can be found at: https://github.com/themarshallproject/doj14141/blob/master/data/doj_data.csv#L52. As noted by Chanin: "Several Obama-era agreements, including those in Seattle, Ferguson, Baltimore, and Albuquerque, include provisions requiring independent monitor teams to conduct outcome assessments as a part of the oversight process (USDOJ, 2017b). For example, the 2016 Newark, New Jersey agreement requires the monitor team to review department data on officer pedestrian and traffic stops, post stop searches and arrests, and use of force, in an effort to assess the effectiveness of each policy change (Newark Consent Decree, 2016, para. 174). This development is an attempt to addresses the criticism that early pattern or practice agreements overlooked the importance of substantive evaluation," (Chanin, 2017a, p. 259, citing Chanin, 2012; PERF, 2013; & Clark, 2010).

[103] Eleven years later (in 2015), the Cleveland Division of Police was identified as having continued to engage in a variety of unconstitutional policing practices that resulted in the enforcement of a formal Consent Decree.

Jurisdiction	Year	Name & Title of Monitor
Easton PD, PA	2010	Self-reporting of non-compliance required (MOA)
Orange County Sheriff, FL	2010	Internal Compliance Coordinator (MOA)
Seattle PD, WA	2012	Merrick Bobb (2012-2020) > Dr. Antonio Oftelie, **Monitor**, (Consent Decree & MOA) http://www.seattlemonitor.com/
East Haven, CT	2012	Kathleen O'Toole (2012-2014) > Rafael Ruiz (2014-2017), Joint **Compliance Expert** (Consent Decree)
Warren PD, OH	2012	DOJ monitoring (Consent Decree)
New Orleans PD, LA	2013	Jonathan Aronie (Primary **Monitor**) (Consent Decree) http://consentdecreemonitor.com/
Puerto Rico PD	2013	Arnaldo Claudio, **Technical Compliance Advisor** (resigned – May 2019) >John Romero (Consent Decree) https://puertoricofederalmonitor.com/ > https://fpmpr.org/
Missoula PD / University of Montana PD, MT	2013	Thomas R. Tremblay, **Independent Reviewer** (MOA)
Portland PD, OR	2014	Dr. Dennis Rosenbaum, **Compliance Officer** and Community Liaison (Consent Decree) https://www.portlandcocl.com/
Albuquerque PD, NM	2014	Dr. James Ginger, **Monitor** (Consent Decree) https://www.abqmonitor.org/
Suffolk County PD, NY	2014	Internal "Compliance Coordinator" (MOA)
Cleveland PD, OH	2015	Matthew Barge (2015 – 2019) > Hassan Aden, **Monitor** (Consent Decree) http://www.clevelandpolicemonitor.net/
Los Angeles County Sheriff, CA, (Antelope Valley Stations)[104]	2015	Dr. Angie Wolf and Joseph Brann, Lead **Monitors** (Consent Decree) http://antelopevalleysettlementmonitoring.info/
Meridian PD / County of Lauderdale, MI	2015	Rodney Monroe & the Police Foundation, **Independent Auditor** (Settlement Agreement)
Maricopa County Sheriff, AZ	2015	MCSO to grant "reasonable requests" for information from DOJ (Consent Decree & MOA)
Ferguson PD, MO	2016	Natashia Tidwell, Lead **Monitor** (Consent Decree) https://fergusonmonitor.com/
Newark PD, NJ	2016	Peter Harvey, **Monitor** (Consent Decree) https://www.newarkpdmonitor.com/
Yonkers PD, NY	2016	Compliance Reviews by DOJ (MOA)
Miami PD, FL	2016	Jane Castor (2016-2019) > Corey Sanders (CRT lawyer), Independent **Reviewer** (MOA)

[104] On April 28, 2015, the USDOJ and the County of Los Angeles entered into a Consent Decree as it related to policing conducted by the Sheriff's Antelope Valley Stations, policing the areas of Lancaster and Palmdale (US v. County of Los Angeles - Settlement Agreement - April 28, 2015 (justice.gov)). On August 5, 2015, the DOJ and the County of Los Angeles entered into a second Settlement Agreement, as it related to the administration of the Los Angeles County Jails (United States v. County of Los Angeles and Los Angeles County Sheriff - Settlement Agreement - August 5, 2015 (justice.gov)). This research project was limited to Consent Decrees relating to policing as opposed to corrections. As such, only the first Settlement Agreement fell within the scope of this research.

Jurisdiction	Year	Name & Title of Monitor
Alamance County Sheriff NC	2016	Internal contact required for DOJ inquiries (MOA)
Baltimore PD, MD	2017	Kenneth Thompson, **Monitor** (Consent Decree) https://www.bpdmonitor.com/[105]
Ville Platte PD, MI	2018	DOJ assessment & monitoring (Settlement Agreement)
Evangeline County Sheriff, MI	2018	DOJ assessment & monitoring (Settlement Agreement)

3.2.1. Issues and Concerns Regarding Court-Appointed Monitors

The appointment of independent monitors has been described by many commentators as an essential measure to ensure agency compliance and ensure the sustainability of §14141 reforms (Davis et al., 2002; Davis et al., 2005; Walker & Macdonald, 2009; Clark, 2010; Chanin, 2012;[106] PERF, 2013;[107] Chanin, 2014;[108]

[105] Although the Baltimore monitor was appointed during the Trump administration, credit here is given to the Obama administration as the Trump administration actually attempted to delay the enforcement of the Consent Decree in the face of the City's insistence that it go forward. (See Section 3.3.3, *infra*)

[106] According to Chanin (2012), "[a]s with remedial cases (see, e.g., Cooper 1988; DiIulio 1990) and other court-based reform initiatives (see, e.g., Sandler and Schoenbrod 2003), the presence of a substantive expert who carries the authority of the court is thought to enhance implementation efforts" (p. 97).

[107] "The choice of a court-appointed federal monitor is essential. Police departments under consent decrees have varying experiences with federal monitors; some good, others not so good. Good federal monitors do much more than just 'monitoring' the implementation of a consent decree. They have substantive knowledge of policing issues, are efficient and effective in achieving goals, and serve as strong mediators and problem-solvers. In addition to the federal monitor, experts are often hired in the Consent Decree implementation process. When this happens, the experts should have knowledge in current police policies and practices as well as experience in the Consent Decree process in similar jurisdictions" (Jaio, 2020, citing PERF, 2013).

[108] Chanin (2014) was effusive in his comments regarding the importance of court-appointed monitors: "[t]he importance of the independent oversight these monitor teams provide cannot be overstated. In all five jurisdictions [evaluated by Chanin, to include: Pittsburgh, PA, Detroit, MI, Washington D.C., Cincinnati, OH, and Prince George's County, MD], monitor teams established the parameters for compliance and set the agenda, pace, and tone of the reform process. In this capacity, they provided to department leadership both technical advice and objective information about the department's progress. Monitor teams also served as the conduit between the DOJ and the affected department, establishing a necessary link between a top-down, "DOJ-driven" effort and the goals, priorities, and day-to-day operational emphases that define a bottom-up approach to organizational change…The value of the monitor seems to square with the existing theory on the import of actors capable of working entrepreneurially bridge implementation challenges and those who provide external accountability. What is more, these results further emphasize the values of flexibility and adaptability, as well as an understanding between both monitor and agency leadership that collaboration is a key to successful implementation" (Chanin, 2014, p. 48, citing Barcach, 1978; Majone & Wildavsky, 1979; Cooper, 1988).

USDOJ, 2017b).[109] However, the concept of using outside monitors has also been criticized for the significant expenses associated with monitoring efforts (Walker, 2003, p. 22; Ross & Parke, 2009, p. 204; Chanin, 2012; PERF, 2013; Rushin, 2015, p. 103) and for the perception that monitors have unfettered authority (PERF, 2013, pp. 2-3, 31 [Discussing the question of "Who Monitors the Monitors?"].[110]

In Seattle, Michael McGinn, the Mayor serving at the time of the DOJ investigation report, and who personally negotiated the City's Settlement Agreement with the DOJ, publicly questioned the potential for a court-appointed Monitor to become "a shadow mayor" (*Seattle Times,* 5/15/2012)[111] and as per fears of SPD command staff, "a shadow chief" (*Seattle Times*, 5/10/2012,[112] 7/17/2012).[113]

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[109] As referenced by Walker & Macdonald, "one of the major shortcomings of many past reform efforts has been the lack of any mechanism to ensure implementation" (Walker & Macdonald, 2009, p. 511)

[110] The Police Executive Research Forum report was the result of a forum, including police chiefs, DOJ personnel, academics and monitors to discuss "lessons learned" from implementation of Consent Decrees and Settlement Agreements from 1997 through 2010. While the report noted the essential functions that the court-appointed monitors had played in the implementation of Section 14141 reforms, it also identified criticism of the use of monitors, noting that "[s]ome even say there is an inherent conflict of interest on the part of the monitors who are designated in each case to oversee the reforms, because they believe the monitors have a financial interest in keeping the cases going." The PERF report also represents, however, that "[o]thers say that monitors are people of integrity who do not delay completion of consent decrees for personal gain" (PERF, 2013, p. 2).

The PERF report noted the following exchange between the Executive Director of PERF and the DOJ: PERF Executive Director Chuck Wexler: "Yes, that raises the question: Who monitors the monitor?" DOJ Deputy Section Chief Christy Lopze: "The monitor is accountable to three parties. There is the judge, whom the monitor reports to. There is the defendant, who is paying the bills and has the responsibility to review the bills to ensure that they are proper. And there are the plaintiffs, who are responsible for making sure that the agreement is structured and that the monitor is doing what the agreement requires him to do. Some of the monitoring bids that come across our desks seem high, but we attempt to select monitors that have high integrity and are trying to do their job right. Also, most monitoring agreements have caps that prevent the monitor from charging more than a certain amount. The Monitors are like the chiefs in this room – people who want to fix a problem and help improve the practices of officers on the street" (PERF, 2013, p. 31).

[111] Miletich, S., Thompson, L. & Sullivan, J. (2012, May 15). Mayor's math questioned on cost of police overhaul. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[112] Carter, M. & Miletich, S (2012, May 10). Deadline looming for accord to fix SPD. *Seattle Times*, retrieved from https://www.seattletimes.com.

[113] According to a letter sent by the Seattle City Attorney to the Mayor while the City was negotiating the Consent Decree with the DOJ, "A troubling victim narrative has emerged at SPD, in which DOJ is cast as a 'bully' seeking to impose a 'shadow chief' at an unverified, speculative cost," (Miletich, S. & Carter, M. (2012, July 17). City Attorney Rebuke's Mayor's DOJ Strategy. *Seattle Times*, retrieved from https://www.seattletimes.com).

3.2.2. The Selection of the Monitor & Composition of the Monitoring Team (Seattle)

The selection of the court-appointed monitor in Seattle ended up being significantly more difficult than experienced in other cities. Like other Settlement Agreements, the DOJ and the City were required under the Consent Decree to agree on a monitor to be submitted to the federal court for approval. If the parties could not agree on a single choice, they had the option of submitting three candidates each, for the judge to consider in making an appointment (Settlement Agreement, U.S. v. Seattle, Document No. 3-1, 7/27/2012, para. 171).

The Consent Decree, as negotiated, allowed the parties to identify a monitor for selection. Unfortunately, for the Mayor, however, the city's approval was determined by the City Attorney to be actionable by the City Council and the Mayor was at odds with the Council with respect to issues relating to the DOJ intervention.[114] Ultimately, the City Council, with the support of the elected City Attorney (who had previously served on an SPD oversight board that had been critical of the SPD),[115] settled on the choice of Merrick Bobb, the President of the Police Assessment Resource Center (PARC), based in Los Angeles (*Seattle Times*, 10/17/2012[116] & 10/18/2012)[117]. Bobb, had previously served as Deputy General Counsel *to the Christopher Commission*, which examined the LAPD for systemic excessive force after the beating of Rodney King in 1991, and as Staff Counsel for *the Koltz Commission* which conducted a similar review in 1992 as to the Los Angeles County Sheriff's Office. Bobb had been serving as the Special Counsel

[114] In fact, by the end of March, 2012, the Mayor had abandoned all pretext of trying to work with Council members on the DOJ negotiations, leading *Seattle Times* to publish an article with the following sub-headline: "A "collaborative effort" between the mayor, city attorney and City Council to create a unified response to a U.S. Department of Justice investigation into the use of force by Seattle police has unraveled, according to sources familiar with the talks" (Carter, M. (2012, March 29). Seattle panel to fix police sharply split, sources say. *Seattle Times*, retrieved from https://www.seattletimes.com).

[115] See http://www.seattle.gov/cityattorney/about-us/about-pete-holmes.

[116] Miletich, S. (2012, October 17). Police officials have doubts about monitor candidate. *Seattle Times*, retrieved from https://www.seattletimes.com.

[117] Miletich, S. (2012, October 18). Mayor rebuked for rejecting monitor. *Seattle Times*, retrieved from https://www.seattletimes.com.

for the Los Angeles County Board of Supervisors, monitoring the Los Angeles County Sheriff, since 1993.[118]

While Bobb came with extraordinary experience as a police monitor, he engendered a great deal of suspicion from the SPD command (and, thus, Mayor McGinn). Even though the Mayor and the SPD indicated a willingness to pick another candidate also supported by the DOJ (the former Washington D.C. monitor), the City Attorney and City Council insisted on the appointment of Bobb, who was also a top choice for the DOJ (*Seattle Times*, 10/17/2012 & 10/18/2012). When the City Council voted almost unanimously to support Bobb's appointment (supported by the City Attorney), Mayor McGinn "reluctantly agreed" to accept him as the Monitor (*Seattle Times*, 10/23/2012).[119] The stage was set, however, for the SPD to claim a lack of procedural due process and fairness and ultimately led a rocky start to the relationship between the Monitor and the SPD (*Mynorthwest.com*, 2/21/2013[120] & *Seattle Times*, 11/16/2013).[121]

The Seattle experience became problematic largely because the City government was divided and there was a refusal to give either faction (the Mayor and the SPD on the one hand and the City Council and the City Attorney on the other) the right to "veto" the choice of the Monitor (*Seattle Times*, 10/18/2012). Although the DOJ had intentionally set up the selection process to be collaborative between the parties, the fact that City leadership would be divided by the process did not appear to occur to the

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[118] See https://www.parc.info/staff-2.

[119] Miletich, S. (2012, October 23). McGinn bows to council, backs L.A. monitor for SPD. *Seattle Times*, retrieved from https://www.seattletimes.com. Shortly after Council's vote, Mayor McGinn released the following statement: "We know from the experience of other cities that reform efforts are successful when the police force buys in to the effort. Our office and others expressed concerns that Mr. Bobb would not be seen as an impartial monitor ... We are disappointed that the Council did not listen to those concerns and that our reform efforts may prove more difficult as a result of their vote… We believe that their vote was a mistake, but respect that this is now the City's position. Going forward, the mayor will roll up his sleeves and continue to work with all stakeholders to implement reform in our police force" (quoted in *the Seattle Times*, 10/23/2012). Unfortunately, Mayor McGinn's statement, being critical of Council's decision, did nothing to alleviate the concerns of SPD command staff and instead, exacerbated SPD issues and concerns with respect to how the Department was being treated overall by the entirety of the process.

[120] Kruse, B. (2013, February 21). Seattle police monitor blasts City for 'humiliating' him. *Mynorthwest.com*. Retrieved from https://mynorthwest.com/30270/exclusive-seattle-police-monitor-blasts-city-for-humiliating-him/.

[121] Miletich, S. & Carter, M. (2013, November 16). Monitor blasts SPD foot dragging. *Seattle Times*, retrieved from https://www.seattletimes.com.

DOJ or the Mayor while he was negotiating the agreement. As a result, the Mayor was forced by a vote of City Council to accept Merrick Bobb as the City's preferred candidate, even over his own objection and the objections of SPD Command Staff (*Seattle Times*, 10/23/12).

This ultimate result was likely disappointing to the DOJ who had a policy of proffering settlement agreements that generally made the selection of a monitor a collaborative process. As represented by the DOJ in 2017:

> Selection of a monitor generally begins as a joint process between the Division and the local jurisdiction. Usually following a public solicitation process, the parties screen and interview candidates and endeavor to make a joint recommendation for approval by the court. The Division has found that respecting the input of the local jurisdiction in selecting a monitor bolsters the Monitor's credibility and increases stakeholder confidence in the Monitor. Beginning with the Pittsburgh case in 1997, the Division has largely succeeded in coming to agreement with local jurisdictions and the court on the identity of the Monitor. When the Division is unable to come to agreement, however, the parties typically will ask the court overseeing the Consent Decree to resolve the dispute and select the Monitor, thus ensuring that the Monitor is beholden only to the court. (USDOJ, 2017b, p. 23)

The process was so disturbing that in September 2020, Monitor Bobb thought it necessary to comment on the experience at the time of his resignation from his Monitoring position, after more than seven years on-the-job:

> When I was nominated as Monitor, I was immediately seen as a threat and was strongly opposed by the Mayor, the SPD, as well as by the police officers' union. Led by Tim Burgess, Sally Clark, Nick Licata, Bruce Harrell, and others, the City Council, by an eight to one vote, nonetheless approved my selection on behalf of the City and, with the strong backing of City Attorney Pete Holmes and DOJ, I was nominated and ultimately selected by Judge Robart as Monitor. For a while, I was watched by the Administration hoping to find something to make me look bad, but those efforts soon stopped. (Bobb, 2020, p. 3)[122]

Regardless of one's opinion on the quality of the work performed by Monitor Merrick Bobb, it certainly appears that his selection as Monitor, having been imposed on

[122] Bobb, M. Seattle Consent Decree, 2013-2020. On file with author. In a footnote to his report, Bobb threw in a bit of sarcasm relating to criticism he faced as it related to monitor-related expenses: "There were those Egyptian cotton sheets I bought at Costco and a corkscrew that I purchased, not realizing that anything that facilitated the drinking of wine with the monetary support of Seattle was impermissible" (n. 5).

Mayor McGinn and the SPD by the City Council and the City Attorney, was likely misguided. While City Attorney Holmes and four members of Council acknowledged the objection of SPD command staff to the selection of Bobb, recognizing that those opinions "deserve our attention and consideration," they also argued that the SPD should not be given "veto authority" over the selection process (*Seattle Times*, 10/18/2012). Given that, in this case, there was a candidate who appeared on both the DOJ selection list and the SPD list (the former monitor for the Washington D.C. MOA), one has to wonder whether it was worth two years of conflict for the City Council and City Attorney to get their first choice, when there was a clear second choice in the wings who would have more likely been able to engage the SPD in a collaborative manner in support of a more seamless start to the reform process.

3.2.3. Other City Experiences

Interestingly, while the first monitor selection process, in Pittsburgh, was reported to have been generally successful, the selection of the Monitor in New Orleans about eight months after the appointment of the Seattle Monitor[123] suffered its own challenges, albeit for different reasons. In the case of New Orleans, there were two impediments to a collaborative choice: first, the City balked at the proposed cost for monitoring by the team that was eventually selected, arguing for a lower priced alternative;[124] and second, the City and the DOJ disagreed on the importance of having monitors with law enforcement backgrounds (Rushin, 2017a, pp. 152-153).[125]

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[123] The Seattle Monitor was appointed by the court on October 30, 2012 (U.S. v. Seattle, Document No. 35, filed 10/30/2012); the New Orleans Consent Decree Monitor was appointed on July 5, 2013. Retrieved from http://consentdecreemonitor.com/faq.

[124] In Rushin's evaluation of the New Orleans Monitor selection process, he observed that "[t]he New Orleans monitor selection process illustrate[d] the tension over allocating costs and burdens. There, the City and the DOJ sharply disagreed on the appropriate choice of monitor, due in large part to substantial difference in cost between the two options; New Orleans advocated for a cheaper monitor, while the DOJ supported the bid from a more expensive team. Ultimately, the Court sided with the DOJ" (Rushin, 2015, p. 104)

[125] As previously illustrated by Rushin, "Police agencies frequently push for monitors with law enforcement background… Conversely, the DOJ has indicated that while monitoring teams should include some individuals with law enforcement experience, lawyers should play an important role in the process. As one DOJ litigator explained, 'in all of these cases there are complicated issues of constitutional law [and] criminal procedure involved' including 'evidence gathering, data collection, [and] document review that needs to happen…attorneys are trained to do that kind of work'" (Rushin, 2015, p 104).

The experiences in Seattle and New Orleans stand in stark contrast to Pittsburgh's reportedly positive experience: the selection of the Monitor was described as "a joint process between city and DOJ officials" which allowed the city to play a "primary role" in the selection process which "likely increased the confidence of city officials in the Monitor and facilitated his work" (Davis, et al., 2002, p. 11). As further described by Davis et al. (2002):

> The selection of the Monitor by city and DOJ officials was a critical choice, and, by all indications, the successful candidate facilitated the change process. The Monitor played a [sic] early, vital role after the signing of the decree by helping officials to develop a plan of action. He operationalized imprecise standards in the decree, avoiding potential differences between the city and DOJ in interpreting the decree. He produced a compliance manual that gave city officials an exact idea of what milestones he expected them to achieve at each stage to meet his standard of compliance. His early meetings with community leaders helped reassure them that real reform was afoot. He developed a relationship with city officials that was more collaborative than adversarial, making it easier for them to accept some of the more difficult terms of the decree. (p. 64)

Given the general confidential nature of the Monitor selection process, there has never been any research evaluation of that process as a whole. As mentioned by Rushin, "No research into federal intervention into local police departments has ever evaluated the Monitor selection process…Generally, this selection process happened through a confidential negotiation process behind closed doors" (Rushin, 2017a, p. 150).

Even so, the experiences of a number of different cities in choosing a monitor have been documented. As previously noted, Rushin reported on a "transparent" process ordered by the federal judge assigned to the New Orleans Consent Decree, who required the public disclosure of each applicant monitoring team's proposals, negotiations involving a panel of officials from DOJ and the City and public hearings regarding the options. Even so, however, the process ended up forwarding two different choices to the judge, who ultimately chose the applicant supported by the DOJ, the law firm of Sheppard Mullin Richter & Hampton (Rushin, 2017a, p. 150).[126]

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[126] The New Orleans Monitor's website provides the following description of the selection process: "After reviewing the several competing proposals as well as the Parties' memoranda, the public's letters, and the transcripts and audio records of the public hearings, the Court selected Sheppard Mullin Richter & Hampton LLP as the Monitor on July 5, 2013. In selecting the Sheppard Mullin team to serve as Monitor, the Court explained its reasoning as follows: *First, the duties of the Monitor closely track the kinds of activities that are the bread and butter of legal*

The choice of a monitor in 2016 for Ferguson, MO, also involved a collaborative process: As reported by Patel (2016),

> On May 23, 2016, the Ferguson Collaborative called on officials to engage the community in the process of establishing and selecting a monitoring team. This team would be composed of a community liaison - someone already trusted by the community stakeholders - and other members of diverse backgrounds possessing expertise in racial justice and an understanding of municipal court practice. On July 12, 2016, a public hearing was held where community members, advocates, and residents could question the final four monitor candidates. Questions arose concerning each candidate's goals and how each would properly address community engagement. The public was given several days to provide feedback to the city or the DOJ on the final selection. Ultimately, the law firm of Squire Patton Boggs was selected as the Monitoring team and was approved by the court on July 25, 2016 (pp. 865-866).

3.2.4. Composition of the Monitoring Team

There is "widespread disagreement" about the best composition for a monitoring team (PERF, 2013; Rushin, 2015; Rushin, 2017a). In Seattle, the City Council's choice was a lawyer with extensive experience in police oversight who was working with two "police experts," one who worked with the DOJ on the original DOJ investigation. While study participants noted that the Mayor and the SPD would have preferred a monitoring team that would have consisted of monitors with law enforcement backgrounds, they were willing to accept a number of alternative candidates, rather than the ultimate choice who had been described to them as "uncompromising" with respect to his views on police reform.

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practice. The Monitor is not primarily responsible for formulating policies-that task falls to the City and the New Orleans Police Department ("NOPD") in the first instance. The Monitor is instead primarily responsible for reviewing the policies that the City and NOPD draw up to ensure that they comport with the requirements of the Consent Decree and constitutional policing-precisely the kind of advisory role that lawyers are accustomed to playing. Similarly, the Monitor is not primarily responsible for implementing policies. The Monitor instead has the obligation of assessing compliance with the policies. That kind of institutional investigation and assessment, which involves the collection, review, and synthesis of large amounts of information, is also a task that lawyers, particularly lawyers at firms like Sheppard Mullin, routinely perform. The Monitor also has the responsibility to report to both the Court and the public in clear and concise terms. It goes without saying that lawyers are trained to communicate with and report to courts, and the Sheppard Mullin team makes a strong case for its competence in communicating with the public as well (New Orleans police monitor website, located at http://consentdecreemonitor.com/).

The composition of monitoring teams varies across the US, although most teams are led by lawyers and also include former police chiefs, with some including academics, information technology experts, and community members as well (Alpert et al., 2017, pp. 241-242). As described by DOJ (2017b):

> Sometimes the named monitor is a person, who works with a team; other times it may be an organization, firm, or corporate entity. Monitoring teams generally include diverse perspectives, including team members with real-world policing experience reflecting both a management and rank-and-file perspective. For example, in New Orleans and Cleveland, the Monitoring teams comprise a diverse group of former police executives and officers, academics, attorneys, and community organizers. The Cleveland monitoring team includes a former legal counsel to police unions and a consultant with technical expertise in law enforcement information technology, appropriate to that agreement's focus on that department's data and technological capacity. The independent monitoring team is generally the agent of the court overseeing the reform agreement and is independent from the Department of Justice and the local jurisdiction, although, as discussed further below, most monitoring teams are jointly agreed upon by the Division and the local jurisdiction before being appointed by the court (p. 21).

3.2.5. Role & Importance of the Monitor

In 2017, the DOJ extensively reported on the role and importance of "the Monitoring team" stating that the "core of the Monitoring team's role is to:

- "Assess and report on the law enforcement agency's progress in implementing the reform agreement;
- Assist the agency in developing a plan to implement reforms and address any barriers to implementation, including by providing technical assistance;
- Evaluate whether the reforms mandated by the agreement are working and, if not, to recommend changes;
- Constructively engage communities and stakeholders in the reform process; and
- Assist the local jurisdiction and the United States in resolving any differences that might arise over the particulars of implementing the reform agreement."

  (DOJ, 2017b, p. 21)[127]

[127] The role of the monitors in Section 14141 implementation is also discussed by Walker & Macdonald, 2009, n. 167. In addition, see, Walker, 2018, pp. 1822-1823 ["The monitoring process

The DOJ went on to extensively comment on the importance of the role of the Monitor and the Monitoring team with respect to the implementation of §14141 reforms:

> Each of these aspects of the Monitoring team's role is critical to the overall success of the Division's reform agreements. Monitors act as an intermediary between the Division, the local jurisdiction, and the court and assist in resolving disputes. In this role, the independence of the Monitoring team is key. The Monitoring team's credibility allows it to play the role of neutral broker and mediator, to ensure that disagreements over the meaning of a provision or the significance of a new initiative do not become distractions from the overall goal of achieving effective, constitutional policing. The independence of the Monitoring team also bolsters the credibility, in the eyes of the public, of the final court determination that the reform agreement has been implemented.
>
> At the most basic level, the Monitoring team's job is to monitor and report on progress under the agreement. To that end, the Division's reform agreements ensure that the Monitoring team has necessary access to the agency's documents and data, as well as the ability to conduct on-site inspections and site visits without prior notice. Monitoring teams are empowered to conduct audits and reviews on all the topics covered by a reform agreement. And they are required to issue public reports detailing the status of implementing the reform agreement, usually on a quarterly or biannual basis. In the Division's current generation of reform agreements, the Monitor's assessment of implementation is an objective task that turns on the achievement of specific, defined benchmarks and outcome measures. The Monitoring team also assists the law enforcement agency in developing a framework for implementing the agreement, ensuring that deadlines are met and reforms are accomplished. The Monitoring team advises and supports the law enforcement agency to define terms, refine outcome measures, develop specific plans for implementation, and address any barriers to compliance. Monitors also support law enforcement agencies by, where appropriate, lending independent credibility to departments' and advocates' efforts to obtain the community and political support necessary to implement reforms … Monitoring teams also carry forth the community and stakeholder engagement necessary to build public confidence in the implementation of consent decrees. In the current generation of reform agreements monitoring reports are required to be public documents, which the Division generally posts to its website, and many agreements contain further provisions requiring the release of critical data—such as data about stops, searches and arrests or rates of use of force—that allow communities to participate in assessing the law enforcement agency's progress toward reform. Many reform agreements—

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involves an independent team observing on a regular basis the various reforms. Monitors report the degree of progress made to the district court and to the public through regular reports. Monitors have played a variety of roles in this process: monitor, goad, counsellor, tough-grading school teacher, and resource person"]; See also, Cleveland Monitoring Team website: "The Monitoring Team has many roles- including arbiter, advisor, and facilitator," Retrieved from http://www.clevelandpolicemonitor.net/about.

> including those in Ferguson, Albuquerque, Cleveland, Puerto Rico, New Orleans, and Seattle—require that the Monitor hold regular public meetings to directly engage communities in the Monitoring process. The Division's most recent consent decree, in Newark, additionally requires the Monitor to hold regular meetings with representatives of rank-and-file officers, further ensuring that the Monitor remains responsive to a broad range of critical stakeholders in reform. (DOJ, 2017b, pp. 22-23)

It seems well established that independent, court-appointed monitors serve a "critical and unique role…[in] overseeing the [§14141] reform process" (Chanin, 2012, p. iv). As aptly described by Walker & Macdonald (2009):

> The Monitor typically involves a team of professional consultants with prior law enforcement management experience, involvement in pattern or practice litigation, or involvement in overseeing management reforms in other areas of business or professional life. Monitors do more than simply report on the progress of consent decree and MOA implementation. Because of their capacity to investigate and to report both to the district court and to the public any implementation shortcomings, they are active agents of implementation. Their role in this regard encompasses assistance, encouragement, warnings, and threats of exposure, in varying degrees. (p. 511)[128]

The Vera Institute evaluation of the Pittsburgh Consent Decree identified the Monitor as one of "two key factors [that] enabled the city quickly to comply with the terms of the decree." Similarly, experiences in Cincinnati and Washington D.C. showed noteworthy roles for the Monitor in moving initially recalcitrant departments towards eventual success and consent decree compliance (Davis et al., 2002; Walker & Macdonald, 2009).

In addition, the existence of monitoring reports has been lauded for providing a level of transparency into otherwise closed police bureaucracies (Walker & Macdonald, 2009, p. 515 ["Taken as a whole, the reports of all the court-appointed monitors provide

[128] Similarly, Chanin (2012) identified the role of the court appointed monitor as "serv[ing] both as objective reviewers as well as intermediaries between the DOJ and the police department leadership. They attend every important planning meeting, communicate regularly with all critical staff, and follow closely progress towards the goals outlined in each clause of the settlement document. In addition to their assessment responsibilities, monitors are charged with managing the process and helping each side overcome obstacles that threaten successful implementation. A key feature of this job is the quarterly reports each monitor is required to file in order to document the implementation process" (p.109).

a revealing picture of the difficulties involved in bringing about change in a law enforcement organization"].

In 2010, the DOJ hosted a roundtable of more than 100 policing professionals to "take stock" on "the DOJ's implementation of the State & Local Law Enforcement Pattern or Practice Program." In an ensuing report, which summarized the content of the overall conversations regarding the use of court-appointed monitors, it was observed that:

> [t]here seemed to be agreement that the —right monitor can make a significant difference and that some monitors do a disservice in prolonging the process. One person suggested the development of a procedure to 'monitor the Monitors.' Another suggested that there be some way to limit the power of the Monitor, with some consideration given to the role and authority of monitors in §14141 consent decrees during negotiations. (Clark, 2010, p. 5)

In Seattle, the initial composition of the Monitoring Team was described as consisting mostly of litigation attorneys with the appearance that DOJ and the Monitor were expecting resistance to consent decree implementation and were readying themselves for a fight in court. According to one Seattle study participant: "You had to wonder how much DOJ was 'we're going to have a fight, so we're going to make sure we are lawyered up for that fight."[129]

[129] In fact, when Matthew Barge, the Deputy Director of the Police Assessment Resource Center (whose Executive Director, Merrick Bobb, served as the Seattle Monitor), was chosen as the Monitor for the Cleveland Division of Police in 2015, the composition of that team was significantly different than the original composition of the Seattle Monitoring Team. The Seattle Team was composed of six lawyers, with three serving as Monitor, Deputy Monitor and Assistant Monitor. Supplementing the team of lawyers were two "police experts," a "Chief of Staff," a "Director of Research" and a PhD. (See, Seattle Monitor, 1st Semi-annual Report, April 2013). The Cleveland Team, on the other hand, consisted of an executive team of one lawyer (the Monitor), two retired police Chiefs (the Deputy Monitor and the "Director of Implementation") and two "civilians," serving as "the Director of Community Engagement" and "the Director of Outcome Measures." The rest of the Cleveland Team consisted of a mixture of subject matter experts, to include a union lawyer, a local law professor, two PhD's, and a retired police Captain amongst others. (See Cleveland Monitoring Team, 1st Semi-annual Report, June 2016. Retrieved from http://www.clevelandpolicemonitor.net/resources-reports).

3.2.6. Challenges with Measuring Compliance

One repeated criticism of the Seattle reform process was a purported lack of clarity with respect to how compliance would be measured. Paragraph 184 of the Settlement Agreement defined "full and effective compliance" as follows:

> "Full and effective compliance" with a material requirement of the Settlement Agreement requires that the City and SPD have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) ensured that the requirement is being carried out in practice.

Paragraph 187 further stated:

> Three years after the Effective Date of the Settlement Agreement, the City and SPD may demonstrate "full and effective compliance" by showing that the standard and established practice of SPD officers is to use force within constitutional limits and that no pattern or practice of the use of excessive force exists, as demonstrated by the outcome assessments set forth in the Settlement Agreement. (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012))

In his First Systemic Assessment Report (September, 2015), the Seattle Monitor went to great lengths to try to explain what "full and effective compliance would look like:

> "As ordered by Judge Robart, the Monitor will… insist that there is clear evidence that the various requirements of the Consent Decree are in fact "being carried out in practice" and are sufficiently manifest throughout the Department and across Seattle's diverse communities. "Full and effective compliance" requires clear, sustained evidence that SPD is where it needs to be not just in a few instances or temporarily across some of the Consent Decree's provisions – but that it has reached and maintained the appropriate outcomes and compliance with the whole of the Consent Decree, that the reforms are "baked in," and that SPD has reset its culture and relationship with all the diverse communities it serves, particularly the African-American community. Our examination of individual cases or data will therefore be done with an eye toward determining what those individual instances say, in the aggregate and overall, about the performance of SPD and its officers." (First Systemic Assessment Report, 2015, p. 5)

> "However, all readers must be cautioned to note that the general numbers themselves may not tell the entire story. There is no single threshold number that SPD must reach across each and every area that represents initial compliance. For example, an assessment might judge 70 percent of a given type of investigative report as sufficiently thorough and accurate as consistent with compliance – because the quality of the remaining 30 percent of cases leaving room for improvement but being relatively close to where it should be. On the other hand, even if 90 percent of reports were

> judged to be sufficiently thorough and accurate, there still might not be initial compliance with the relevant provision of the Consent Decree because the remaining 10 percent of investigative reports were wholly inadequate, disturbingly biased, or insufficiently documented. Thus, initial compliance with provisions of the Consent Decree depends not just on the number of percent of instances where SPD is adhering to requirements but also on the quality or nature of those instances where SPD is falling short." (First Systemic Assessment Report, 2015, p. 6)

> "The true test has been and will remain whether SPD has the systems, policies, structures, and culture in place to manage for itself the risk of unconstitutional policing – and whether, through those systems, SPD holds officers and supervisors rigorously accountable through fair and transparent processes, critically analyzes officer and departmental performance based on unbiased evidence and objective data, and proactively identifies and seriously addresses performance issues and trends." (1st Systemic Assessment Report, 2015, p. 6)

The Seattle Monitor's attempt to apply the definitions of "full and effective" compliance to the policies and practices of the SPD differed from prior Monitoring efforts in other cities, where the Monitors tended to try to use quantitative methods to establish compliance levels, applying a requirement that the affected police department comply with each paragraph of the Settlement Agreement to a 95% level of certainty (a level generally used by social scientists to reach conclusions that are not likely the result of mere chance).[130]

In Pittsburgh, the Monitor developed a

> three-tiered framework for analyzing compliance… Primary compliance involves the development of a formal policy on a particular aspect of police operations. Secondary compliance involves evidence that the department has incorporated the policy into training and supervision. Operational compliance, the third level, involves evidence that officers comply with the policy in their routine activities. (Walker, 2003, p. 45)

[130] As described by Chanin in his review of four jurisdictions wherein court appointed monitors were required to determine whether full and effective compliance had been achieved: "Despite some variation in their data collection and oversight method, each monitor team applied the 95% substantial compliance threshold very similarly, regardless of the substantive nature of the provision under review or the considerable subjective authority maintained by each team" (Chanin, 2012, p. 110).

In Cleveland, the Monitor determined compliance with the use of the following terms: “non-compliance,” “partial compliance,” “operational compliance” and “general compliance.”[131]

Study participants on the City-side complained that the Monitor would subjectively evaluate compliance levels and suggested that he would only find the City in full compliance based on his own personal “gut feelings.” As stated by Rushin, however, “Ultimately, measuring compliance is an inexact science that puts considerable authority in the hands of external monitors” (Rushin, 2015, p. 108; Rushin, 2017a, p. 157).

3.2.7. Costs

Perhaps the most controversial part of the use of a court-appointed monitor to assist in the implementation of a §14141 reform effort has been the direct cost of paying for the time and expenses of the Monitoring team; expenses which the DOJ has always imposed exclusively on the City.[132] In the case of Seattle, the ultimate cost of Monitoring ended up exceeding $1 million per year.[133] Even so, when the Judge overseeing the Seattle Consent Decree compared the anticipated monitoring costs with other cities, he opined that it was akin to the purchase of a new automobile: saying that Seattle was “neither paying for an expensive foreign car or a cheap one, but was getting a ‘nice solid American car’ in the middle of the cost range” (*Seattle Times*, 11/29/2012).[134]

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[131] See, Cleveland Monitor Semi-annual reports. Retrieved from http://www.clevelandpolicemonitor.net/resources-reports.

[132] See for example, Seattle Settlement Agreement paragraph 209 that required the City of Seattle to deposit $100,000 to the “Registry of the Court as interim payment of costs incurrent by the Monitor.” The City is required to “replenish the fund” as needed, to pay the costs associated with the monitoring effort throughout the life of the Consent Decree (U.S. v. Seattle, Document No. 3-1, filed 7/27/2012).

[133] Total monitoring team costs for the period from November 2012 through January 2017 are available on the Seattle Monitoring Team website, at http://www.seattlemonitor.com/monthly-statements. Although statements for February through May 2017 are available as well, not all invoices for those months are retrievable from the website. Although monitoring has continued through 2020, the Monitoring Team has not published its invoices since May 2017. Total annual costs reported were, $837,260 for 2013, $1,109,829 for 2014, $1,091,570 for 2015 and $1,011,172 for 2016. See Table 3.5, *infra*.

[134] Miletich, S. (2012, November 29). Police monitoring to cost city $880,000 in first year. *Seattle Times*. Retrieved from https://www.seattletimes.com.

The judge's description belied some of the actual costs of the initial monitoring budget, which described a highly paid team of professionals, including lawyers and some police professionals. As noted by the *Seattle Times*, the Monitoring Team's initial budget called for one of the police consultants to be paid a princely sum of "$75,000 for 75 days of work." The Monitor and four members of his staff at the Los Angeles-based Police Assessment Resource Center (PARC) were reportedly budgeted for an average of $80,000 for the first year; a local lawyer was budgeted for a much lower cost of $35,000 for working as the Deputy Monitor (*Seattle Times*, 11/29/2012).

The charges billed by the Monitor caused much consternation amongst those research participants associated with the city and the Seattle community. City concerns publicly manifested themselves shortly after monitoring began when the Monitor, in an attempt to reduce hotel costs for out-of-town team members, rented an apartment for the team and made purchases for that apartment to include such minor items as a corkscrew and a $35 "Egyptian cotton pillow sheet." Specifically, the city budget office challenged the Monitor for what it described as "'alcohol and alcohol-related expenses,' expensive meals, toilet paper and a $35 Egyptian cotton pillowcase" (*Mynorthwest.com*, 2/21/2013).

Shortly after attending a meeting with city budget staff, the Monitor reportedly sent an email to the City (copied to the DOJ) stating that:

> we decline in the future to go through the humiliating, time-consuming, and obstructionist process we went through this morning where we were required to justify each pillowcase in the Seattle apartment, a toolkit to put together furniture bought at IKEA, or a $5.99 corkscrew, among other trivialities.

The email went on to criticize budget staff by stating that "[a]lthough we are happy to answer legitimate inquiries, we cannot abide being treated as if we were suspects being grilled about theft from the city, ... We are professionals and expect to be treated as such." The Monitor further noted that any delays in approving his December 2012 invoice (which billed $52,152 for "billable hours" and $6,664 for "overhead") "would put 'unnecessary roadblocks and obstacles' in his path and that the City was putting its agreement with the DOJ in jeopardy." He concluded by writing that: "I'm not certain that we can currently say we are getting cooperation from the city regarding the Monitoring or

movement toward full and effective implementation of the Consent Decree" (*Mynorthwest.com*, 2/21/2013).

Although the Monitor later told *myNorthewest.com* that the City and the Monitoring Team "each took a tone we later regretted, followed by mutual apologies," a source from the City stated that city officials were afraid to speak openly and honestly on the matter and a source stated that s/he was "paralyzed with fear" about the potential ramifications for criticizing the Monitor (*Mynorthwest.com*, 2/21/2013). At the same time, however, numerous research participants including many from the community, the City and SPD continued to question the costs associated with the Monitoring team. According to one participant, a city staffer was regularly sending the Monitor's billings to the City's Ethics Department and it was alleged that the Monitor moved from hourly billing to flat rate billing "to avoid scrutiny." According to one community member, who was particularly dismissive of the work of the Monitoring Team: "the amount of money spent for the Monitor was in and of itself a shocking expenditure for what we got back."

Table 3.5, below, provides a summary of the Seattle Monitoring Team's expenses for the period between November, 2012 and May, 2017 as per the invoices which have been published on the Monitor's website, http://www.seattlemonitor.com/monthly-statements. Invoices for June, 2017 to present have not been posted by the Monitor.

Table 3.5. Seattle Monitoring Team Expenses (Nov. 2012-May 2017)[135]

Month	Billable Hours (USD)	Pro Bono Hours[136]	Overhead[137] (USD)	Total (USD)
November, 2012	69,695		14,814	84,489
December, 2012	52,152		6,664	58,375*
January, 2013	60,720		9,127	69,847
February, 2013	52,016	10,750	7,998	60,014
March, 2013	69,870	23,000	6,072	65,942
April, 2013	59,032	10,450	10,354	69,386

[135] Information obtained from Seattle Monitoring Team website, http://www.seattlemonitor.com/monthly-statements. No monthly statements available on website after May, 2017.

[136] Estimated worth of "pro bono" hours reportedly donated by members of Monitoring Team.

[137] Per Monitoring Team invoices, "Overhead" includes: Travel & Per Diem, Accommodations /Cable & Equipment and Supplies.

Month	Billable Hours (USD)	Pro Bono Hours[136]	Overhead[137] (USD)	Total (USD)
May, 2013	45,255	12,912	9,316	54,571
June, 2013	40,435	27,162	4,457	44,892
July, 2013	42,402	29,550	9,107	51,510
August, 2013	42,707	14,437	7,619	50,027
September, 2013	90,872		8,382	99,254
October, 2013	80,245		7,612	87,377*
November, 2013	85,302	11,750	8,889	94,191
December, 2013	81,745		8,504	90,249
2013 Totals:	**750,601**	**128,261****	**97,437**	**837,260**
January, 2014	100,867		7,963	108,830
February, 2014	82,505	16,337	7,846	90,351
March, 2014	88,792	18,754	10,758	99,550
April, 2014	96,955	86,450	12,510	109,465
May, 2014	85,540	83,690	7,077	92,617
June, 2014	73,732	81,815	8,961	82,693
July, 2014	77,248	86,479	6,517	83,766
August, 2014	81,775	31,150	9,398	91,173
September, 2014	80,867	36,596	11,378	92,245
October, 2014	79,203	89,015	10,659	89,862
November, 2014	79,472	75,677	7,879	87,351
December, 2014	73,905	26,900	8,021	81,926
2014 Totals:	**1,000,861**	**632,863**	**108,967**	**1,109,829**
January, 2015	90,477	36,550	9,000	99,478
February, 2015	79,050	3,447	7,828	86,878
March, 2015	85,173	3,475	5,073	90,247
April, 2015	88,920	21,900	10,639	99,559
May, 2015	95,437	21,589	0	95,437
June, 2015	87,077	36,200	11,180	98,257
July, 2015	79,547	13,154	8,173	95,220*
August, 2015	85,226	28,075	6,300	99,526*
September, 2015	87,937	16,217	5,545	99,982*
October, 2015	43,949	35,028	5,681	75,431*
November, 2015	72,450	11,025	3,463	75,913
December, 2015	71,445		4,196	75,642
2015 Totals:	**966,688**	**226,660**	**77,078**	**1,091,570**
January, 2016	76,367	375	4,022	91,839*
February, 2016 ***	N/A	N/A	N/A	N/A
March, 2016	103,592	275	9,079	112,671
April, 2016	85,277	6,055	6,990	92,267
May, 2016	54,000	12,325	10,493	64,492

Month	Billable Hours (USD)	Pro Bono Hours[136]	Overhead[137] (USD)	Total (USD)
June, 2016	97,445	12,987	2,497	99,942
July, 2016	104,047	14,350	5,569	109,616
August, 2016 #	62,465	3,675	2,754	65,219
September, 2016	87,862	3,140	8,394	96,257
October, 2016	101,237	4,150	8,548	124,286*
November, 2016	96,087	5,225	3,096	99,184
December, 2016	52,687		2,711	55,399
2016 Totals:	**921,066**	**62,557**	**64,153**	**1,011,172**
January, 2017	110,467	1,515	7,909	118,377
February, 2017 #	87,030	1,870	5,823	92,853
March, 2017 #	30,497	1,595	0	30,497
April, 2017	133,457	3,265	2,711	136,139
May, 2017 #	99,750		0	99,750
Grand Total	**4,220,064**	**1,058,586**	**385,556**	**4,670,311**

*Total billing differs from subtotals due to credits or additional charges as described in invoice; ** Total Pro Bono hours for Monitoring Year #1 as per October 2013 invoice; *** February 2016 invoice could not be accessed on website; # Not all invoices for the month could be accessed on website. Acknowledgement to Kevin Rosenthal (B.S., 2020) for compiling the data for this table.

As indicated above, the costs associated with the Seattle Monitoring Team were extensive and are well in excess of the amount reported as monitoring activities have continued to the present day. Even so, the Monitoring Team did report more than $1 million in pro bono services provided over the course of a five-year period.

Costs of monitoring have been controversial in virtually every jurisdiction where court-appointed monitor teams have been put into place. The teams tend to contain members from outside the geographic region where the impacted agency is located. For example, as shown in Table 3.6, for Consent Decrees reached in 2012-2015, where Monitoring Teams were put in place, the lead Monitor either resided or worked well outside of the region where the work needed to be done:

Table 3.6. Locations of Monitors Compared to Jurisdictions Monitored

Jurisdiction	Monitor	Based out of:
Seattle, Washington (2012)	Merrick Bobb, Police Assessment Resource Center	Los Angeles[138]

[138] Information obtained from https://www.parc.info/.

Jurisdiction	Monitor	Based out of:
New Orleans, LA (2013)	Sheppard Mullin Richter & Hampton	Washington D.C.[139]
Puerto Rico (2013)	Arnaldo Claudio John Romero	Washington D.C.[140] California[141]
Portland, OR (2014)	Dr. Dennis Rosenbaum	Chicago, IL[142]
Albuquerque, NM (2014)	Dr. James Ginger (Public Management Resources, Inc.)	Pamplico, SC[143]
Cleveland, OH (2015)	Matthew Barge (PARC) Hassan Aden	New York, NY[144] Washington D.C.[145]
Los Angeles County (2015)	Dr. Angie Wolf (National Council on Crime & Delinquency)	Oakland, CA[146]

As a result, cities must not only pay for the work of the Monitors (often averaging $250 per hour),[147] but also, costs associated with travel and lodging. There are many arguments for and against these types of arrangements. Arguments for paying these types of expenses recognize that "you get what you pay for;" subject matter experts who can be considered to be independent of local policing tend to be located all over the country and their expertise is in high demand. On the other hand, it can be argued that people with the necessary expertise should be able to be located closer to an affected jurisdiction and that "pro bono" rates should apply.[148]

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[139] Information obtained from https://www.sheppardmullin.com/jaronie.

[140] Information obtained from https://www.justice.gov/opa/pr/district-court-approves-selection-arnaldo-claudio-technical-compliance-advisor-oversee.

[141] Personal linked-in communication with member of monitoring team.

[142] Information obtained from https://nij.ojp.gov/bio/dennis-rosenbaum.

[143] Information obtained from https://www.justice.gov/usao-nd/file/764261/download.

[144] Information obtained from http://www.clevelandpolicemonitor.net/

[145] Information obtained from The Aden Group LLC.

[146] Information obtained from http://antelopevalleysettlementmonitoring.info/

[147] As charged by the Seattle and Cleveland Monitoring Teams per the invoices on their websites (although research participants claimed that the Seattle Monitor was charging up to $400 per hour at times).

[148] For example, the Baltimore Consent Decree includes a team that is more localized than in other cases. The lead monitor is a local Baltimore Attorney (https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-kenneth-thompson-profile-20170919-story.html) and the Deputy Monitor is located in Washington D.C., approximately 40 miles from Baltimore. Other members of the Monitoring Team, however, are located in the far reaches of the country, including Memphis, Chicago, Seattle and Los Angeles. Retrieved from https://www.bpdmonitor.com/resources-reports).

Table 3.7. Costs of Monitoring Services for Select Cities*

Jurisdiction	Annual Cost of Monitoring
Prince George's County	$900,000
Seattle, WA	**$1.0 million**
Washington D.C.	$1.0 million
Detroit, MI	$1.75 million
New Orleans, LA	$2.0 million
Los Angeles, CA	$2.2 million

Costs from Rushin, 2015, Fig. 4.1; Seattle costs increased from Rushin's estimate of $880,000 based on data from Table 3.5.

As indicated in Table 3.7, the costs of monitoring for the Seattle consent decree actually appear to be lower than for other major metropolitan areas. If these costs were compared on a per capita basis, however, the cost of the Seattle reform effort appears to have been substantially in excess of that of other cities.[149]

[149] In 2020, the Seattle PD was budgeted for 1,422 officers (Beekman, D. (2020, October 16). Seattle has seen 110 police officers depart this year, department says. Seattle Times. Retrieved from Seattle has seen 110 police officers depart this year, department says | The Seattle Times; In comparison, the Washington D.C. Metropolitan Police Department reported 3,929 sworn officers in the employ of that department (See, D.C. Metropolitan P.D. 2018 Annual Report, p. 30. Retrieved from MPD Annual Report: 2018 | mpdc. The Detroit Police Department reports on its website employing 2,200 officers in 2021 (See, Police Department | City of Detroit (detroitmi.gov)).

Objections to the high cost of monitoring activities have been made in Cincinnati,[150] Detroit,[151] New Orleans, Los Angeles,[152] New Orleans,[153] Albuquerque,[154] and Seattle (PERF, 2013; *Marshall Project*, 4/23/2015;[155] *Frontline*, 11/13/2015). In addition, critics have suggested that court-appointed monitors have an incentive to drag out reform efforts due to the high level of compensation provided through the Settlement Agreements (Clark, 2010; PERF, 2013; *Frontline*, 11/13/2015).

At the same time, the DOJ has argued that costs associated with police reform may not be cheap, but that the costs of unconstitutional policing comes at an even greater costs, particularly in the settlement of lawsuits, community mistrust and lack of cooperation and negative impacts on the criminal justice system (PERF, 2013; *Marshall Project*, 4/23/2015; Clark, 2010; USDOJ, 2017b; Jaio, 2020).[156] In addition, evidence

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[150] The original Cincinnati monitor was replaced in 2002, after the city complained that the original monitor was "nickel and diming us to death" (Chanin, 2012, p. 173, citing Anglen, R. (2002, November 6). New Monitor Demanded: Officials Want Reform Overseer Replace. *The Cincinnati Inquirer*. Retrieved from http://www.enquirer.com/editions/2002/11/06/loc_kalmanoff06list0.html).

[151] Detroit has been described as "a worst-case scenario" where the first monitor was accused of lying about fees and expenses "to the tune of millions of dollars" The Monitor was later replaced after it was disclosed that she became involved in an inappropriate sexual relationship with the City's Mayor (Chanin, 2012, pp. 173-174).

[152] "In Los Angeles, the reform agreement was set to take five years. Police provided budget records showing about $115 million in spending. But Sharon Tso, the city's chief legislative analyst, estimated actual costs were about $300 million. The agreement took nearly 12 years, making it the longest and costliest reform by the Justice Department to date" (Kelly, K., Childress, S., & Rich, S. (2015, November 13). What happens when police are forced to reform? *Frontline*). Retrieved from https://www.pbs.org/wgbh/frontline/article/what-happens-when-police-are-forced-to-reform/. Also, as reported by Rushin, "Towards the end of the Consent Decree monitoring [in Los Angeles], the then-President of the Police Protective League [] argued publicly that the [court-appointed monitor] was "wast[ing] taxpayer dollars [with] incessant, meaningless auditing that does nothing to enhance public safety or 'reform' the LAPD." Political critics of the Consent Decree also focused their attacks on the high cost of monitoring services. Council member Dennis Zine publicly criticized the cost of things like airfare and food paid to monitors who needed to travel from out of state to perform their duties (Rushin, 2015, p. 161).

[153] In New Orleans, even though the DOJ was invited into the city by Mayor Mitch Landrieu, he later sought to have a federal judge block the Justice Department consent decree, arguing that it would cost the city at least $10 million (*Marshall Project*, 4/23/2015).

[154] In Albuquerque in 2017, the City Council asked for an audit of the work of the court-appointed monitor, concerned about the expenditure of more than $3 million dollars of public funds over the first three years of the monitoring period (Uyttebrouck, O. (2017, November 21). City Council votes to audit APD monitor. *Albuquerque Journal*. Retrieved from https://www.abqjournal.com/1095808/city-council-votes-to-audit-apd-monitor.html).

[155] Weichselbaum, S. (2015, April 23). Policing the Police. *The Marshall Project*. Retrieved from https://www.themarshallproject.org/2015/04/23/policing-the-police.

[156] In 2017, the DOJ justified the costs in their report outlining Section 14141 work over the last 20 years: "The local jurisdiction generally bears the costs of supporting the monitoring team, but

suggests that the costs of monitoring may pay for itself in the long-term through a reduction in civil lawsuits in payouts for instances of police misconduct (Rushin, 2015, ft. 24, [quoting a Detroit official as claiming that "the amount of money that we have saved on lawsuits that we had endured for years, particularly for deaths in our holding cells, have paid for the cost of implementation of the Monitoring 2 or 3 times"]).[157]

In Seattle, community research participants noted that the while the presiding judge was lauding the Monitoring Team for donating "pro bono hours" to the Seattle project, they were still billing the City at $250 per hour, "while we were working for free." Some community members believed that the amount of money paid to the Monitoring team was "shocking" in comparison to what the community "got back" for the Monitoring Team's work. Within the City, it was suggested that the DOJ should consider getting a new Monitor every three years to reduce the potential for a monetarized conflict of interest; it was also suggested that the DOJ should consider providing a bonus to the Monitor for finishing the project early or on-time. SPD research participants were particularly harsh about the costs of monitoring. One well-placed SPD member claimed that not only were the billings excessive (as they related to the costs of the Monitoring team's private apartment and travel expenditures), but also claimed there were "bogus billings" (for consultations that did not happen between SPD personnel and the Monitoring team) that went unchallenged by the City.

From the perspective of local members of the Monitoring team, however, one of the lawyers noted that "I knew every time I woke up and worked on the Monitoring Team, I would be losing money."

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the Division takes steps to ensure that the cost is reasonable and sustainable. In some cases—for example, in Cleveland, Ohio and Meridian, Mississippi—the monitoring team itself absorbs some of the administrative costs and contributes significant amounts of time free of charge. The Division has made cost estimates a critical part of its screening process for selecting monitor candidates. The current generation of reform agreements emphasizes objective measures and a gradual narrowing of the scope of the agreement to ensure that the monitoring team remains focused and works efficiently. Where cost issues have arisen as a legitimate barrier to necessary reform, the Division has worked with the monitoring team, the local jurisdiction, and the court to address those concerns" (USDOJ, 2017b, p. 23).

[157] See also, Rushin, 2015, at Chapters 4-5, providing data supporting a reduction in payouts for civil liability in Los Angeles as the result of a successful implementation of the Los Angeles Consent Decree; see also, Powell (2017) exploring data from 27 jurisdictions and concluding that preliminary evidence "indicates that consent decrees may reduce civil rights violations, as operationalized by section 1983 litigation, an indicator of police misconduct" (p. 575).

3.3. Other City Experiences

With 40 different jurisdictions having experienced the implementation of some form of Consent Decree or Settlement Agreement over the past twenty-plus years, the different experiences of many of the jurisdictions have been either the subject of evaluation studies, academic journal articles, and/or media reports. As a comparison to the Seattle experience, this Chapter describes some of those experiences as described in the academic and professional literature, as well as through evaluation studies and media reports.

Even though §14141 was passed by Congress in 1994, and, as such, has been in effect for more than 25-years, there have only a limited number of evaluation studies, looking at the long-term effectiveness of reforms initiated as a result of USDOJ pattern or practice law suits. In addition, only two *comprehensive* studies have evaluated the effectiveness of individual consent decrees: the first, a two-part study, relating to the City of Pittsburgh (Davis et al., 2002 & 2005) and the second relating to the City of Los Angeles (Stone et al., 2009).[158]

By 2014, however, more data driven discussions of the relative successes and failures that could be attributed to §14141 litigation began to appear. The most prolific authors, Chanin and Rushin, used various forms of data to conduct limited evaluations of Pittsburgh and Los Angeles, as well as Cincinnati, Detroit, Prince George's County and Washington D.C. (Chanin, 2012; Chanin, 2014; Rushin, 2014; Chanin, 2015; Rushin, 2015; Chanin, 2016; Rushin, 2016).[159]

In other studies, academics (including Chanin and Rushin) evaluated data obtained from a wide swath of police agencies involved in DOJ investigations and

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[158] As explained by Chanin (2014): "The majority of the field's empirical knowledge derives from case studies of reform in Pittsburgh and Los Angeles. Stone, Foglesong, and Cole's (2009) examination of LAPD's experience under federal oversight provides a description of the reform effort and a substantive evaluation of the twelve-year process (2001–2013)" (p. 39).

[159] The PhD dissertations written by Chanin, *Negotiated Justice: Legal Administrative and Policy Implications of Pattern or Practice Police Misconduct Reform* (2012) and Rushin, *Structural Reform Litigation in American Police Departments* (2015) contributed significantly to the literature on Section 14141; both dissertations conducted original research (semi-structured interviews with a diverse group of stakeholders) and evaluated multiple data points (including crime and arrest rates, citizen complaints, use of force incidents and the like) to draw conclusions on the levels of success of Section 14141 consent decrees and address issues of sustainability.

Settlement Agreements (Rushin & Edwards, 2017; Powell et al., 2017; Chanin, 2018; Devi & Fryer, 2020; Jaio, 2020). Some of the research looked into issues such as de-policing, §14141 investigation impacts on crime rates, and the sustainability of reform (Rushin & Edwards, 2017; Chanin & Sheets, 2018; & Devi & Fryer, 2020).

Additional, but more limited, evaluation studies have also been conducted, including a 2007 study evaluating "police-community relations" in Cincinnati the same year that the DOJ-Cincinnati MOU was terminated (Schell, Ridgeway, Dixon, Turner & Riley, 2007), and a study of police uses of force, before and after the imposition of the Consent Decree in Washington D.C. (Bromwich, 2016).[160]

Section 3.3.1 presents the experiences of those agencies subject to the various evaluation studies, based on the available academic and professional literature to include the Pittsburgh Police Department (1997-2002), the Los Angeles Police Department (2000-2009), the Metropolitan Police Department (Washington D.C.) (2001-2008), the Cincinnati Police Department (2002-2008), the Detroit Police Department (2003-2014), and the Prince George's County Police Department (2004-2009).

Section 3.3.2 provides examples of experiences of additional cities where agencies have been found in compliance with their Settlement Agreements with the USDOJ (including the Steubenville Police Department OH (1997-2005), the New Jersey State Police (1999-2009), the Columbus Police Department, OH (2002-2004), the Detroit Police Department, MI (2003-2014) and the East Haven Police Department, CN (2012-2017) based largely on media and independent monitoring reports.

Section 3.3.3 summarizes experiences of various cities which are still operating pursuant to Consent Decrees or Memorandums of Understanding, and which have been mentioned in some limited evaluation studies and media accounts: to include the Portland Police Bureau, OR (2012-ongoing),[161] the New Orleans Police Department, LA

[160] The report was conducted by the then-former Washington D.C. court-appointed Monitor. As indicated by USDOJ (2017b), the independent monitorship in Washington D.C. was terminated in 2008, although under a transition agreement, the Metropolitan police force provided on-going reporting on certain provisions of the MOA until February 2012. (p. 42).

[161] I served as the first Director of the Independent Police Review Division for the Portland, Oregon, City Auditor's Office from 2001 through 2005, completing my service six years before the DOJ investigation finding the Portland Police Bureau subject to the provisions of Section 14141.

(2013-ongoing), the Puerto Rico Police Department (2013-ongoing), the Albuquerque Police Department, NM (2014-Ongoing), the Cleveland Division of Police, OH (2015-ongoing),[162] the Ferguson Police Department, MO (2016-ongoing), the Maricopa County Sheriff's Department, Arizona (2015-ongoing), the Alamance County Sheriff's Office, NC (2016-ongoing), the Miami Police Department, FL (2016-ongoing) and the Baltimore Police Department, MD (2017-ongoing).

3.3.1. Evaluated City Experiences

Pittsburgh, Pennsylvania (1997-2002).

Pittsburgh had the dubious distinction of being the first city where the DOJ took action on a sustained pattern or practice violation.[163] The DOJ investigation took place against the backdrop of the 1996 death of an African-American businessman and a subsequent class action lawsuit, brought by the ACLU and community leaders against the Pittsburgh Police Bureau. (Gilles, 2000, p. 1405).

As previously noted, Pittsburgh was the subject of the first evaluation studies relating to the implementation of §14141 reforms – the first in 2002, the same month that the Consent Decree was terminated (Davis, et. al, 2002) and the second in 2005 (Davis et al., 2005). The studies, conducted under the auspices of the Vera Institute of Justice, described their methodology as follows:

> In support of a follow-up evaluation report, researchers reported conducting, "both before and after the decree for the Bureau was lifted in 2002" observations of "police in [the] field," interviews with "key officials and community leaders," "focus groups with police officers," citizen and officer surveys, and "conducted original analyses of police data." (Davis et al., 2005, Executive Summary, para. 2)
>
> … We used a variety of methods to abstract lessons from the Pittsburgh experience. Our primary means of gathering information was through in-depth interviews with police officials, the Monitor, police officers, union members, OMI staff, human rights activists, and community leaders. Where

As such, I have no personal knowledge relating to the experiences of Portland as reported in this paper.

[162] Although I have been a member of the Cleveland Monitoring Team since 2016, no information obtained herein is based on my personal experiences or any information (confidential or otherwise) obtained over the course of my monitoring activities. Instead, all information herein has been obtained from academic literature, published information and media reports.

[163] The Pittsburgh Consent Decree is located at: https://perma.cc/D4BK-EHCZ.

> we could, we also examined trends in measures of police accountability and activity, trends in the filing and investigation of citizen complaints, and crime indicators. Finally, we surveyed 400 Pittsburgh residents to ascertain what they knew about the Consent Decree and their perceptions about changes in policing since the decree was signed. (Davis et al., 2005, p. 8)
>
> … The bulk of our data came from interviews with police administrators, police officers, police union members, the federal police monitor, OMI officials, and community leaders. Information from these sources was sometimes in conflict. Therefore, we gathered data on trends in police and OMI performance and conducted a citizen survey to determine what citizens thought of the decree and its effect on policing in Pittsburgh. (Davis et al., 2002, p. 62)

The 2005 evaluation report described a similar methodology:

> Vera researchers have studied the Pittsburgh Police Bureau since 2001. Both before and after the decree for the Bureau was lifted in 2002, the researchers observed police in field and management settings, interviewed key officials and community leaders, conducted focus groups with police officers, surveyed citizens, reviewed the federal monitor's reports, and conducted original analyses of police data. In 2003, researchers also surveyed more than 100 front-line officers. (Davis et al., 2005, Executive Summary)
>
> In the year before the decree ended, we measured several important indicators of police performance and civilian satisfaction and trust, providing baselines for comparison with the period after the decree. We continued data collection in the post-decree phase, allowing us to compare the figures before and after the lifting of the decree. (Davis et al., 2005, p. 5)
>
> Our main source of information was in-depth interviews with key informants including police command staff, union officials, OMI staff, and leaders of community organizations. We interviewed police and OMI administrators at regular intervals throughout the project. We interviewed leaders of community organizations in the final year of the decree and again in the year after it ended.
>
> We used two methods to gauge the effects of the decree-related reforms on police officers and first-level supervisors in the year after the decree ended. We conducted focus groups with officers and supervisors in all six of Pittsburgh's police zones. (Davis et al., 2005, p. 6)

In addition, Pittsburgh has been the subject of a number of additional more limited evaluation studies (Chanin, 2012; Chanin, 2014; Chanin, 2015; Chanin, 2016; Devi & Freyer, 2020) and academic comment (Gilles, 2000; Walker & Macdonald, 2009; Walker, 2012; Rushin, 2017a).

Pittsburgh officials have been described as having been "angry over being singled out" for the first §14141 enforcement action (Chanin, 2012, p. 40).[164] The former City Solicitor was quoted as alleging that, in its investigation, the DOJ failed to interview even one police officer, instead, relying solely on complainant allegations (Chanin, 2014, ft. 7).[165]

In Pittsburgh, an explicit decision was made to exclude the police union from the negotiation process. According to Chanin, "[t]he union opposed the process from the outset and to the extent possible, fought the implementation of reforms throughout." Chanin was unable to determine though his research to what extent a decision by the reform-minded police chief to exclude the union from the negotiation process might have exacerbated the union's opposition to Consent Decree implementation (Chanin, 2012, p. 178).[166]

Although the City initially considered fighting the DOJ action, they eventually decided against litigation and in favor of a settlement agreement with the DOJ (Chanin, 2012, p. 40). As reported in the Vera Institute evaluation of the Pittsburgh consent decree, conducted the same year that the Consent Decree was terminated, there were "three main factors in the city's decision" to settle with the DOJ: 1) the arrival of a new reform-minded Chief who was supportive of many of the DOJ's recommendations, 2) the realization that Police Department record keeping was so deficient as to make it difficult

[164] As described in section 7.2, Seattle officials were likewise angry and upset over being singled out for a Section 14141 enforcement action, believing there to be many other police departments with worse records than the SPD that were more deserving of federal intervention.

[165]The reaction of City officials to the DOJ's Pittsburgh findings mirrored the reaction of a number of SPD and City-affiliated research participants. As noted by the 2002 evaluation report: "[Pittsburgh] City officials were skeptical that the Justice Department could successfully make its case and initially decided to fight the allegations. Neither the mayor, police administrators, nor the city solicitor believed that the practices of the Bureau of Police were so abusive of civil rights that federal intervention was warranted. City officials were united in their frustration and disbelief that Pittsburgh was being targeted. According to one police official, "There was a sense of…why us?" (Davis et al., 2002, p. 7). Identical feelings and comments were made by Seattle city and police officials over the course of this research.

[166] Although Chanin did comment that "although it is hard to trace such [union] opposition directly to McNeilly's decision to exclude the union from early decision-making, this decision, in combination with McNeilly's combative leadership style does seem to have exacerbated the situation" p. 178).

to defend the case,[167] and 3) the recognition that the new database system that was demanded by the DOJ could potentially be used to defend against future allegations of police misconduct (Davis et al., 2002, p. 7).

On September 13, 2002, the Pittsburgh consent decree was terminated. Overall, the Pittsburgh evaluation studies (Davies et al., 2002 & 2005) found that implementation efforts were successful. The studies attributed the success to the willingness of the city to overcome its initial resistance, the work of the court-appointed monitor who produced a working "compliance manual" and who consulted with community early-on in the process, and the work of a reform-minded Police Chief who developed a working early intervention system to identify problematic officer behavior, put an emphasis on supervisor accountability and who replaced "indiscriminate drug sweeps with intelligence-based enforcement." The evaluation studies also acknowledged the importance of the adoption of new use-of-force policies. Community members specifically identified the Consent Decree as "a progressive tool, essential to Pittsburgh's efforts to reform the Police Bureau" (Davies et al., 2002, Executive Summary, pp. 11, 34 & 64).

Ultimately, the 2002 evaluation concluded that "[i]t is irrefutable that the Consent Decree had led to many positive changes in Pittsburgh policing," citing new policing relating to capturing information on enforcement activities, improved police training, an improved process for filing and investigating citizen complaints, and data which did not support allegations of increased crime or trend data supporting allegations of "depolicing" (Davis et al., 2002, pp. 62, 63 & 65).[168] The evaluation further found that "in some ways, the Consent Decree was a godsend to the police chief" in that it allowed him to "circumvent[] the political battles that he would have had to fight with the union to implement reforms. It also ensured the City Council's commitment to provide funds for the reforms" (Davis et al. 2002, p. 12).

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[167] City officials in Seattle have likewise acknowledged that the SPD's failure to create or maintain a working management information system would have made it very difficult for Seattle to successfully defend against a DOJ pattern or practice case.

[168] Although a contrary finding was made after a data analysis conducted by Devi & Freyer in 2020 [working paper not peer reviewed], which concluded that: "Consistent with our general hypothesis, crime in Pittsburgh increased by 306.82 as a result of the [DOJ] investigation" (Devi & Freyer, 2020, n. 43).

Although the 2002 evaluation noted that positive comments were made about the implementation of the Pittsburgh Consent Decree, particularly as it related to training and the early intervention system, it also noted that "overwhelmingly, the comments of both officers and supervisors about the decree were negative." However, the evaluation did not include a formal survey of officer opinions, and the evaluators were unable to determine to what extent strong negative opinions were held by a majority of officers or only a vocal minority. In addition, officer claims about the negative consequences of the decree on crime and police productivity was largely refuted by the data (Davis et al., 2002, p. 48).

By the time the 2005 follow-up evaluation study was conducted, the evaluators noted that "[f]or the first time in our experience in Pittsburgh, community leaders seem more concerned about the police stopping crime than about whether they violated the civil rights of citizens" (Davis et al., 2005, p. 36). Although the evaluation did note that there still appeared to be skepticism about the police within the African-American community (Davis et al., 2005, p. 41). However, the 2005 evaluation report did identify continuing issues with respect to the morale of rank-and-file officers:

> Low morale continued to be the dominant theme in the focus groups, reinforced by layoffs, aging equipment, and the Bureau's policy of annually rotating 20 percent of officers in each zone. Resentment about the decree still ran strong, with many officers expressing the belief that the rank and file had been "sold out" by the administration . . . We continued to hear claims that fear of complaints and disciplinary actions for minor infractions kept officers from being effective. One sergeant lamented that "police officers are afraid to arrest people; they give people too many chances." Officers and supervisors alike continued to complain about the amount of paperwork required by the new accountability mechanisms. (Davis et al., 2005, p. 17)[169]

Even considering the police morale challenges that were identified, the 2005 evaluators found that: "[d]espite recent financial strains, those reforms remain firmly in place today, and both community leaders and citizen surveys reflect significant

[169] Similar morale problems have been described in Seattle. However, it has to be considered the low morale may very well be an issue for all major city urban police officers. As pointed out by one Seattle command officer, "the only thing police officers hate more than change, is the way things are…"

improvements in service" (Davis et al., 2005, Executive Summary).[170] As to long-term sustainability, the 2005 evaluation report noted that:

> [i]n Pittsburgh, local policing is again a local matter, but its future may depend as much on the engagement of citizens and police supervisors as it does on senior management's ability to sustain the procedural improvements put in place over the past six years. (Davis et al., 2005, p. 43)

The 2005 evaluation report concluded that: "[t]here are strong signs a year after most of the decree has been lifted that federal intervention can encourage long-term improvements in police accountability" (Davis et al., 2005, Executive Summary).[171] The 2005 evaluation report went even a step further, asserting that the Consent Decree had actually changed the culture of the Pittsburgh Police Bureau:

> There is no question that the implementation of the Consent Decree requirements in Pittsburgh dramatically changed the culture of the Bureau of Police. Since 2001, we have documented the improvements in accountability: tracking of use of force, traffic stops, searches and seizures, and subject resistance; development of a comprehensive early warning system; centralized review of all data tracked in the early warning system; creation of a management meeting to review officers who might be headed for trouble, and improved training in use of force and cultural awareness. (Davis et al., 2005, p. 40)

Chanin (2012), however, reported finding "mixed" findings with respect to the long-term sustainability of the Pittsburgh reform effort, finding "simultaneous[] signs of progress and indications of slippage" (p. 32).[172] First, Chanin did not agree that the Pittsburgh consent decree succeeded in changing officer culture. Chanin noted that,

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[170] The 2005 evaluation report ultimately concluded that: "[t]he overarching question in Pittsburgh was whether a reform process that relies on legitimacy not from local sources, but from a federal court, could succeed and continue after the federal court withdrew. The simple answer to that question is "yes." There is no question that the implementation of the Consent Decree requirements in Pittsburgh dramatically changed the culture of the Bureau of Police" (Davis, et al., 2005, p. 40)

[171] Interestingly enough, in Seattle, the DOJ did make efforts to solicit input from community and officers to use during the ensuing Consent Decree negotiations and agreed to the creation of a Community Police Commission (CPC) to provide both community and union input into the implementation process. Even so, the CPC made an effort to intervene as a party and openly criticized the DOJ and the City for minimizing their role in the process and rank and file officers and the police unions opposed Consent Decree implementation at various stages in the process (See Chapter 7.7.3 & 7.8, *infra*).

[172] Chanin made similar findings with respect to the Washington D.C. Settlement Agreement, which had been terminated 4 years earlier (Chanin, 2012, p. 32).

> [d]ata from the Vera study [cited herein as "Davis et al."] indicates that though some PBP officers may see the benefit of increased oversight and centralized accountability, most continue to resent the loss of discretion associated with the reform. Citizen complaint data also shows a fairly clear difference between police performance during the implementation effort and that following termination. (Chanin, 2012, p. 255)

Second, Chanin quoted a 2010 interview he conducted with the former PPB Chief of Police who led the reform effort, asserting that the police union had "fought long and hard to try to negate some of the things that the Consent Decree brought about" and had succeeded in some areas by working with sympathetic elected city officials (Chanin, 2012, p. 311).

Similarly, by 2012, Walker (2012) was also questioning the extent to which the Pittsburgh reform effort had been sustained since the termination of the Consent Decree ten years before. Specifically, Walker noted that:

> a [Pittsburgh] police officer remained on duty in 2012 despite three separate allegations of attempts to extort sexual favors from women in cases between 2008 and 2012. Additionally, in 2011 it was revealed that an officer was on duty despite thirty-three citizen complaints and that another officer had two-dozen complaints. (Walker, 2012, p. 64)

Chanin revisited the sustainability of the Pittsburgh reform effort in 2015. He noted that "[m]uch has happened in Pittburgh since the [2005 evaluation] study was published, including three mayoral transitions, the installation of four new police chiefs, and a protracted budget crisis." After reviewing data regarding use of force incidents and assaults committed against PBP officers, Chanin concluded that "[r]ecent data suggest that advances in officer accountability and community trust have eroded considerably over the past several years." Chanin also concluded that recent events had appeared to "have had a dramatic effect on police-community relations in the city and continue to negatively affect public perceptions of the Bureau." Perhaps most concerning, however, was a statement made by Pittsburgh Mayor Bill Peduto who suggested that "a recent corruption scandal and several high- profile force-related incidents [had] the department 'on the verge of another consent decree'" (Chanin, 2015, p. 183).[173]

[173] Quote obtained by Chanin from Benzing, J. (2014, July 1). Pittsburgh police could face second federal consent decree, Peduto says. *Public Source*. Retrieved from http://publicsource.org/from-the-source/pittsburgh-police-could-face-second-federal-consent-decree-peduto-says.

Chanin stepped back somewhat from his conclusions in a 2016 journal article after yet another change in PPB leadership. At that point, he noted that "the current state of police-community relations in Pittsburgh may be as strong as it has been since 2002 when the Consent Decree was dissolved." Chanin quoted the executive director of the Citizens Police Review Board who credited the new police chief for reorganizing the Bureau "creating a new identity in the public perspective and keeping everyone safe, cops as well as the community." Chanin concluded that

> While it is still in its early days, at least some of [the new Chief's] rhetoric on accountability and transparency are support by evidence. According to a recent analysis of 350 police websites, PBP was the second-most transparent department among those sampled. (Chanin, 2016, pp. 85-86)

In Rushin's 2017 book, entitled: *Federal Intervention in American Police Departments*, the author also noted that things in Pittsburgh appeared to change in 2006 when the new Mayor fired the Chief "sid[ing] with local police union leaders, who claimed that [the Chief's] use of excessive disciplinary action hurt officer morale." Rushin further noted that "[i]n the years since this change in leadership, civil rights advocates have worried that the Bureau 'is now sliding back towards where it was' before federal intervention." Rushin also used the Mayor's 2014 quote regarding the potential for a second consent decree, concluding that "[t]he entire Pittsburgh story demonstrates how quickly reforms can unravel without institutional support" (Rushin, 2017a, pp. 241-242).

Further evidence of reform slippage was seen in 2017, when the *New York Times* ran an article with the headline '*It Did Not Stick': The First Federal Effort to Curb Police Abuse.* According to the article: "By 2002, when the Pittsburgh decree expired, the department was considered a model of progressive policing." However, it was identified that

> four years after the Consent Decree ended in 2002, a new mayor, elected with union backing, took office and promptly dismissed Chief McNeilly [the Chief who backed the reform process] … Over time, various aspects of the Consent Decree fell out of use…

The *Times* went on to quote a University of Pittsburgh law professor who suggested that "the only realistic way to look at this is that it did not stick" (Stolberg, S. (2017, April 9) *New York Times*; see also, Walker & Macdonald, 2009, p. 525).

Los Angeles, California (2001-2009).

Given that the 1991 beating of Rodney King and the ensuing *Christopher Commission* report finding systemic use of excessive force by the LAPD was a key factor in the passage of §14141, Los Angeles, ironically became the fifth City to settle a §14141 investigation with the USDOJ in 2001.[174] The DOJ investigation was the result of publicity surrounding the "LAPD Rampart Scandal," wherein an LAPD officer, charged with the theft of cocaine from the LAPD evidence room alleged systemic "noble cause" corruption amongst members of the LAPD Gang Unit ("Community Resources Against Street Hoodlums, a.k.a. "CRASH") (Kupferberg, 2008, pp. 134-135).[175]

As commented on by Walker (2012):

> the 2000 Justice Department consent decree settlement with the Los Angeles Police Department (LAPD). That settlement was far longer and more detailed than, for example, the 1997 consent decree involving the Pittsburgh Police Department. A major part of the explanation is that the LAPD, unlike the Pittsburgh Police Department, had in place policies on the use of force that were at least close to emerging national standards. The problem in the LAPD lay with the administration of those policies, and the LAPD consent decree contains elaborate requirements designed to improve that enforcement. (p. 67)

Like Pittsburgh, the negotiation of the Los Angeles consent decree left out the police union. In fact, in November 2000, the Police Protective League "attempted to intervene and block a proposed negotiated settlement between the city and the government," claiming that the union had been "deliberately excluded" from consent decree negotiations (Rushin, 2015, p. 145).[176]

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[174] The Los Angeles Consent Decree was filed with the court on June 15, 2001 and is located at: https://perma.cc/JNG7-G5MY. As previously noted, Pittsburgh and Steubenville OH negotiated the first two consent decrees in 1997; followed by the State of New Jersey in 1999; the Montgomery County Police Department, MD, followed with an MOU in 2000 (USDOJ, 2017a, p. 25).

[175] It was alleged that members of the CRASH unit planted guns and narcotics on gang members to facilitate their arrest and incarceration and were involved in covering up "bad" officer-involved shootings. It should be noted that I was the Los Angeles County Deputy District Attorney assigned to investigate, prosecute and debrief Raphael Perez, the officer-turned-informant in the case and was assigned to investigate the LAPD Rampart Scandal from its inception in 1999 until 2001.

[176] Citing, Giordono, J. & Kandel, J. (2000, November 2). Police Union Threatens Suit; LAPD: League President Says Officers to File Federal Case About Consent Decree. *Long Beach Press-Telegram*.

The Los Angeles Consent Decree was eventually terminated in 2009. The final monitoring report asserted that

> [w]e believe the changes institutionalized during the past eight years have made the LAPD better at fighting crime, at reaching out to the community, in training its officers, in its use of force, in internal and external oversight, and in effectively and objectively evaluating each of the sworn members of LAPD. (Clark, 2010, p. 9)

As previously noted, the Los Angeles Consent Decree was the subject of a comprehensive evaluation study by the Harvard-Kennedy School which was published in 2009, two months before the LAPD was found in "full compliance" with its consent decree (Stone et al., 2009).[177] The Harvard study was based on "multiple research methods," including "hundreds of hours of participant observation from patrol to the command staff" as well as the analysis of "administrative data on crime, arrests, stops, civilian complaints, police personnel, and the use of force." Survey instruments were created and compared to prior survey results of police officers and community members. Researchers also conducted "a series of formal focus groups and structured interviews with police officers, public officials, and residents of Los Angeles" (Stone, et al., 2009, p. i). The researcher's ultimate conclusion was that the LAPD had undergone significant change since the initiation of the Consent Decree process and that the "management and governance of the LAPD have also changed for the better under the decree" (Stone et al., 2009, pp. i-ii). The Harvard study described the reasons for the success of the federal intervention and speculated as to its sustainability:

> In sum, the evidence here shows that with both strong police leadership and strong police oversight, cities can enjoy both respectful and effective policing. The LAPD remains aggressive and is again proud, but community engagement and partnership is now part of the mainstream culture of the Department. The Department responds to crime and disorder with substantial force, but it is scrutinizing that force closely and it is accountable through many devices for its proper use. Will the management and oversight improvements persist if the Consent Decree ends? Better yet, will management and oversight become still stronger? While we cannot answer

[177] The Harvard report was published in May 2009; the LAPD was found to be in full compliance with the Consent Decree on July 15, 2009; the Consent Decree was nonetheless continued in effect until May 15, 2013, when it was finally terminated after a period of almost 12 years (Rushin, 2015, p. 106 (Figure 4.2) & Appendix B, p. 178); Rubin, J. (2013, May 16). Federal Judge Lifts LAPD Consent Decree*. Los Angeles Times*, retrieved from Federal judge lifts LAPD consent decree - Los Angeles Times (latimes.com); LAPD Consent Decree Over (2013, May 16). ABC13 News. Retrieved from https://abc13.com/archive/9105879/.

> those questions in advance, the LAPD appears ready for that test. (Stone et al. 2009, p. ii)

Even more so than Pittsburgh, the Los Angeles Consent Decree has been the subject of a large number of more limited evaluation studies (Kupferberg, 2009; Chanin, 2012; Rushin, 2015a; Rushin, 2015b; Chanin, 2016; Rushin, 2016; Alpert, et. al, 2017; Jaio, 2020), as well as academic and practitioner comment (Gilles, 2000; Bobb, 2003; Walker, 2003; Walker, 2008; Rushin, 2014; Chanin, 2015; Walker & Macdonald, 2009; Clark, 2010; Walker, 2012; PERF, 2013; Walker, 2017; Walker, 2018; Hardaway, 2019).

Like Seattle, politics played a significant role in the negotiation and implementation of the Los Angeles Consent Decree. The then-Mayor, like the Mayor of Seattle, argued that while reform was necessary, a "full-scale federal takeover" was not necessary and the municipal and police leadership should have been given the opportunity to lead any reform efforts. Mayor Riordan argued that "there's no one better to make reforms than the chief, the command staff, the Police Commission, the inspector general, the independent task force, the council and myself."[178] On the other hand, the City Council appeared to acknowledge that the City had failed to reform the LAPD as needed and that outside intervention was required (Rushin, 2015, pp. 144-145).[179]

While Seattle City officials later complained about examples of excessive force being taken out of context, misrepresented and not accurately depicting the actual state of SPD use-of-force, LA officials complained that the DOJ's investigation findings letter failed to provide any specific examples and provided no supporting evidence for the DOJ's pattern or practice finding. At the same time, however, "city leaders seemed resigned to the inevitability of significant federal intervention" (Rushin, 2015, p. 145).

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[178] See Rushin, 2015, p. 144, citing, Gittrich, G., Barrett, B., & Haussler, A., (2000, May 10). L.A. Admits P.D. Problem; LAPD: But, Says Riordan: 'My Preference is Local Control. *Long Beach Press-Telegram*.

[179] The Harvard Study commented on the reasons for the City settling with the DOJ as follows: "Officials involved in the negotiations over the Consent Decree give varying accounts of the reasons for the city agreeing to settle the case without litigation, such as the political fallout from Rampart, or the Police Department's failure to follow through on earlier commitments to the Department of Justice over the implementation of an officer tracking database. We know of no authoritative account" (Stone et al., 2009, n. 3).

To some in Los Angeles, it seems as though the DOJ had been lying in wait for an opportunity to intervene. This feeling seemed confirmed when the head of the Justice Department's Civil Rights Division publicly stated that "[p]olice reform has been an unfinished item on the Los Angeles agenda for almost a decade…This time, reform must be at the top of the agenda for as long as it takes to get the job done" (Stone et al., 2009, pp. 4-5).[180]

Many of the Los Angeles experiences, on their face, seemed to mirror the experiences in Seattle, to include the fact that new leadership, in the form of the appointment of an outside Chief, was credited for the success of Consent Decree initiated reforms. As noted by Law Professor Erwin Chemerinsky, the author of an Independent report evaluating the LAPD's response to the Rampart Scandal: "Bratton made clear that the culture that tolerated an excess of force, where a code of silence was just pervasive, could no longer be tolerated" (*New York Times*, 8/12/2011).[181] The Harvard study agreed with the assessment that Bratton's leadership in the implementation of the Consent Decree was an important factor in the success of the §14141 reforms (Stone et al., 2009, p. 10).

Additionally, the Harvard study found wide-spread community support for what was perceived as a new LAPD culture that supported a "willingness" to "'listen to criticism,' 'admit mistakes,' and participate in sometimes 'painful dialogue' with communities." At the same time, however, some community members worried about whether the reforms had truly penetrated deeply into the LAPD culture and whether the reforms would outlive the tenure of Chief Bratton. (Stone et al., 2009, p. 47).

Even so, the Los Angeles experience, although it took a complex decree that was in place for almost nine years (with a "transition agreement" in place for another four years),[182] has been called a great success, both by the Harvard-Kennedy School evaluation study and by community leaders.

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[180] Citing, Bowles, S. (2001, October 3). LAPD agrees to list of reforms; U.S. will be watching. *USA Today*.

[181] Nagourney, A. (2011, August 12). In Los Angeles, a police force transformed. *New York Times*. Retrieved from https://www.nytimes.com/2011/08/13/us/13lapd.html?pagewanted=all.

[182] USDOJ, 2017b, pp. 41-42.

According to the Harvard evaluation study, "success in terms of implementing the decree went hand in hand with improved morale and reductions in crime." Stone et al. (2009) further identified police leadership as having an impact on post-consent decree crime levels:

> In the first years, when the Department was led by officials who failed to implement the decree (perhaps because they had resisted and resented it from the start), crime in Los Angeles increased. Then, when new leadership in the Department began to drive implementation of the Consent Decree, the crime trend turned and fell. The pattern is unmistakable: recorded crime fell after 2002 during the period in which the decree was embraced by the leadership of the LAPD, after rising during the period in which implementation was stalled. (p. 6)

In addition, the evaluation study identified decreases in officer involved use-of-force; as well as successes in the implementation of an early intervention system and a new capacity for the LAPD to conduct internal audits (Stone et al., 2009, pp. 33, 38 & 39). The Consent Decree also formalized the role of the Inspector General, allowing for independent evaluations of serious uses of force and recommendations for the improvement of LAPD practices (Stone et al., 2009, p. 55).

In a *New York Times* article published two years after the evaluation study, community leaders were effusive in their praise for reforms put in place as the result of the federal intervention:[183]

> "It's been an amazing transformation," said John W. Mack, a former head of the Urban League who is the president of the Police Commission, the civilian board that oversees the force. "The L.A.P.D. of today is very, very different than 10, 12 years ago, when I was one of the people who was constantly battling them." Constance Rice, a civil rights lawyer who regularly sued the department two decades ago, said, "We've gone from a state of war to becoming partners here."

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[183] As of 2016, positive comments continued. As observed by Chanin: "Much of the response to the [LAPD] reform effort has been positive. Attorney Merrick Bobb, who is currently the Independent Monitor of the § 14141 process in Seattle and longtime Los Angeles resident, saw the LAPD go from 'an occupying army to being a community partner.' Critics of the Department also have recognized a change. 'I'm not particularly fond of the police,' said Clarence Heard, a minister in South Los Angeles, 'but, to be honest with you, I think L.A. is much better since the feds took over the LAPD. You know, I think they work harder at trying to defuse a situation as opposed to escalating a situation.' According to the executive director of the ACLU of Southern California, the Consent Decree process resulted in 'serious culture changes' to the Department" (Chanin, 2016, pp. 102-103).

> … "Bratton took them from the police force with the biggest police corruption scandal in the country and the biggest riot in American history on its résumé to a police force that was producing declining crime, had won the confidence of a liberal police commission and won the respect of the black middle class," Ms. Rice said. "The L.A.P.D. was hated by everybody. Bratton didn't only reduce crime. He created a new policing atmosphere." (*New York Times*, 8/12/2011)

One of the most common criticisms of the implementation of externally forced reform to police departments is the concern that it will lead to a reduction in the productivity of the police (commonly referred to as "depolicing") and a subsequent increase in crime (Rushin & Edwards, 2017; Rushin, 2017a; Walker, 2017; Devi & Fryer, 2020). The Harvard study specifically found that "there is no objective sign of so-called 'de-policing' since 2002; indeed, we found that both the quantity and quality of enforcement activity have risen substantially over that period" (Stone et al., 2009, Executive Summary, [Claims of Depolicing, at pp. 19-32]; see also, Rushin, 2015, p. 166).[184] In fact, after an extensive discussion of the issue, the Harvard researchers made the following conclusion:

> In sum, our analysis of the volume of arrests confirms what the first part of our analysis of stops revealed: the statistics refute any claim of de-policing in Los Angeles today as a result of the Consent Decree. Some de-policing may have occurred in the first two years of the Consent Decree, when

[184] Like the Pittsburgh study (Davis et. al, 2002, p. 42), the Harvard researchers reported hearing claims of de-policing "frequently during [their] interviews and focus groups with police officers, with many officers insisting that the Consent Decree remains an impediment to effective policing as well as a deterrent to the kind of work in communities they consider necessary to reduce crime." The study also noted survey results that indicated "a widespread belief in de-policing among LAPD officers, with 79% of officers believing that the Consent Decree harmed the ability of the LAPD to reduce crime and 89% of officers believing that LAPD officers were no longer "proactive in doing their jobs" (Stone et al., 2009, pp. 19-20). Similar beliefs were expressed amongst participants in the Seattle research and were reported as concerns in the Seattle media (Seattle Times, 6/26/2011; Tizon, A. & Forgrave, R. (2001, June 26). Wary of racism complaints, police look the other way black neighborhoods. *Seattle Times*; Tizon, A. & Ith, I. (2001, August 2). Stats contradict 'de-policing' claims. Seattle Times; Young B. (2007, May 1). Oversight office criticized in survey of officers. *Seattle Times*, Westneat, D. (2011, February 20). Wary Police may step back service. *Seattle Times*; Spangenthal, J (2011, November 1). SPD Disputes rumors of de-policing Within the Department. *Seattlemet.com*. Retrieved from https://www.seattlemet.com/articles/2011/11/1/spd-disputes-rumors-of-de-policing-within-the-department). See also, CPC press release, 6/2/2014, "CPC Clarification of Data Presentation," reporting that a presentation made by a member of SPD was not "concrete evidence of de-policing," located at: https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/CPC%20Press%20Release_Data%20Presentation%206-2-14.pdf#:~:text=COMMUNITY%20POLICE%20COMMISSION%E2%80%99S%20CLARIFICATION%20OF%20DATA%20PRESENTATION%20%28Seattle%29,a%20Powerpoint%20showing%20raw%20data%20on%20traffic%20and.

> recorded crime rose slightly while enforcement activity, both stops and arrests, declined; but there is no sign of de-policing since 2002. Indeed, enforcement activity has increased, with the increase in arrests concentrated on the minor crimes where management policy guides officer discretion. (Stone et al., 2009, p. 30)

Ultimately, the Harvard researchers concluded that the positive changes that had been identified and attributed to the Consent Decree could not be explained but for the presence of a "strong and effective" police leadership: "At best, federal oversight and a consent decree can keep shortcomings in view but only police leadership and strong local governance can bring the changes that the parties to such litigation agree they want to see" (Stone et al., 2009 [Concluding Observations], p. 68).

A number of parallels exist between the Los Angeles and Seattle consent decree experiences. First, after identifying a pattern and practice of constitutional violations on the part of the police force, the DOJ refused to consider any agreement to forestall the filing of a civil rights law suit without a formalized consent decree being put into place (Kupferberg, 2008, p. 135).[185] In addition, like in Seattle, the Mayor and the Police Chief were forced to back down on their opposition to the Consent Decree when faced with a City Council that was prepared to approve such an agreement, even in the face of the opposition of the City's executive branch (Kupferberg, 2007, p. 135).[186]

Second, some of the reports of the Los Angeles and the Seattle monitors are startlingly similar in their evaluation of agency responsiveness during the initial periods of the implementation effort. By the LAPD monitor's third quarterly report, the Monitor "evinced a growing frustration," concluding that not only was the LAPD non-compliant with various provisions of the agreement, but that there was "the presence of a vocal minority inside the LAPD the continues to fight to preserve the insular culture that led to the adoption of the Decree" (Kupferberg, 2007, p. 148; LAPD Independent Monitor Report, 5/15/2002, p. 29).[187] In the Seattle Monitor's first semi-annual report, he noted substantial resistance to reform that was identified at every level of the department

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[185] Citing, Daunt, T. (2000, June 2). U.S. Presents Demands to LAPD, *Los Angeles Times*.

[186] Citing Daunt, T. (2000, September 16). Riordan, Parks Give in on LAPD Consent Decree *Los Angeles Times*.

[187] Office of the Independent Monitor of the Los Angeles Police Department, 3rd Quarterly Report (2002). Retrieved from http://lapd-assets.lapdonline.org/assets/pdf/3rd_quarterly_report_02_05_15.pdf.

(Seattle Monitor, 1st semi-annual report, p. 5) and he increased his criticism in his second semi-annual report, specifically targeting resistance amongst the SPD command staff (Seattle Monitor, 2nd semi-annual report, 12/13/2013, pp. 5-6).

While the LAPD monitor took aim at the department's inability to implement a computerized risk management system (LAPD Monitor, 11th Quarterly report, 3/31/2004),[188] the Seattle Monitor likewise repeatedly criticized the SPD for its failures to implement a comprehensive data platform (Seattle Monitor, 2nd semi-annual report, 12/13/2013; Seattle Monitor, 3rd semi-annual report, 6/16/2014). It was only by the 6th Semi-Annual report that the Seattle Monitor began positively reporting on data management issues (Seattle Monitor, 6th semi-annual report, 12/15/2015).

Los Angeles and Seattle also experienced attempts by the parties (the City and the DOJ) to reduce the scope of their Consent Decrees only to be rebuffed by their respective presiding federal Judges. In Los Angeles, the presiding judge denied the parties March 2006 request to amend the Consent Decree and subsequently, in May 2006, extended it for a period of an additional three years (particularly citing the LAPD's failure to implement a working early intervention system) (Kupferberg, 2007, p. 150).[189] In Seattle, the presiding judge found the City partially out-of-compliance with the Consent Decree, against the objection of the parties, as it related to the SPD's accountability mechanisms (U.S. v. Seattle, Document No. 562). In both cases, the

[188] Office of the Independent Monitor of the Los Angeles Police Department, 11th Quarterly Report (2004). Retrieved from http://lapd-assets.lapdonline.org/assets/pdf/LAPD_Q11_Report.pdf.

[189] Citing, McGreevy, P. (2006, March 22). Plan to Change LAPD Consent Decree Rejected. *Los Angeles Times*; McGreevy, P. (2006, March 28). U.S. Oversight of LAPD May Be Extended. *Los Angeles Times*; McGreevy, P. (2006, May, 16). LAPD Faces 3 More Years of Scrutiny. *Los Angeles Times*.

presiding judges questioned the DOJ's commitment to reform when they made their rulings (Kupferberg, 2007, p. 150; [190] U.S. V. Seattle, Document No. 562 (5/21/2019).[191]

Success in both LAPD and Seattle has also been attributed to the hiring of a new reform-minded Chief of Police. In Los Angeles, according to the Monitor reports, the appointment of Chief Bratton marked the true beginning of institutional reform in the LAPD, in part because "Chief Bratton raised the level of visibility and dedication to the Consent Decree" (Rushin, 2015, p. 150). In Seattle, it was the hiring of Chief Kathleen O'Toole (a self-described protégée of Chief Bratton) that was credited by the Seattle Monitor with ensuring the SPD was on the road towards compliance (Seattle Monitor, 4th semi-annual report, 12/15/2014; Seattle Monitor, 5th semi-annual report, 6/15/2015; Seattle Monitor, Compliance Status & Seventh semi-annual report, 9/26/2016).

Both cities also suffered from substantial extensions of the original terms of their Settlement Agreements. The LAPD failed to meet the deadlines imposed by its Consent Decree, resulting in the aforementioned three-year extension (Kupferberg, 2007; Walker & Macdonald, 2009). Seattle found itself "partially out of compliance" with its Consent Decree almost seven years after the initial approval of the settlement agreement. In addition, the City was forced to withdraw a May 20, 2020 request to terminate substantive portions of the Consent Decree after concerns were raised regarding SPD responses to protests against the police as a result of the May 2020 death of George

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[190] Los Angeles Federal Judge Fees was quoted as saying: I have a real question why the [Justice] Department, in my view, wants to walk away from parts of this decree." The DOJ was quoted as responding to the Judge's comment by saying: "We take our responsibility for enforcing this decree very seriously, …we believe now its more important to focus on those areas where there hasn't been compliance." (McGeevy, P. (2016, May 16). LAPD faces 3 more years of scrutiny. *Los Angeles Times*. Retrieved from https://www.latimes.com/archives/la-xpm-2006-may-16-me-consent16-story.html).

[191] In making his finding that the SPD had fallen partially out of compliance with the Consent Decree, Judge Robarts was critical of the DOJ for "misapprehend[ing] both the import of the arbitration process and its intersection with the Consent Decree, as well as the court's starting point for assessing accountability that formed the basis for its finding that the City was in full and effective compliance with the Consent Decree." The judge specifically accused the parties of doing so "for the sake of political expediency." (U.S. v. Seattle, Document No. 562 (5/21/2019), p. 10). In a later order regarding the City's submission of a methodology for addressing accountability deficiencies, the court was further critical of "the Government's particularly unhelpful response to the court's order" noting that, instead of participating in the discussion of the methodology, the DOJ "reiterated its position that considerations of accountability 'are outside the scope of the Consent Decree.' The Judge concluded that "the Government's penchant for relitigating the issue is unhelpful to the court and the process of reform" (U.S. v. Seattle, Document No. 585 (10/15/2019), p. 3).

Floyd. In fact, the Los Angeles Consent Decree has been identified as "the beginning of a new era in consent decrees, in which the duration expanded far beyond what was initially planned" (PERF, 2013, p. 2).[192]

Although the cost of the Monitoring of the Los Angeles Consent Decree was estimated to be about $2 million a year (Rushin, 2015, p. 106), an LAPD Commander, when addressing a 2013 symposium on the Consent Decree process was supportive of the costs when he said:

> It cost us a total of $15 million for monitoring. It would have been only $11 million if we had finished in five years. But I think the money was well spent in terms of preventing future litigation and gaining credibility with the community. So yes it was a lot of money, but I think we got our money's worth. (PERF, 2013, p. 34)

With all costs considered, estimates indicate that the total cost of implementing reforms, to include the costs of monitoring, "likely surpassed $100 million." (Rushin, 2015, p. 106). However, it has also been identified that the total number of civil rights claims filed against the LAPD declined over the period of the Consent Decree. "The total payouts for civil rights suits based on the date of filing also decreased from $13,187,100 in 2002 to $3,325,054 in 2006" (Rushin 2015, p. 116).[193]

Six years after the Harvard study, in his PhD dissertation, Rushin (2015) found that at the conclusion of the Consent Decree process:

> The LAPD was a dramatically different department. Virtually all empirical measures suggest that the LAPD is engaged in less misconduct today than it was before federal intervention. The LAPD has also seen a dramatic reduction in payouts for civil rights violations. And there is no evidence that federal intervention made the LAPD less aggressive or effective in fighting crime. During the Consent Decree period, officer aggressiveness increased and crime fell substantially more than the national average. The Los Angeles crime decline is particularly fascinating because there have not been any significant socio-economic, legal, or demographic changes in

[192] Although the Consent Decree was terminated after nine years, the overall process of DOJ oversight was not completed until 3 years later: "In Los Angeles, the transition from DOJ oversight to department autonomy was made more gradual by a 2009 Transitional Agreement (TA). Under the TA, the federal court maintained jurisdiction over the case and authority to mandate continued federal oversight unless and until the LAPD addressed the remaining matters to the satisfaction of the presiding judge (LAPD Transition Order, 2009)" (Chanin, 2015, n. 14).

[193] Additionally, as noted by Rushin: "While this total is jarring, in a city as large as Los Angeles, it only amounts to between $2 and $3 per resident per year" (Rushin 2015, p. 161).

> Los Angeles that should explain the unusually dramatic decline in crime over the structural reform era. This suggests that the LAPD may have played a role in the declining crime rates. (p. 126)[194]

Rushin further noted what he referred to as "the single most important change made in the LAPD" – the creation of the LAPD Audit Unit. The creation of the ability of an agency to conduct internal audits is, arguably, one of the most important means by which reform can be sustained. (Rushin, 2015, pp. 158-159; Jaio, 2020, pp. 7-8).[195] Rushin (2017) recognized, however, that the federal monitor had lauded the LAPD's improved use-of-force policies and procedures as "the single most encouraging aspect" of the implementation of the Consent Decree (pp. 200-202).

Washington D.C. (2001-2008).

The Settlement Agreement between the Washington D.C. Metropolitan Police Department and the DOJ[196] was preceded by an invitation from the then new Chief of Police.[197] The Agreement was in the form of a Memorandum of Understanding, as

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[194] See follow-up publications by Rushin: "…once the reforms had concluded, the LAPD was a remarkably different agency by virtually any metric" (Rushin, 2016, p. 119); "[b]y virtually any measure, the LAPD appears to be a better department today than it was during the Rampart scandal" (Rushin, 2017a, p. 165).

[195] Jaio, however, outlined an inauspicious start to the LAPD's Audit Unit. Initially, the court-appointed Monitor indicated that audits were "of poor quality and often incomplete." Jaio commented that most of the LAPD Audit Division had no prior training in auditing and only "a vague understanding" of audit procedures. Jaio also noted that "the initial relationship between the Audit Division and the U.S. DOJ and the federal monitor was poor and contentious…they viewed the DOJ as intrusive and their experience with the independent monitor as confusing." Jaio observed, however, that the quality of auditing started to improve in 2002 and that "[o]vertime, a change in institutional practice and attitude toward auditing occurred in the LAPD" (Jaio, 2020, pp. 7-8).

[196] The Memorandum of Agreement was filed with the court on June 13, 2001 as can be found at: https://perma.cc/PXE8-BUEF.

[197] Chief Ramsey was hired in April 1998. Later that year, the Washington Post published a week-long exposé into MPD police shootings and uses of force that suggested systemic issues and concerns and "a weak investigative infrastructure." The request for federal intervention was made less than two months after the Washington Post series had been published (Chanin, 2012, pp. 48-49). According to the court-appointed monitor for the MPD: "At the time, the request of Mayor Williams and Chief Ramsey was unprecedented: although DOJ had previously investigated numerous law enforcement agencies under the authority conferred by this legislation, it had not previously been invited by the law enforcement agency to conduct the pattern and practice investigation" (Bromwitch, 2016, p. 5). Chief Ramsey later told a Police Executive Resource Foundation symposium that: "When I was chief at the Metropolitan Police Department in Washington, we would not have been able to make the changes we made without the Consent Decree. We would have encountered pushback from the union, and we would not have obtained the funding needed to develop an early intervention system and underlying technology infrastructure to support it" (PERF, 2013, p. 34).

opposed to a consent decree and was announced at a June 13, 2001 press conference jointly held by the Attorney General, the Mayor and the Chief of Police.[198] As reported by the DOJ in 2017:

> In February 1999, the Division opened an investigation into the Metropolitan Police Department (MPDC) in Washington, D.C. In June 2001, the Division identified a pattern or practice of excessive force linked to inadequate use of force policies and training; deficient supervision of officers; and inadequate systems of accountability. The parties entered into a memorandum of agreement (MOA), including the appointment of an independent monitor. The independent monitorship terminated in April 2008, although under a transition agreement MPDC provided on-going reporting on certain provisions of the MOA until February 2012. (DOJ, 2017b, p. 42)

As previously seen with respect to the Pittsburgh and Los Angeles examples, the Washington D.C. MOA initially suffered from compliance problems (Walker & Macdonald, 2009; Chanin, 2012).[199] In his first report, the Monitor found that the MPD "ha[d] failed to accomplish virtually all of the milestones identified in the MOA within the time periods specified" (Walker & Macdonald, 2009, p. 515).[200] It reportedly took a number of years to resolve "underlying management problems that inhibited successful implementation." As a result, the MOA was extended beyond its original five years; although it has been suggested that the Monitor played an important role in helping the MPD to overcome its initial "almost complete failure to implement the MOA at the outset" (Walker & Macdonald, 2009, pp. 513, 521).

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[198] Then-Attorney General John Ashcroft was quoted as saying: "We are confident that when the balance of the reforms contained in this agreement are implemented, the DC Metropolitan Police Department will be a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary. And, we hope that the cooperative approach adopted by MPD and the Department of Justice likewise will serve as a model for how Justice can help police agencies fix a problem, rather than merely fix the blame" (Transcript of June 13, 2001 Press Conference, available at http://www.justice.gov/crt/attorney-general-news-conference-dc-mayor-anthony-williams-and-dc-police-chief-charlesramsey.)

[199] Chanin observed that "progress toward implementation [in Washington D.C.] did not begin until nearly a year after the MOA was signed. Perhaps owing to this slow start and to the complexity of the changes mandated, the parties amended the terms of the MOA no fewer than four times. Pursuant to these changes, the MOA terminated on June 13, 2008, seven years after the MOA was signed and two years after the original June 2006 deadline" (Chanin, 2012, p. 51).

[200] Citing Bromwich, Special Report of the Independent Monitor (2002), pp. 1-2. Retrieved from http://clearinghouse.wustl.edu/chDocs/public/PN-DC-0001-0003.pdf.

Similar to Pittsburgh and Los Angeles, the police union was not perceived by the parties to be a helpful stakeholder in the reform process.[201] Chanin reported that there was "direct evidence from both Washington D.C. and Pittsburgh that… hostility to the pattern or practice initiative persist[ed] among union groups excluded from the process." As an apparent result, "in each city, there [was]… a highly targeted effort by organized labor to countermand changes brought on by the settlement reform process" (Chanin, 2012, pp. 179-180).[202]

By June 2008, when the MPD MOA was terminated, the Monitor was praising the Department for its reform effort:

> MPD has become a much more sophisticated police agency ... We believe that the City's and MPD's success in implementing the MOA's reforms, which are now embedded in the Department's internal policies and practices, stands as a model for municipalities and police departments across the country. (Independent Monitor Final Quarterly Report, 2008, Jun. 13, p. 3)

As of 2010, MPD leadership was still speaking highly of the success of the reform effort. The then-Chief, who was appointed in 2007 after the retirement of Chief Ramsey, who solicited DOJ involvement in the first place, believed that "the organizational and systemic changes that drove the reform…remain[ed] in place and continue to represent the core of MPD's operational philosophy" (Chanin, 2012, p. 256).

By the time of the publication of his dissertation, however, Chanin (2012) was reporting that "Pittsburgh and Washington, D.C., show mixed results, with both jurisdictions demonstrating simultaneously signs of progress and indications of slippage" (p. 32).[203] Chanin reported that the "outcome-based evidence…[was] decidedly mixed."

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[201] In an interview with Chanin in 2010, the D.C. Chief noted that his decision to obtain DOJ intervention was made without conferral with the police union – he believed that whatever short-term costs ("in the form of internal opposition") that might have been caused by excluding the union, that exclusion would be beneficial in the long term and was "a practical necessity" (Chanin, 2012, p. 178).

[202] As late as 2010, Kristopher Baumann, the former head of the Washington, DC officer's union, told Chanin about his organization's "intent on undoing the DOJ's reforms:" "And if you don't respect…the ability of the union to have input, whatever you do is going to be undone ... And eventually, even the good things that may have been done by [the reform] process could be undone because it wasn't done the right way. And if you don't respect the process from the beginning, you're building a house of cards" (Chanin, 2017a, p. 264).

[203] At the same time, Walker (2012) was expressing concern about the sustainability of the Washington D.C. reform process: "Recent news reports, however, have raised questions about

He concluded that “the citizen complaint data suggest that MPD has regressed substantially,” but also noted “dramatic declines in force-based civil litigation and related payouts in the last two years of the District’s implementation process” (Chanin, 2012, p. 323).

In 2015, the second D.C. Chief to serve under the MOA, Cathy Lanier, was interviewed by *Frontline*. She commented that at the time that the MOA was entered into, “the city was bankrupt…and the police department was in shambles.” She was quoted as believing that the reforms “led to better training, improved policies and the use of less-lethal options in confrontations, including pepper spray and rubber bullets.” The *Frontline* article observed that “[s]ince the agreement ended in 2012, police have reported a steady decrease in the use of force and civilian complaints” and a slight decrease in the number of fatal shootings by Metropolitan police officers (*Frontline*, 11/13/2015).

Also in 2015, the court-appointed monitor was hired to evaluate the sustainability of the reforms created by the MOA, which had been terminated seven years before. The Monitor commented that the MOA had been terminated in April 2008, “in large part as a result of the strong leadership of [two MPD Chiefs], and their commitment to the principles of the MOA,” even though substantial compliance with all provisions of the MOS had not been fully accomplished (Bromwich, 2016, p. 9).

Bromwich reported that his 2015 review of the MPD “focused on whether its policies, practices, and procedures have remained consistent with the June 2001 MOA and are consistent with current law enforcement best practices.” He described having reached “a mixed verdict” (Bromwich, 2016, p. 114).

On the plus side, Bromwich reported that the “MPD has generally kept in place the use of force policies and procedures that brought it into substantial compliance with

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whether the reforms in some of the departments where consent decrees or MOA were successfully terminated remain viable. In September 2011, for example, it was reported that twenty-three officers had been arrested on criminal charges so far that year in Washington, D.C. A September 2012 news story, meanwhile, reported that over ninety officers had been arrested on criminal charges in the previous three and a half years. Arrest on any charge for a police officer is concerning, but the number of arrests in this department - with some of the arrests involving sex with a minor, burglary, and shooting of transgendered people - raises very serious questions about whether the accountability procedures instituted by the MOA are functioning at all” (p. 64).

the MOA more than seven years ago," and that MPD had "successfully reduced its use of the most serious types of force, including firearms, even during period of increase crime in the District of Columbia." Overall, he found that "MPD is plainly a very different, and much better, law enforcement agency than it was when DOJ began its investigation in 1999" (Bromwich, 2016, pp. 114-115).

However, Bromwich did find "some significant deficiencies in key areas covered by the MOA." He found that some use of force policies were in need of revision, and changes that had been made in the requirements for reporting and investigating use of force "that we think have gone too far" (Bromwich, 2016, p. 115). He also found that "the quality of serious use of force investigations had declined" and that the agency had "virtually stopped conducting MOA-related audits and reviews during a five-year period (2010-2014)" (Bromwich, 2016, pp. 114, 115).

Bromwich attributed the deficiencies, not so much to "explicit policy choices or conscious decisions to deemphasize use of force issues" and more the result of other factors, to include "the transfer and retirement of personnel who played key roles in MPD's system for dealing with use of force issues, an inevitable loss of focus on these issues after a period of intense attention to them, and the emergence of competing priorities" (Bromwich, 2016, p. 116).

In the cover letter to the Bromwich audit, the Washington D.C. auditor concluded that the "review clearly demonstrates that it is possible to enact and sustain reform when a commitment to such action is made at the highest leadership levels."[204]

Chanin (2015), however, took a more moderate approach to issues of the sustainability of the reform effort. Chanin noted that:

> The picture in Washington D.C. is…difficult to interpret. Significant reductions in force-based civil litigation and related payouts since 2003 suggest that both the frequency and severity of MPD misconduct has declined. A spike in allegations of misconduct complicates the picture, as

[204] The D.C. auditor further commented that "[i]n this instance, a mayor and a police chief initiated a partnership with the Department of Justice, and the legislature supported that partnership with significant funding over a number of years. This review and the recommendations also underscore the importance of independent oversight by civilian entities such as the Office of the District of Columbia Auditor to ensure that the commitment to policing reform is sustained over time" (Browich, 2016, Cover Letter from D.C. Auditor, Kathleen Patterson).

> does the startling number of MPD officers that have faced criminal charges in the postreform years (p. 183).[205]

Cincinnati, Ohio (2002-2008).

In April 2001, the City of Cincinnati experienced a riot after the fifteenth shooting of a young African-American over a period of six years. At the same time, the Department was sued by a coalition of civil rights groups for engaging in a practice of racial profiling. This policing crisis led the DOJ to announce a §14141 investigation the following month (Walker, 2003, p. 3; Simmons, 2010; Chanin, 2012, pp. 54-57; USDOJ, 2017b). After a five-month investigation, the DOJ identified a pattern or practice of unconstitutional policing by the Cincinnati Police Department that required "improvements in use of force policies, reporting and review; accountability systems, officer discipline, data collection, and transparency; and training." The DOJ action was "integrated with ongoing negotiations regarding a lawsuit brought by private plaintiffs," resulting in a DOJ MOA and a private "Consent Decree" which became known as the "Collaborative Agreement" (DOJ, 2017b, p. 42).[206]

The federal judge presiding over the private law suit urged the parties to reach a settlement (Simmons, 2010; Chanin, 2012, pp. 56-57). The parties ultimately invited the local police union to participate and created an "advisory group" "consisting of attorneys and key stakeholders" to negotiate the collaborative agreement.[207] This unique arrangement has been described as "reflecting a more democratic experimentalist model, which values deliberation by incorporating community feedback and participation in police-reform strategies" (Simmons, 2010, pp. 419-420).[208]

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[205] Walker (2018) made the following similar observation: "Washington, D.C. offered a complex pattern of trends following the end of the MOA, with uses of force following a "volatile" pattern, while civil litigation payouts declined and stayed low" (p. 1805).

[206] The Memorandum of Agreement was filed with the court on April 12, 2002 and can be found at: https://perma.cc/8NTK-Z78P.

[207] In 2010, Chanin interviewed the former City Monitor, Richard Jerome, who argued that including the union in the settlement negotiations "may have co-opted their support." According to Jerome: "having [the union] at the table, as opposed to kind of outside and criticizing - I mean, I remember Pittsburgh very well - helped tremendously" (Interview with author, Mar. 24, 2010) (Chanin, 2012, p. 179).

[208] Simmons further described the process used to negotiated the Cincinnati agreements: "As it unfolded, Cincinnati's approach to police reform exemplified the 'bottom-up' approach encouraged by the New Governance paradigm. The advisory group sought participation from

The federal court subsequently appointed a monitor to implement the MOA and the private Consent Decree simultaneously. The decision to have the court-appointed monitoring team manage the implementation of both the private agreement and the MOA was "unique." "Despite their distinct origins and divergent developmental processes, [the agreements] were fused in the eyes of the CPD, the Monitor team, and the community. Both were inextricably related, complementary pieces of the same comprehensive reform effort." (Chanin, 2012, p. 315).

In addition, the MOA included a unique requirement where any revisions to use of force policies were first required to be submitted to "Community Councils, and other appropriate community groups for their review, comment and education" (Walker, 2003, p. 36; Cincinnati MOA, para. II.13).[209] The agreement was a precursor to a similar requirement in Seattle, which gave a "Community Police Commission," among other things, the jurisdiction to review and comment on SPD policies.

The start of the reform process was particularly difficult in Cincinnati. In fact, the implementation of the reform was reportedly delayed for over a year over billing conflicts between the first monitor hired to facilitate the reform process and the City. It was only by December 2002, that another monitor was appointed and the process was able to go forward (Chanin, 2012, p. 173). However, the relationship between the second monitor and the city was challenging as well. Reportedly, the Monitor complained that the police were often "uncooperative" and the police accused the Monitoring team of being "unrealistic and overly intrusive" (PERF, 2013, p. 3).

At one point, the federal court found the Department in "material breach" of the MOA and converted the MOA into "an Order of the Court."[210] After the MOA was

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many constituencies across the city and organized the constituents into eight stakeholder groups, including 'African American citizens, city employees, police and their families, white citizens, business/foundation education leaders, religious and social service leaders, youth, and other minorities' (Simmons, 2010, p. 425).

[209] Retrieved from https://perma.cc/8NTK-Z78P.

[210] The Cincinnati Monitor's Eighth Quarterly report described the City's position after three years of monitoring:

"In its refusal to abide by the terms of the Agreements, the City complain[ed] that it has already implemented the terms of the MOA, that the reporting requirements of the Agreements are overly burdensome and a 'waste of time,' and that the Monitor Team has focused too much on 'outcomes and change' as opposed to "systems and processes" (City of Cincinnati Independent Monitor's Eighth Quarterly Report" (1/14/2004), p. 8, cited by Chanin, 2012, pp. 174-175).

converted into a court order, the judge facilitated meetings with the parties to ensure implementation of the agreement (PERF, 2013, p. 3; Walker & Macdonald, 2009, p. 512). After interviewing city officials, Chanin concluded that "the depth and pace of change [associated with the concurrent agreements] overwhelmed the Department" (Chanin, 2012, pp. 162-163).

The Collaborative Agreement also contained a requirement that there be "regular evaluations by an independent consulting firm on the impact of the reform process on community and officer attitudes and perceptions and police practices" (Walker & Macdonald, 2009, p. 519; Chanin, 2014; Walker, 2016). The RAND Corporation was hired "to conduct surveys for five years and produced seven reports covering field stops, arrests, searches, uses of force, traffic stops, public attitudes and officer perceptions of the reform process" (Walker, 2018, p. 1804). The final report, published in 2009, identified improvements in surveyed areas to include resident's perceptions of the police, racial profiling and department record keeping (Ridgeway, 2009; see also, Walker & Macdonald, 2009, pp. 525-526; [211] Chanin 2014; Patel, 2016, pp. 813-814; Walker 2018, p. 1804).

The MOA was terminated on April 12, 2007 and the Collaborative Agreement was terminated in August, 2008 (DOJ, 2017b, p. 42; Chanin, 2012, p. 60). In support of the termination of the MOA, the Independent Monitor reported that:

> Over the course of the Agreements, we have seen vast improvement within the Cincinnati Police Department relating to oversight and accountability, particularly in the area of force and the investigation of force incidents. While a review of the history over the past several years reveals peaks and valleys with regard to the Department's efforts that were undertaken and implemented in this important area, the end result is favorable to the Department, the City of Cincinnati, and the diverse community they serve. (Chanin, 2012, p. 60, quoting Cincinnati Monitor Final Report, December 2008, p. 37)

Independent Monitor's Eighth Quarterly Report (2015, January 14). Retrieved from http://www.acluohio.org/assets/issues/PolicePractices/CincinnatiAgreement/1.14.05_Eighth_Quarterly_Report.pdf. After reviewing monitor reports and conducting "several interviews," Chanin concluded that "judicial intervention not only led to a settlement between CPD leaders and the monitor but also prevented any negative effects of the disagreement from metastasizing" (Chanin, 2014, p. 48, citing Cincinnati Independent Monitor, Final Report, 2008, Dec.).

[211] Walker & Macdonald (2009) further noted that "the RAND evaluations have been generally positive, finding no clear patterns of racial bias in policing, and citizen and officer attitudes that exhibit some conflicts but are at least not at the crisis stage" (p. 532).

The federal reform effort lasted for seven years – at the conclusion of which, the Independent Monitor concluded that the Cincinnati project was "one of the most successful police reform efforts ever undertaken in this country" (PERF, 2013, p. 3, citing Cincinnati Monitor Final Report).[212]

By 2009, the RAND Corporation had prepared five evaluations of Cincinnati police practices that have been described as "fairly positive to the extent that they did not find systematic patterns of racially biased policing or overwhelmingly negative attitudes on the part of officers and citizens" (Riley et al., 2005; Ridgeway, Schell, Riley, Turner & Dixon, 2006; Schell, et al., 2007; Ridgeway et al., 2009; Ridgeway, 2009; see also, Walker & Macdonald, 2009, p. 526 [describing the first three evaluation studies]). As recognized by Walker & Macdonald (2009): "[o[n all of these points, the state of police-community relations in Cincinnati appears to be improved over the conditions that prevailed in 2001-2002 when violent disturbances erupted in response to a series of police shootings of citizens." Although it was noted that the absence of pre-Collaborative Agreement data made it impossible to identify any improvements with any scientific certainty, Walker & Macdonald opined that "the evidence strongly suggests that the reforms within the police department and changes in police strategy have reduced inappropriate officer behavior and introduced police tactics that are both effective and do not generate citizen discontent" (pp. 526-527).

Four years after the termination of the Collaborative agreement, Chanin conducted a limited evaluation of the state of the Cincinnati reforms. He found that the City "maintains a strong accountability infrastructure and has succeeded thus far in maintaining desirable levels of several key outcomes, including citizen complaints and police use of force" (Chanin, 2012, p. 32).[213] Chanin further reported that one of the reasons for the success of the reform effort in Cincinnati was likely the result of "a capable, proactive political leadership." Specifically, a change in the city management reportedly helped to overcome resistance on the part of the police (Chanin, 2012, p. 182). In addition, Chanin (2012) credited much of the success to "the prolonged tenure"

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[212] Cincinnati Monitor Final Report (December 2008, located at: https://www.cincinnati-oh.gov/police/linkservid/97D9709F-F1C1-4A75-804C07D9873DC70F/showMeta/0/.

[213] Although Chanin (2012) did report that the President of the Cincinnati Fraternal Order of Police "was more circumspect in her analysis of the reform initiative, making clear that the substance of the agreement was anathema to the traditional orientation of the union, but that the opportunity to take some ownership of [the] reform process superseded those concerns" (p. 60).

of the then-Chief of Police and his staff's "sustained commitment to the MOA and the Collaborative Agreement" (p. 296).[214]

Comments by a diverse group of community and police leaders, made after the termination of the agreement, seemed to support that the reform effort was a success. The City Manager, in a 2010 interview with Chanin commented on some of the positive results of the reform effort:

> The changes that were made have resulted in ... a significant drop-off in the number of instances where citizens are injured as they're being taken into custody. There are a lot fewer injuries to police officers as they're trying to make an arrest. The allegations of excessive force have plummeted. The incidents where the use of deadly force is even an issue has plummeted … [The DOJ] agreement helped make all that happen. (Chanin, 2015, p. 168)

In addition, by the time the Police Executive Research Forum conducted a symposium on "Lessons Learned" from "Civil Rights Investigations of Local Police" in 2013, the then-retired Chief was reflecting positively on the impact of the MOA-initiated reforms: "Prior to the Consent Decree in Cincinnati, we paid out $10 to $11 million to settle a number of lawsuits. However, since the Consent Decree, the ACLU has not sued the Police Department. That is a tremendous savings" (PERF, 2013, p. 35). And after a 2014 officer-involved shooting of shooting of a 37-year-old African-American man,[215] the policy director of the ACLU of Ohio was quoted as crediting the reform process with an improvement in Cincinnati policing:

> 'I think it's unrealistic to say that there is never going to be another police problem or another issue that crops up … But I think what has changed is that there are much fewer of them [and CPD officers' now] have the tools and the training and the mutual understanding of how to talk about these issues. (Chanin, 2016, pp. 95-96).[216]

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[214] Although Chanin (2012) noted the irony here, in that the Chief was also almost held in contempt of court for the department's failure to cooperate with the monitor in year-three of the agreement (p. 296).

[215] Baker, J. (2014, August 5). Chief: police-involved shooting 'a fight for survival.' *Cincinnati.com*. Retrieved from https://www.cincinnati.com/story/news/2014/08/05/cincinnati-police-officer-shoots-man-killed-traffic-stop/13611479/.

[216] Citing, Flatow, N. (2014, September 11). What Has Changed About Police Brutality in America, from Rodney King to Michael Brown, *THINKPROGRESS*. Retrieved from http://thinkprogress.org/justice/2014/09/11/3477520/whats-changed-and-what-hasnt-in-policing-the-police/.

In 2015, Chanin reported that the reforms in Cincinnati accomplished "significant and lasting change within the CPD" and that "[six] years removed from DOJ and monitor oversight, [CPD] has experienced little or no backsliding, a finding supported by consistent reductions in undesirable outcomes, including use of force incidence and allegations of abusive or unlawful behavior" (USDOJ, 2017b, p. 39, quoting, Chanin, 2015, pp. 179-180). Chanin (2015) further noted that:

> the process seems to have had a sustained, positive effect in Cincinnati. Numbers of postreform citizen complaints against CPD officers continue to decline, as does use of force incidence, and the number of injuries sustained by CPD officers. Such progress has contributed to increasing trust in the Department among minority community members [citations omitted] and a sterling national reputation. (p. 183)[217]

Greenberger (2016) reported that "the DOJ/Cincinnati Police Department consent decree process provides an excellent recent example of how the DOJ pattern or practice process leads to effective and sustainable policing reforms" (p. 204). Greenberger went on further to report that

> [f]ifteen years after the adoption of the Consent Decree, Cincinnati serves as a "model of effective reform." The results were profound: between 1999 and 2014, police use-of-force incidents declined by 69 percent, citizen complaints against police declined by 42 percent, and injuries resulting from encounters with police declined by 56 percent. In addition, the number of violent crimes dropped from 4,137 in 2002 to 2,343 in 2015. (pp. 205-206)[218]

In 2016, Patel argued that involving the police union in "a consensus driven process" was "a key component to the culture shift that purportedly took place during the 2002 to 2009 reform process" (Patel, 2016, n. 177).[219] In a 2017 article, Chanin agreed that while including the union in the negotiations "may have exacted some early costs, particularly in terms of the length and tone of the negotiation, … the benefits of inclusion

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[217] Citing, Schuppe, J. (2014, August 30). Blueprint for peace: What Ferguson can learn from Cincinnati. *NBC News*. Retrieved from http://www.nbcnews.com/storyline/michaelbrown-shooting/blueprint-peace-what-ferguson-can-learn-cincinnati-n191911.

[218] Citing, Semuels, A. (2015, May 28). How to Fix a Broken Police Department. *The Atlantic*. Retrieved from http://www.theatlantic.com/politics/archive/2015/05/cincinnati-police-reform/393797/.

[219] Citing, Cincinnati Has Earned Its Policing Pride (2015, May 20). *Cincinatti.com*. Retrieved from http://www.cincinnati.com/story/opinion/editorials/2015 /05/19/cincinnati-earned-policing-pride/27606913/.

far outweigh[ed] delays to the process" (Chanin, 2017a, p. 265).[220] Chanin (2017a) concluded by arguing that:

> [w]hat is more, having participated in the negotiation, union leadership in Cincinnati had a much less legitimate case to make for criticizing the settlement in the press or actively working to dismantle the reform effort, either in court or through legislation. (p. 265)

By 2017, Chanin was identifying the Cincinnati reform effort as "demonstrating clearly the power of inclusivity." He compared the Cincinnati effort positively to Washington D.C. and Pittsburgh and identified Cincinnati as having been "widely lauded as a model for effective, durable reform" (Chanin, 2017a, p. 265;[221] see also, Walker 2017; Scott, 2017).

Detroit, Michigan (2003-2014).

A Consent Decree between the DOJ and the City of Detroit was entered into in July 2003.[222] The Consent Decree was not terminated until August 2014, when the City and the DOJ entered into a transition agreement under which the DOJ would "continue to monitor DPD's efforts to comply with certain provisions of the prior consent decree that had not yet been fully implemented." The City was found in full compliance in March, 2016 (DOJ, 2017b, p. 43).

Although "the process took more than a decade and tens of millions of dollars," a Detroit Assistant Chief was quoted in 2015 as saying: "It was a significant investment, there were a lot of lessons learned…But we are a better department" (*Frontline*,

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[220] Chanin quoted one of the civil rights attorneys who brought one of the original law suits that resulted in the Collaborative Agreement as "argu[ing] that providing union representatives a seat at the bargaining table paid dividends in terms of implementation, and set a tone of collaboration and cooperation that continues today: 'That turned out to be a very, very helpful move . . .[] I think it was a major aid in getting us off to a good start'" (Chanin, 2017a, p. 265, citing McKee, T. (2011, March 6). Ten years later: Cincinnati police/community relations much improved. *WCPO9 Cincinnati*. Retrieved from www.WCPO.com.

[221] Citing, Faraj, J. (2016, November 10). Cincinnati's collaborative police reform effort offers model for Milwaukee. OnMilwaukee.com. Retrieved from https://onmilwaukee.com/raisemke/articles/nns-cincinnati-reforms.html; Maggi, L. (2011, October 16). Cincinnati police reform effort notable for 'collaborative agreement.' NOLA.com. Retrieved from http://www.nola.com/crime/index.ssf/2011/10/cincinnati_police_reform_effor.html; and, Semuels, A. (2015, May 28). How to fix a broken police department. *The Atlantic*. Retrieved from https://www.theatlantic.com/politics/archive/2015/05/cincinnatipolice-reform/393797/

[222] The Detroit Consent Decree was entered into on July 18, 2003 and can be found at: https://detroitmi.gov/departments/police-department/detroit-police-department-office-civil-rights.

12/14/2015).[223] The same Assistant Chief was quoted during the 2013 PERF symposium as saying that,

> "[t]he Detroit Police Department is a better police department as a result of the Consent Decree. Today we have a very specific way of taking a citizen's complaint, and we have a management awareness system through which we are able to manage our employees. We used the Consent Decree to get some of the tools we needed." (PERF, 2013, p. 35)

In 2013, Rushin spoke to a person "with inside knowledge about the Detroit Police Department" who asserted that the amount of money saved on lawsuits over the years had "paid for the cost of implementation of the Monitoring two or three times over" (Rushin, 2015, p. 115).

Detroit has been described as having explained "ongoing macro compliance problems," which included an "inconsistent and scandal-ridden leadership," and resource shortages resulting from deeply seeded financial trouble (Chanin, 2014, pp. 45, 46; Dukanovic, 2016). As Chanin noted, "implementation of wholesale organizational changes is a notorious challenge [even under normal circumstances]; in this context [Detroit's case], it…proved to be near impossible" (Chanin, 2014, p. 46).[224] At the same time, Chanin credited the federal judge overseeing the Detroit reform effort as having "been instrumental in helping to address major problems," citing his "formal authority, together with an ongoing attention to the reform effort," as having helped "to keep a process threatened by scandal, leadership uncertainty, and financial calamity" (Chanin, 2014, pp. 48-49).

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[223] Frontline further reported that "In Detroit, the Justice Department forced reforms on police after officers fatally shot 47 people in five years, including six who were unarmed. The overhaul took 11 years and eight police chiefs" (Sarah Childress, December 14, 2015, Policing the Police – Inside 20 Years of Federal Police Probes, *Frontline*. Retrieved 11/7/20 from, https://www.pbs.org/wgbh/frontline/article/inside-20-years-of-federal-police-probes/).

[224] The challenges with respect to Detroit's leadership were uniquely problematic. As acknowledged by Chanin (2014), "Former mayor Kwame Kilpatrick, elected in 2001, is now serving time in a federal prison for charges stemming from a widespread bribery and corruption scheme. Kilpatrick's criminality was more than simply a distraction from the police reform effort; in 2009, an inappropriate relationship between Kilpatrick and Sheryl Robinson Wood, the independent monitor charged with overseeing the implementation of DPD's consent decree, was exposed. Wood was immediately removed from her position, leaving questions about the legitimacy of her six years on the job. At the time of her removal, DPD was only 36% compliant. Less than two years later, under the oversight of a new monitor team, hired by a newly elected Mayor, 72% of the settlement had been implemented" (p. 48).

Prince George's County, MD (2004-2009).

In January 2004, the Prince George's County Police Department entered into a Memorandum of Understanding and a Consent Decree with the DOJ, after a years-long investigation, initiated in July 1999 (focusing on the Department's canine unit) and expanded in 2000.[225] The Consent Decree (addressing canine use of force) was terminated in March 2007; the MOA (addressing broader issues of force) was terminated in January 2009 (USDOJ, 2017b, p. 43).

In 2015, the then-police Chief noted that the period of federal intervention was "a painful time," but he also asserted that "both of those agreements have made us better, hands down" (Frontline, 11/13/2015). The head of the Prince George's County NAACP branch also asserted that the department was "more in touch with county residents," with excessive force complaints having been dramatically reduced and an improvement in department receptivity to needs for change (Frontline, 11/13/2015).

Chanin (2012), however, reached different, more disconcerting conclusions. He asserted that Prince George's County "continues to struggle with very basic notions of lawful policing" (p. 344-345). Citing a high rate of officer-involved shootings in 2008, accompanied by "a series of incidents" involving an attempt to cover up a police beating, a cheating scandal and "several criminal indictments of PGPD officers" (pp. 71-72), Chanin concluded that "one way or another, it appears that PGPD was not able to sustain strong, continuous support for the settlement agreement either during or after the implementation" and that as a result, the department has "had trouble achieving sustainable reform" (p. 298). In looking at "several outcome-based data points," Chanin ultimately concluded that the federal reform effort in Prince George's County "did not have the same kinds of effects" as it had on other jurisdictions (p. 274).[226]

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[225] The Prince George's County Consent Decree and MOA were filed with the court on January 22, 2004; the Consent Decree can be found at: https://perma.cc/6AWT-3Y7W; the Memorandum of Agreement can be found at: https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/pg_memo_agree.pdf.

[226] Chanin (2012) specifically looked at citizen complaint data which showed that allegations of officer misconduct "increased steadily over the lifetime of the five-year agreement;" the infrequency of which PGPD leadership agreed with recommendations from Prince George's Citizen Complaint Oversight Panel; a lack of transparency with respect to Department data; several recent high profile excessive force allegations; "a wide-ranging federal investigation into illegal and corrupt practices within the Department;" and, a cheating scandal with respect to police academy exams. Chanin concluded that: "What data does exist…seems to suggest a wide

Even so, on January 15, 2009, the Monitoring Team filed its final report, finding the PGPD in substantial compliance with all but one provision (Chanin, 2012, pp. 70-71). Chanin (2014) suggested that

> an approaching deadline appears to have prompted the Monitor team to declare the Prince George's County Police Department (PGPD) in substantial compliance and terminate the agreement, despite signs that the department may not have been ready to operate without DOJ oversight. (p. 45)

In the 2013 PERF symposium, a PGPD Deputy Chief made the following positive observations regarding the federal intervention:

> Our Department was placed under a memorandum of understanding and consent decree in 2004, and after coming out on the other end, it was a very positive experience for us. I think the key is understanding, going into the process, that there are no cut-and-dried answers. As we negotiated with the Justice Department, DOJ didn't say, "You have to do A, B, and C." Rather, they said, "You have to live up to certain Constitutional standards," and we had to find a way to tailor those standards to policing in Prince George's County while remaining effective. So that's how we approached it. Every policy was custom-made and then approved by the independent monitors. The outcome was a greater degree of policy and practice clarity for our personnel, which we think is contributing to crime reduction. We fundamentally explain to our officers where the boundaries are on a variety of issues so they are able to aggressively fight crime while policing Constitutionally. (PERF, 2013, p. 11)

Chanin (2016), his most recent evaluation of the state of the Prince George's County reform effort, was somewhat equivocal, but, overall, similar to his original conclusions:

> Despite this pattern of unlawful and corrupt behavior among PGPD officers and a continued absence of respect for the rule of law among certain county officials, it is hard to draw any definitive conclusions about the effectiveness or long-term viability of the reform effort. There is simply not enough known about the department to make a legitimate assessment of efforts to change the department's approach to the use of force and external accountability. Further, the lack of available information on the PGPD reform effort seems to support the notion that the Prince George's County government is either unwilling or unable to make police accountability and department transparency a priority, despite claims to the contrary. The widespread unwillingness among stakeholders to speak with me (either on or off the record) about the process adds weight to this

gulf between where Prince George's County appears to be and where the Justice Department would have wanted them to be seven years after the MOA was signed" (pp. 274-280).

> conclusion. These impressions become stronger still after even the most cursory examination of incidents involving the County and its police department since 2010, the first full year after the MOA was terminated. (p. 101)

3.3.2. Cities with Completed Consent Decrees

New Jersey State Police (1999-2009).

In December 1999, the DOJ found that New Jersey state troopers were engaging in a practice of racial profiling by stopping black and Latino drivers at a more frequent rate than white drivers.

The New Jersey consent decree was reportedly "characterized by a friendly and mutually complimentary relationship between the State Police and the independent monitor" (Kupferberg, 2008, p. 152). In the Monitor's first report, it was noted that,

> Members of the Monitoring team were unanimously impressed with the commitment, focus, energy and professionalism with which members of the New Jersey State Police and the Office of State Police Affairs applied themselves and their organizations to implementation of the changes … Their commitment to 'doing the job right' is exceptional. (Kuperberg, 2008, p. 152, citing Monitor's First Report (October, 2000), p. v)[227]

Still, however, the Monitor's first report acknowledged that "a great deal of work remain[ed] to be done" (Monitor's First Report, 2000, p. vi). The Monitor's second annual report (January, 2001) found that the State Police had complied with 88% of its first-phase reform tasks and approximately 50% of the second-phase tasks. Even so, however, the percentage of minorities stopped rose from 38 to 40 percent (Kupferberg, 1998, p. 152-153, citing, *Associated Press*, 1/11/2001).[228]

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[227] Monitors First Report, Long-term Compliance Audit (2000). Retrieved from https://www.state.nj.us/lps/monitors_report_1.pdf#:~:text=Monitors%E2%80%99%20First%20Report%20-Longterm%20Compliance%20Audit%20Civil%20Number,and%20Rivas%20Newark%2C%20New%20Jersey%20October%206%2C%202000.

[228] Minority Stops Climb on Turnpike (2001, January 11). Associated Press, The Press of Atlantic City; Monitor's Second Report. Retrieved from https://www.state.nj.us/lps/monitors_report_2.pdf#:~:text=The%20second%20independent%20monitors%E2%80%99%20report%20was%20submitted%20to,New%20Jersey%20State%20Police%20are%20data%20based%2C%20and

By 2004, the New Jersey State Attorney General's Office and the DOJ moved jointly to terminate court oversight of the internal affairs unit of the State Police. The court-appointed monitor agreed, calling the unit "a 'shining star' of reform". On April 8, 2004, the presiding judge found that the internal affairs unit, "once denounced by investigators as slow and ineffective, had met its obligations under the decree and no longer required court monitoring" (Kupferberg, 2008, p. 153, citing *Newark Star-Ledger*, 4/9/2004, 7/20/2004).[229]

In July, 2005, the Monitor in his 12th report (July, 2005) announced "100% compliance with all requirements of the decree." (Kupferberg, 2008, p. 154, citing Monitor's 12th report, p. iv).[230] It was not until 2007, however, that the Monitor noted that the Department was "fully capable of self-monitoring and self-adaptation" (Monitor's 16th report (August, 2007), p. 7) [231] and recommended the termination of the Consent Decree (Walker & Macdonald, 2009, p. 520).

The New Jersey State Attorney General, however, declined to petition the court to end judicial oversight at the time, "concerned…that matters might slip back to the old ways of doing things if the changes have not filtered all down" (Kupferberg, 2008, p. 154, citing *Newark Star-Ledger*, 5/12/2006).[232]

The Sixteenth [and next to last] Monitor's Report in August 2007 reported that "the New Jersey State Police appear to have reached a watershed moment during the last two reporting periods." The Monitor concluded that the agency had "become self-monitoring and self-correcting to a degree not often observed in American law enforcement." (USDOJ, 2017b, p. 39). In late 2007 that the New Jersey Governor announced an intent to "ask the federal government to halt its oversight of the New

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[229]Schuppe, J. (2004, July 20). Trooper Reforms Working, Feds Say; Major Progress Praised but Some Profess Doubt, *Newark Star-Ledger*; Schuppe, J. (2004, April 9). Judge Eases Monitoring of State Police by Court; Minority Leaders Will Fight Ruling on Consent Order, *Newark Star-Ledger*.

[230] New Jersey Monitor's 12th report, located at https://www.state.nj.us/lps/monitors-report-12.pdf.

[231] New Jersey Monitor's 16th report, located at https://www.nj.gov/oag/monitors-report-16.pdf.

[232] Hepp, R., (2006, May 12). AG Cautious on Call to End Monitoring of Trooper Stops, *Newark Star-Ledger*.

Jersey State Police because of sufficient reforms." (Kupferberg, 2008, p. 154, citing, *New York Times*, 12/8/2007).[233]

During the 2013 symposium organized by the Police Executive Research Forum, the former New Jersey Attorney General noted that the development of the "EIS [early intervention system] was the most difficult part of the reform to accomplish" and, as a result "it took almost 10 years before the Consent Decree was resolved… it was very expensive and difficult to develop, but it was the critical component [of accountability and consent decree compliance]" PERF, 2013, pp. 17-18). He further commented that:

> Without the force of a court order behind us, I doubt we would have obtained the funding that we needed from the state, over a sustained period of time, to develop the systems that the New Jersey State Police put in place to ensure internal transparency. I think the process was a help to us. We did not put anything in place that we were not going to do eventually in any case. But putting the force of a court order behind it created a momentum that would not have otherwise existed. (PERF, 2013, p. 35)

As explained by Walker & Macdonald (2009), the State of New Jersey gave "serious consideration to the question of what formal arrangement, if any should be made following the termination of [the] consent decree to ensure continuity of the court ordered reforms." The Governor subsequently established the New Jersey Advisory Committee on Police Standards, which issued a report on December 7, 2007.[234] The Committee concluded that "the critical component of sustainability" was "continued oversight" of the Department and ongoing audits of activities previously reviewed by the court-appointed monitor (p. 534, citing *New Jersey Advisory Commission on Police Standards*, p. 89).

East Haven, Connecticut (2012-2017).

In December 2012, the DOJ and the City of East Haven, Connecticut entered into a Consent Decree after the DOJ identified a pattern or practice of discriminatory policing against Latinos (DOJ, 2017b, p. 44).[235] The first person appointed to monitor

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[233] Chen, D. (2007, December 8). Monitoring of Police Should End, Corzine Says, *New York Times*.

[234] See N.J. Advisory Comm. on Police Standards, Report and Recommendations to Governor Jon S. Corzine (Dec. 7, 2007). Retrieved from http://www.state.nj.us/acps/njacps final report.pdf.

[235] The East Haven Consent Decree was filed with the court on November 20, 2012 and can be found at: https://perma.cc/WQG5-FMGT.

compliance (referred to in the Consent Decree as "the Joint Compliance Expert") was Kathleen O'Toole, who served in that capacity until she was appointed the Chief of Police in Seattle, with the responsibility to lead the Seattle Police Department towards compliance with its Consent Decree.

The East Haven Police Department employed 50 officers; the DOJ opened an investigation in September 2009 after four officers were arrested for federal civil rights violations perpetrated against members of East Haven's Latino community. "In December 2011, the Division identified a pattern or practice of discriminatory policing against Latinos, particularly in traffic enforcement. In December 2012, the [City and the DOJ] entered into a court-enforced consent decree." (USDOJ, 2017b, p. 8, 44). Court jurisdiction over the agreement was terminated "on time" and "under budget" in December 2017 (*WHSU.org*, 12/18/2017).[236]

According to media reports, over the period of the Consent Decree, the Chief of Police and "about half the department" had been replaced; body camera use was implemented and the Department prioritized hiring Spanish-speaking officers. According to the new Chief:

> Our officers are some of the best trained, both locally and nationally, and we take complaints about our own very seriously. We have made great strides in bridging the gap with all members of our community, and we hold officers accountable for their conduct. (WSHU.org, 12/18/2017)

By 2015, the U.S. Attorney General was referring to East Haven as a model for improving police-community relations. (*Police.one*, 4/5/2017).[237]

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[236] Dunavin, D. & Cioffari, N. (2017, December 18). East Haven Police Fulfill Terms of Consent Decree for Anti-Latino Bias. *WHSU.org*. Retrieved from https://www.wshu.org/post/east-haven-police-fulfill-terms-consent-decree-anti-latino-bias#stream/0.

[237] Seewer, J. (2017, April 5). How Police Departments with Consent Decrees are Faring. *Police.one*. Retrieved from https://www.policeone.com/doj/articles/how-police-departments-with-consent-decrees-are-faring-RZ2BCbuGpTQm7NgN/

3.3.3. Cities with Ongoing Consent Decrees

Portland Oregon (2012-Ongoing).

After a fifteen-month investigation, in September 2012, the DOJ "identified a pattern or practice of excessive force against persons with mental illness,[238] which resulted in a Consent Decree, which remains in effect" (USDOJ, 2017b, p. 44).[239] The DOJ investigation was initiated, in part, due to a letter sent by a County Grand Jury, which concluded that the Portland Police Bureau needed to be held responsible for "flawed police policies, incomplete or inappropriate training, incomplete communication, and other issues with the police effort" that resulted in a 2010 shooting of an armed suicidal man (Grand Jury Letter, 2/10/2010).[240] The DOJ was invited to investigate the Police Bureau at the behest of the Mayor and the Chief of Police (Patel, 2016, pp. 838-839).

The agreement in Portland was limited in scope. This was attributed to Portland's willingness "to cooperate[] with [the] DOJ investigation[] at its outset and immediately [begin] instituting suggested departmental changes" (PERF, 2013, p. 4). The Portland investigation was the first DOJ investigation to focus exclusively on police interactions with persons suffering from mental health crisis. The Portland investigation letter acknowledged that the mental health system in Oregon was "in shambles." As such, the DOJ took the position that Portland police needed the appropriate tools to assume the burden of dealing with the results of a broken mental health system (PERF, 2013, p. 25; Walker, 2018).[241]

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[238] Interestingly, while serving as the Director of Portland's Independent Police Review Division, I sat in on a police awards ceremony in 2005 where the Department gave medals to two officers involved in a controversial police shooting in the mental health ward of a hospital. The Police Bureau gave out the awards even though the shooting was widely reviled within the community and without any publicity or acknowledgment that awards were being given out in that case.

[239] The Portland Consent Decree was filed with the court on December 17, 2012 and can be located at: https://perma.cc/FSH5-5NHV.

[240] Letter from Grand Jury 1, Session 1, to Michael D. Schrunk, Dist. Att'y, Multnomah Cty. Courthouse (2010, February 10). Retrieved from http://media.oregonlive.com/news _impact/other/letter-jurors.pdf.

[241] The Portland findings letter can be located at: http://www.justice.gov/crt/about/spl/documents/ppb_findings_9-12-12.pdf

The Portland example stands out when it comes to the community's engagement in the process even before the approval of the settlement agreement between the City and the DOJ. Community leaders were reportedly disappointed that the DOJ findings did not include an allegation of racially based policing; however, possibly as a result of community advocacy, "the settlement agreement included provisions related to bias-based policing, data collection on race, and a community engagement and outreach ('CEO') plan" (Patel, 2016, p. 840). In addition, starting on February 18, 2014, the court conducted a two-day "fairness hearing to determine whether the settlement agreement was 'fair, adequate and reasonable" which "provided a platform for a prepared list of fifty-eight speakers from the community" (Patel, 2016, pp. 842-844). Patel (2016) described the "fairness hearing" as "historic for its inclusion of so many community voices" (p. 843).[242]

Lastly, Portland also appears unique in that on February 19, 2013, the court granted the Portland Police Association's (PPA) request to intervene as a party (Patel, 2016, p. 841). The court held that the PPA had a protectable interest in the litigation "because the terms of the proposed settlement agreement conflicted with provisions of the labor agreement existing between the city and the PPA." This decision raises the question of whether police unions whose labor agreements could impact the implementation of a consent decree should be required to be parties to the litigation, a practice which has, thus far, been avoided by the DOJ.[243]

By 2020, reports indicate that use of force in Portland declined from being used "against nearly 300 people in the first quarter of 2017, to less than 200 in the last quarter of 2019 as reforms set in." Although it was acknowledged that consent decrees are not specifically intended to reduce uses of force, the decrease supported the conclusion that de-escalation training may have reduced the level of violence between police and the community *(Politico.com*, 6/29/2020).[244] Even so, a recent U.S. DOJ report found the

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[242] Although Patel did not indicate what, if any, changes were made to the Consent Decree as a result of the fairness hearing.

[243] As discussed in Chapter 7.8, *infra*, the Seattle experience has been substantially impacted by the substance of the collective bargaining agreements with the police unions as they related to police accountability and the imposition of discipline.

[244] Trickey, E. (2020, June 29). The Obama-era Police Reform Biden Can't Wait to Restart. *Politico.com*. Retrieved from https://www.politico.com/news/magazine/2020/06/29/obama-police-reform-341685.

PPB out of compliance with its consent decree, one year after finding the City in full compliance and based, in large part, on the PPB's use of force as the result of anti-police protests in the Summer and Fall of 2020.[245]

New Orleans, Louisiana (2013-Ongoing).

In March 16, 2011, seven years after closing its first investigation of the New Orleans Police, the DOJ found the NOPD had engaged in "a pattern or practice of excessive force; unlawful stops, searches and arrests; discrimination on the basis of race, national origin and LGBT status; and gender discrimination in the failure to adequately respond to, and investigate violence against women." It took almost two years for the parties to negotiate a Consent Decree,[246] which was entered into on January 11, 2013 (USDOJ, 2017b, p. 45; Rushin, 2015, n. 2).[247] The New Orleans Consent Decree has been described as "broader in scope and more detailed than any other consent decree the DOJ had issued since it was given the authority 18 years earlier to investigate local police departments" (PERF, 2013, p. 1) The PERF report described the New Orleans Consent Decree as "a 122- page document that mandates hundreds of police department policy changes dealing with use of force, searches and seizures, arrests, interrogations, performance evaluations, misconduct complaints, off-duty work assignments, and more" (PERF, 2013, p. 3; Dukanovic, 2016; Jaio, 2020). [248]

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[245] Levinson, J. (2021, Feburary 10). After violent summer, Portland Police once again out of compliance with federal oversight. *OPB.* Retrieved from After violent summer, Portland police once again out of compliance with federal oversight - OPB; see, *U.S. v. City of Portland*, Plaintiff's Notice of Fifth Periodic Compliance Assessment Report, filed February 10, 2021. Retrieved from dojcompliancereport21121.pdf (documentcloud.org).

[246] The Rushin dissertation contains a typographical error – asserting a 10-month delay between the completion of the DOJ investigation and the entering into of the Consent Decree when, in fact, it was actually a 20-month delay (Rushin, 2015, n. 2).

[247] The New Orleans Consent Decree can be found at: https://perma.cc/T5FZ-XXPB.

[248] The New Orleans settlement negotiations have been described as "very complicated." According to PERF (2013), "newly elected Mayor Mitch Landrieu wrote a letter to the Justice Department in 2010 asking for assistance in reforming the Police Department. Two years later, the Justice Department and the city of New Orleans jointly announced their agreement on a consent decree detailing a complicated set of reform measures. However, as of February 2013, that agreement was being disputed in court, as the city sought to disengage from the process, over the objections of DOJ. City officials argued that they were misled about the costs of the agreement, particularly with regard to reforming the city's jail. DOJ officials said that there are Constitutional violations that must be remedied. Both sides continued to move forward, however, and by May the Mayor was seeking a tax increase in order to help pay for the Consent Decree reform measures" (PERF, 2013, p. 27; Jaio, 2020, citing Winston, A. (2013, August 31). American police reform and consent decrees. *Truthout/News*. Retrieved from http://www.truth-out.org/news/item/18455-american-police-reform-and-consent-decrees); According to Jaio

Notably, the Consent Decree also "focused heavily on a community-oriented policing approach and engagement with neighborhood organizations and groups" (Dukanovic, 2016, p. 921).[249] In addition, the New Orleans agreement attempted to deal with the concern that "policing problems cannot be isolated and cured" in that "they are connected to broader criminal justice and social systems." As such, the Consent Decree required "a regular meeting of law enforcement, public defenders, prosecutors, and judges to identify problems in the criminal justice system and develop solutions that extend beyond reform of the police" (USDOJ, 2017b, p. 34).

Like the selection of the Seattle monitor,[250] the selection of the New Orleans monitor was not a seamless process. In the case of New Orleans, concerns over costs drove the city to choose a monitor candidate (with more policing experience) that was cheaper than the ultimately successful candidate, a Washington D.C.- based law firm (Rushin, 2015, p. 104).

By 2015, the NOPD Superintendent was complaining that the size of the NOPD had dropped from 1,500 to 1,150 over the course of the reform period and that police recruits were dropping out of the police academy to work for the state police in order to both earn more money and avoid the oversight provided by the Consent Decree and the implementation of a body-worn camera program (*Frontline*, 11/13/2015).

However, in 2017, the federal judge monitoring the reform effort, in conjunction with an NOPD Deputy Superintendent over the NOPD Compliance Bureau and the NOPD's Director of Analytics, published a paper lauding the NOPD's success in the area of "data-driven reform." The paper noted that "over a 2-year span," the NOPD had

(2020), "[t]he city leadership of New Orleans, [] initially opposed the Consent Decree and related police reforms with a negative attitude (Winston, 2013). It was only after the Superintendent was replaced that the new leadership worked closely with the monitors and DOJ" (Jaio, 2020, p. 5).

[249] For an excellent description of the events leading up to the NOPD consent decree and the challenges associated with community engagement issues, see Patel, 2016, pp. 833-838. Ultimately, Patel concluded that "despite improvements in a number of [] areas," the New Orleans consent decree "made little progress in the area of community engagement. [Community initiated attempts to intervene in the Section 14141 litigation] suggests discontent on the part of several community constituents and government agencies. Moreover, a tracking system of police interactions with organized constituents [did] little to change the structure or power dynamic that created the cry for DOJ-led reform" (Patel, 2016, p. 838).

[250] See section 3.2.2, *supra*.

"transformed from a department struggling to comply with its expansive consent decree to one exploring even broader reforms" (Morgan et al., 2017, p. 290).[251]

By 2020, the New Orleans reform process was being described as an "astonishing success story" with a decline in police shootings, pursuits and citizen complaints and an increase in internal complaints against officers, purportedly indicating the department was more willing to hold its officers accountable (Politco.com, 6/29/2020, quoting Professor Sam Walker).[252]

Puerto Rico PD (2013-Ongoing).

In September 2011, after a three-year investigation, the DOJ found that the Puerto Rico Police Department had been engaging in "a pattern or practice of excessive force, violations of the First Amendment right to observe and record police activity and unlawful searches and seizures resulting from inadequate policies, supervision, training, accountability, and community engagement." The parties entered into a consent decree in July 2013 (USDOJ, 2017b, p. 45). [253]

The Puerto Rico Consent Decree included community engagement provisions that required the PRPD to engage the community to "ensure collaborative problem-solving, ethical and bias-free policing, and more effective crime prevention." The Consent decree also specifically included a requirement to maintain "Community Interaction Council's (CIC's) with community representatives to facilitate regular communication and cooperation between the PRPD and community leaders at the local level" (Patel, 2016, p. 828).

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[251] The authors concluded that "[t]he consent decree, once daunting, presented an opportunity for NOPD to build new systems of accountability from the ground up to reshape the future of the Department. Now, NOPD has developed a replicable model of data-driven management that has produced significant results. NOPD is applying this model across departmental operations to institutionalize the many requirements of the Consent Decree and the broader reforms it has embraced" (Morgan, et al., 2017, pp. 290-291).

[252] It should be noted that Walker (2018) used the New Orleans consent decree as an example "illustrat[ing] the challenge of effecting change on just one seemingly straight forward aspect of policing" when he noted that three years into the Consent Decree the Department was still in noncompliance with the requirement that supervisors "respond to and investigate uses of force" (p. 1822).

[253] The Puerto Rico Consent Decree was filed with the court on July 17 2013, and can be found at: https://perma.cc/TBT3-QMM8, at para. 205.

By May 27, 2014, however, no monitor had yet been appointed and the Settlement Agreement had not yet been translated into Spanish. This state of affairs resulted in a court motion being filed by one of the "CICs," which was quickly dismissed by the court for lack of standing, but with comment from the court acknowledging that the court "shared" many of the CIC's concerns (Patel, 2016, pp. 829-830).

Although a monitor was appointed shortly thereafter, the Monitor's first six-month report (covering the period from June 6, 2014 to December 2014), "addressed the lack of steps taken in implementing the Consent Decree due to the long delay in appointing [the Monitor]…" (Patel, 2016, p. 830). The Monitor filed a total of seven six-month reports, the last of which was filed with the court on June 6, 2018.[254] In that report, while the Monitor noted that "the PRPD has continued to reach specific milestones in compliance with steps in the Action Plans under the steadfast guidance and leadership of the Reform Unit Director," he also "detail[ed] ongoing, persistent challenges and recommendations regarding necessary steps to achieve compliance." Ultimately, the Monitor concluded that the PRPD would "not meet the original four-year capacity-building timeframe" envisioned when he was first appointed and reached the overall conclusion that the PRPD was in "partial compliance with unsatisfactory progress made in key compliance areas" (Puerto Rico TCA, Seventh six-month report, 6/6/2018, pp. 3, 4, 5 & 8).[255]

In an unusual move, the court-appointed monitor resigned in May 2019 alleging that the reform process was not proceeding effectively and the millions of dollars in legal fees associated with the reform effort were "going to waste" (*Politico.com*, 6/29/2020). The Monitor described having submitted "eight reports detailing illegal use of force, illegal transfers and violations of constitutional civil rights, among other things, but [had]

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[254] Seventh Six-Month Report of the Technical Compliance Advisor, June 10, 2017 – March 31, 2018, located at: https://www.clearinghouse.net/chDocs/public/PN-PR-0001-0033.pdf,

[255] The monitor specifically concluded that: "The PRPB is for the most part in full or partial compliance in meeting policy and procedure development as well training development steps in the Action Plans. However, it is in non-compliance in key data collecting and reporting objectives as well as implementation objectives defined in the Action Plans. Furthermore, there are areas such as Professionalization, Supervision and Management, Administrative Complaints, and Information Systems and Technology where the PRPB is non-compliant in key steps and is far from making satisfactory progress towards the implementation of the Agreement" (Puerto Rico TCA, Seventh Six-Month Report, p. 8). Retrieved from https://www.clearinghouse.net/chDocs/public/PN-PR-0001-0033.pdf.

not received support from federal officials [in the Trump DOJ]" (*Washington Post*, 5/14/2019).[256]

A then-Deputy monitor was subsequently appointed to succeed the original monitor and issued his first report in March 2020, covering the period from October 2018 to June 2019.[257] According to one member of the Monitoring team, Puerto Rico has had four to five years of capacity building and as of 2020, they were just starting the Monitoring phase.[258]

Albuquerque, New Mexico (2014-Ongoing).

After a 17-month investigation, the DOJ issued a findings letter concluding that the Albuquerque Police Department was engaging in a pattern or practice of excessive force, including deadly force.[259] Similar to findings made in New Orleans, the DOJ specifically found that "[t]he use of excessive force by [Albuquerque police] officers is not isolated or sporadic [rather it] stems from systemic deficiencies in oversight, training and policy." (Walker, 2018, p. 1819, quoting USDOJ findings letter, 3/17/2011).[260]

A consent decree between the City and the DOJ was filed on November 14, 2014 (USDOJ, 2017b, p. 45).[261] According to the DOJ, in order to assist the department in correcting issues relating to the use of excessive force, the Albuquerque Consent Decree, "required the integration of community and problem-oriented policing concepts

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[256] Coto, D. (2019, May 14). Official over Puerto Rico pólice reform resigns in protest. *Washington Post*. Retrieved from https://www.washingtonpost.com.

[257] See "First Report of the Federal Monitor," retrieved from https://fpmpr.org/reports/2020-03-cmr-1/Case-3-12-cv-02039-GAG-Document-1435.pdf.

[258] Personal "Linked-in" communication with the author, November 13, 2020.

[259] Patel (2016) reported the discord within the City leading up to the DOJ investigation: "In July 2011, the Martin Luther King, Jr. Memorial Center met with Albuquerque Mayor Richard J. Berry, asking him to join it and other activists in inviting the DOJ to investigate the civil rights violations of the Albuquerque Police Department ('APD'). Mayor Berry and APD Chief Ray Schultz then tried to stave off investigation for months by instituting a number of reforms and raising hiring requirements for incoming cadets. When the City Council passed a resolution requesting that the DOJ investigate the APD, the mayor vetoed it. As in other cities, community members challenging standing structures of power eventually sparked action; the DOJ ultimately decided to investigate the APD after receiving pressure from Albuquerque residents, families of shooting victims, and city councillors. The DOJ announced the launch of its investigation into the APD on November 27, 2012. The parties began settlement negotiations on October 29, 2014" (pp. 851-852).

[260] U.S. DOJ, Investigation of the New Orleans Police Department (2011). Retrieved from https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf.

[261] The Albuquerque Consent Decree can be found at: https://perma.cc/4HHZ-C67Q.

into management structures, resource deployments, policies and training systems" (USDOJ, 2017b, p. 26). The DOJ was also concerned with issues relating to officer wellness and support due to its potential impact on officer uses of force. As such, like other decrees (including Ferguson, Cleveland, Puerto Rico and New Orleans) the APD was required to "provide officers with access to health and wellness programs, physical fitness programs, stress management tools, confidential crisis counseling, or other support services necessary to address the heavy burdens placed on today's police officers" (USDOJ, 2017b, p. 33).

In November 2015, *Frontline* reported that since the DOJ investigation began, the number of times APD officers used force dropped by 57%. The APD Chief, appointed in 2014, was quoted as attributing the drop in uses of force to the fact that most APD officers were now trained in crisis intervention: "Our officers are taking more time at the calls; they're taking more time to assess the situation" (*Frontline*, 11/13/2015).

However, by mid-2020, it was being reported that the Albuquerque consent decree "is nowhere near completion." The Monitor was quoted as saying that: "Sergeants and lieutenants, at times, go to extreme lengths to excuse officer behaviors that clearly violate established and trained [police] policy." The Monitor further reported that the department would "sometimes let violations lie dormant until time limits for internal investigations, required in the police union contract, run out" (*Politico.com*, 6/29/2020).

Cleveland, Ohio (2015-Ongoing).

In March 2013, eight years after the termination of a memorandum of agreement between the City of Cleveland and the DOJ (which did not involve the appointment of a monitor), the DOJ opened a new investigation into the Cleveland Division of Police. After a 21-month investigation, the DOJ "identified a pattern or practice of excessive force, and raised concerns about search and seizure practices, resulting from insufficient accountability, inadequate training and equipment, flawed policies, and inadequate

community engagement." A consent decree, to include the appointment of a Monitor, was filed on May 26, 2015 (DOJ, 2017b, p. 45).[262]

The road to Cleveland's consent decree was discussed in a 2020 online article:

> Cleveland's clamor for police reform rose up after November 29, 2012, the night that 13 officers fired 137 shots after a 60-car police chase, killing the unarmed driver and his passenger. Rep. Marcia Fudge, the local NAACP, and the Rev. Colvin of Olivet Baptist each asked the Justice Department to investigate the police department's use of deadly force (Cleveland's mayor followed suit a few weeks later).
>
> [By] December 4, 2014, Cleveland was in turmoil. Just days before, a white police officer had killed a 12-year-old boy playing in a park with a toy gun. The city was outraged at its police department, which many said was ill-trained, poorly supervised, and deeply troubled. On that day, Attorney General Eric Holder arrived in town with a report that seemed to bear out those complaints.
>
> "In recent days, millions of people throughout our nation have come together, bound by grief and bound by anguish," Holder said, mentioning Tamir Rice's death and the killings earlier that year of Eric Garner in New York City and Michael Brown in Ferguson, Missouri.
>
> With that, Holder announced the results of the Justice Department's 1½-year investigation in Cleveland. "There is reasonable cause to believe that the Cleveland Division of Police engages in a pattern and practice of using excessive force," he declared. The report Holder delivered was a scathing indictment of Cleveland police for "poor and dangerous tactics," pistol-whippings, guns fired at "unarmed or fleeing suspects," and of supervisors "all the way up the chain of command" who usually "approved the use of force as appropriate." (*Politico.com*, 6/29/2020)[263]

A significant aspect of the Cleveland Consent Decree was the creation of a Community Police Commission, similar to the identically-named Commission created in Seattle.[264] Additional requirements of the Consent Decree included

> the development of policy designed to regulate mental health encounters (para. 131) as well as the creation of officer teams specifically charged with responding to mental health calls (paras. 145–152). Further, all Cleveland Police Department (CPD) officers must receive crisis intervention training

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[262] Cleveland Consent Decree can be found at: https://perma.cc/4FBT-VPG5.

[263] See also, Chanin, 2016, pp. 67-68 & 111-112; and, Patel, 2016, pp. 847-848, for descriptions of the events leading up to the DOJ investigation and negotiation of the Cleveland Consent Decree.

[264] See Cleveland Consent Decree, paragraphs 15-22.

> (paras. 143–144), while the CPD is tasked with developing collaborative partnerships with community mental health service providers (paras. 153–159). (Chanin, 2017a, p. 259)

At the time of the filing of the Consent Decree, the President of the Cleveland Police Patrolmen's Association "denounced" the decree and subsequently endorsed Donald Trump for President. By late 2017, the succeeding PPA President took "a less defiant public tone," but still called the DOJ investigation report "one-sided," and called the Consent Decree "unnecessary," but acknowledged: "it's here and we gotta deal with it" (*Politico.com*, 6/29/2020; *Cleveland.com*, 5/28/2015).[265]

The cost of the reform effort has been estimated by the City of Cleveland to be as much as $4 million per year (*Cleveland.com*, 11/21/2019),[266] and has been reported as requiring an increase in the City income tax in 2016 (*Cleveland.com*, 12/29/2016; *Politico.com*, 6/29/2020).[267]

By 2020, the police reform effort was being described as "still a work in process." It was noted that the CDP had rolled out new policies, training and disciplinary rules and that use of force incidents "are not only down, they're less likely to result in injuries to police and civilians" (*Politico.com*, 6/29/2020). Even so, in a July 2020 report, the court-appointed monitoring team described ongoing challenges, to include a

> lack[] [of] the technology and data necessary to allow officers to report basic information necessary to evaluate the Department's performance with respect to stops, searches, and arrests; interactions with individuals in behavioral crisis; and community policing and problem-solving; failures to hold officers accountable for misconduct

and a failure on the part of the city to "engage productively" with the Consent-decree created Community Police Commission. The Monitor concluded with a warning that:

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[265] Macdonald, E. (2015, May 28). Cleveland Police Union Says Justice Department Reforms Would Endanger Police. *Cleveland.com*. Retrieved from http://www.cleveland.com/metro/index.ssf/2015/05/union_head_says_aspects_of_cle.html.

[266] Heisig, E. (2019, November, 21). Tamir Rice, officer use of force and Cleveland's high cost of fixing its police department. *Cleveland.com*. Retrieved from https://www.cleveland.com/cityhall/2019/11/tamir-rice-officer-use-of-force-and-clevelands-high-cost-of-fixing-its-police-department.html.

[267] Krouse, P. (2016, December 29). Cleveland income-tax hike to take effect Jan. 1. *Cleveland.com*. Retrieved from https://www.cleveland.com/metro/2016/12/cleveland_income-tax_hike_to_t.html.

"redoubled urgency is necessary for the Department to reach full and effective compliance." (Cleveland Police Monitor, Eighth Semi-annual Report, pp. 2-3, 8-9).[268]

Ferguson, Missouri (2016-Ongoing).

The City of Ferguson found itself in the middle of a political and social maelstrom as the result of the August 9, 2014 shooting of Michael Brown, an unarmed 18-year-old African-American man.[269] Shortly after the shooting, which resulted in protests throughout the country (Patel, 2016, p. 856-857), the DOJ initiated an investigation; only six months later, on March 5, 2015, the DOJ concluded that the Ferguson Police Department had engaged in "a pattern or practice of unlawful stops and arrests, including violations of the First Amendment right to observe and record police activity; excessive force; and discriminatory policing." In addition, the DOJ concluded that the Police Department and the City's Municipal court had "focused on revenue generation at the expense of public safety and constitutional law enforcement" (USDOJ, 2017b, p. 46; Dukanovic, 2016, pp. 931-932).

Like other city experiences, the negotiation of the Ferguson Consent Decree was not seamless. After City negotiators and the DOJ worked out an initial agreement, on February 9, 2016, the Ferguson City Council, concerned about the costs associated with the proposed reform effort, approved the Decree but with the proviso that the DOJ adopt several revisions, to include

> cap[ping] monitoring fees at $1 million over the first five years and no more than $250,000 in a single year of reform…The proposed amendments follow[ed] estimations made by [the Mayor] and other city officials that the DOJ's request could potentially cost the city $10 million over the next three years…[and that] the proposed reform could financially break the city, which [had] a budget of about $14 million and [was] $2.8 million in debt. (Dukanovic, 2016, p. 935)

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[268] See, Cleveland Police Monitor, Eighth Semi-annual report, July 2020, located at: https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5f0dc503ea043118c97d16e5/1594737927356/FILE_9341.pdf. See also, Caniglia, J. (2020, July 13). Report blasts former Cleveland Public Safety Director [] for being lenient with problem police officers. *Cleveland.com*. Retrieved from https://www.cleveland.com/court-justice/2020/07/report-blasts-former-cleveland-public-safety-director-michael-mcgrath-for-being-lenient-with-problem-police-officers.html..

[269] Violent protests erupted the night of the shooting and continued for 11 days. A state of emergency was declared by the Missouri Governor on August 16, 2014 and an executive order calling in the National Guard was issued on August 18. The National Guard was not withdrawn from the city until August 21, 2014 (Devi & Fryer, 2020, p. 29).

The next day, the U.S. Attorney General announced the filing of a §14141 lawsuit against the city, saying that: "The City of Ferguson had a real opportunity here to step forward, and instead they've turned backwards…They've chosen to live in the past." The City eventually accepted the DOJ's proposed consent decree on March 15, 2016. (Dukanovic, 2016, p. 935, n. 144;[270] Patel, 2016; Chanin, 2017a; Powell et al., 2017, p. 576).[271]

The court approved the Ferguson Consent Decree on April 19, 2016, after having received written submissions from community members.[272] Many of the submissions

> argued that the community engagement provisions included within the Consent Decree failed to adequately incentivize officials and police officers to reach out to community…Commentators generally felt that citizen review boards would only have an enduring effect on the reform process if community oversight and engagement provisions were strengthened. (Patel, 2016, pp. 863-864)

By 2017, reports indicated that although the Consent Decree required the creation of a Civilian Review Board to review allegations of police misconduct, the City missed a deadline for the Board to become operational and, as of April 2017, the board was still not able to accept complaints. The federal judge still found, however, that the city was "making meaningful progress" in the implementation of the decree (*Police One*, 4/5/2017). Even so, by November, 2017, City leaders, who had reportedly paid more than $500,000 to its monitoring team over a one-year period, continued to question the value of the costs, being paid for by a city with a population of less than 20,000 (Jaio, 2020, p. 5, citing *Associated Press*, 11/22/2017).[273]

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[270] Citing, Wagner, L. (2016, March 15). Ferguson City Council Accepts Consent Decree Worked Out with Justice Department, *NPR*. Retrieved from http://www.npr.org/sections/thetwo-way/2016/03/ 15/470598733/ferguson-city-council-accepts-deal-with-justice-department.

[271] The Ferguson Consent Decree was filed with the court on April 19, 2016 and can be found at https://perma.cc/AXP6-DMFG.

[272] The court approved the Consent Decree even though it acknowledged that many of the commentators believed it to be "biased in its approach" and recognizing that "some people have complained that they weren't involved in the negotiation of the settlement agreement" (Patel, 2016, p. 864-865, footnotes 467 and 468, quoting from Transcript of Excerpt of Ruling from Motion Hearing at 2, United States v. Ferguson, No. 4:16-cv-00180-CDP (E.D. Mo. Apr. 19, 2016), ECF No. 43).

[273] Salter, J. (2017, November 22). Ferguson leaders wonder if monitor worth cost. *Associated Press*. Retrieved from https://www.usnews.com/news/us/articles/2017-11-22/apnewsbreak-ferguson-leaders-wonder-if-monitor-worth-cost.

By 2019, the court-appointed monitor was giving the city "mixed reviews." Although,

> she lauded the city for implementing a police use-of-force policy and cited progress in use of body-worn and in-car cameras [and] gave generally high marks for municipal court reforms, …[she] cited 'sluggish' progress in community policing, officer training and data collection. (*Associated Press*, 8/8/2019)[274]

Maricopa County, Arizona (2015-Ongoing).

The case of the Maricopa County Sheriff's Office, under the leadership of the infamous Sheriff Joe Arpaio, was the second of only three cases involving litigation between the DOJ and a local police agency.[275] The case investigation was opened in March 2009 and following the refusal of the Sheriff's Department to cooperate with the DOJ investigation, a law suit was filed by the DOJ in September 2010 seeking to compel the Sheriff's Department to provide information to relevant to the DOJ investigation. The Sheriff eventually settled the first law suit in June 2011 by agreeing to cooperate. The DOJ investigation was finally completed in December 2011 wherein the DOJ "identified a pattern or practice of discriminatory policing against Latinos; unlawful stops and arrests; and unlawful retaliation against people who make complaints or criticize MCSO." After unsuccessfully attempting to negotiate a settlement agreement (again, for the first time in the application of §14141), the DOJ filed a lawsuit in May 2012.[276] A judicial decision, in the DOJ's favor was granted in June 2015 and the parties entered into "a consent decree addressing issues concerning worksite raids, retaliation, and language access requirements." The DOJ and the MCSO also entered into a memorandum of agreement

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[274] It's been 10 years since Ferguson: Are racial tensions even worse now? (2019, August 8). *Associated Press*. Retrieved from https://www.usatoday.com/story/news/nation/2019/08/08/ferguson-missouri-riots-5-years-since-shooting-race-tensions-worse/1952853001/.

[275] The first Section 14141 litigation involved the City of Columbus, Ohio, which was sued by the DOJ in October 1999, wherein the city alleged that Section 14141 was unconstitutional (see, https://www.clearinghouse.net/detail.php?id=1034). That litigation was resolved in 2002, after the DOJ concluded that the Columbus Division of Police had "made significant changes to the policies and procedures that we sought to change through the pattern or practice lawsuit" (See, correspondence between City of Columbus and DOJ, found at: https://perma.cc/T38F-58BE). (See also, Ross & Parke, 2009, p. 204; Simmons, 2010, n. 116; Chanin, 2014, n. 2). The third case involved the Alamance County, North Carolina Sheriff's Department, see infra.

[276] Negotiations reportedly "broke down when Sheriff Arpaio publicly refused a key point of the settlement proposed by the Department of Justice, a court-appointed monitor to ensure compliance with the agreement" (Harmon, 2012, p. 49).

regarding the operation of the local jails.[277] In August, 2015, the DOJ intervened in a lawsuit filed by the ACLU regarding discriminatory policing (USDOJ, 2017b, p. 46).

On May 13, 2016, Sheriff "Arpaio and his top deputies [were found] in contempt for violating court orders to stop racially profiling Latinos as part of unlawful enforcement operations targeting immigrants." According to the presiding judge:

> "the Defendants [] engaged in multiple acts of misconduct, dishonesty, and bad faith with respect to the Plaintiff class and the protection of its rights. They have demonstrated a persistent disregard for the orders of the Court, as well as an intention to violate and manipulate the laws and policies regulating their conduct…" (ACLU website, updated 9/13/2017)[278]

Ultimately, the Sheriff was successful in his negotiations with the DOJ, as the final Settlement Agreement did not include the appointment of a court-appointed monitor, a key sticking point in the original negotiations. Sheriff Arpaio, however, lost his campaign for re-election in 2016.

On August 25, 2017, President Trump pardoned Arpaio, who was awaiting sentencing for the criminal contempt-of-court conviction.[279]

Alamance County, North Carolina (2016- Ongoing).

The DOJ's investigation of the Alamance County, North Carolina, Sheriff's Office was opened in June 2010 and concluded in September 2011 with a finding by the DOJ that the Sheriff had engaged in "a pattern or practice of unlawful discrimination against Latinos and unlawful stops and arrests in violation of the Fourth Amendment" (USDOJ,

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[277] A Settlement Agreement between the DOJ and the Maricopa County Sheriff's Department was filed with the court on July 17, 2015 and can be found at: https://perma.cc/6FEJ-HDVE.

[278] Retrieved from https://www.aclu.org/cases/ortega-melendres-et-al-v-arpaio-et-al#:~:text=UPDATE%2FMay%2013%2C%202016%3A%20A%20federal%20court%20found%20Arpaio,immigrants.%20The%20ruling%20stems%20from%20the%20ACLU%27s%20lawsuit.

[279] President Trump's pardon stated that: "Throughout his time as sheriff, Arpaio continued his life's work of protecting the public from the scourges of crime and illegal immigration, … Sheriff Joe Arpaio is now 85 years old, and after more than 50 years of admirable service to our nation, he is (a) worthy candidate for a Presidential pardon" (Riotta, C. (2020, August 8). Joe Arpai: Arizona Sheriff pardoned by Trump for criminal contempt fails to win back old job. *The Independent*. Retrieved from https://www.independent.co.uk/news/world/americas/us-politics/joe-arpaio-arizona-sheriff-election-trump-pardon-jerry-sheridan-a9661196.html.

2017b, p. 47). A complaint was filed by the DOJ in December 2012, after it was determined that the DOJ and the Sheriff would be unable to agree upon a settlement. After the first §14141-initiated trial, the DOJ's complaint was dismissed by a federal District Court judge.[280] The DOJ subsequently appealed the dismissal and, in August 2016, while the appeal was pending the parties entered into a Memorandum of Agreement (USDOJ, 2017b, p. 47; Rushin, 2016; Chafin, 2017a, n. 3).[281]

As with the Maricopa County Sheriff, no court-appointed monitor was required as part of the Alamance County MOA and, in fact, the history of the Alamance County case appears to have closely mirror the experiences of Maricopa County (Rushin 2016, pp. 136-140).

Miami, Florida (2016-Ongoing).

The DOJ opened up an investigation into the Miami Police Department in May 2002, but closed out the investigation without formal findings in May 2006.[282] The DOJ re-opened the investigation in November 2011 and by July 2013, the DOJ identified systemic excessive use-of-force with respect to the discharge of firearms. The city and the DOJ entered into an MOA on March 10, 2016.[283]

In the case of Miami, the MOA did include the appointment of a monitor. By 2019, it was being reported that "some things have improved. Most important, Miami cops are indeed shooting fewer people than they were before the feds intervened"

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[280] The court found that the DOJ failed to provide "evidence that any individual was unconstitutionally deprived of his or her rights,'' and, instead, built its case on ''vague, isolated statements'' and statistical analysis that ''failed to constitute reliable and persuasive proof of the claims under applicable legal standards'' (Chanin 2017a, pp. 261-262, citing, United States v. Johnson (2015). United States District Court (Middle District of North Carolina). Retrieved from https://www.clearinghouse.net/chDocs/public/PN-NC-0002-0012.pdf, p. 251).

[281] The Memorandum of Agreement was signed on August 17, 2016 and can be found at: https://www.justice.gov/crt/file/886406/download.

[282] According to a 2015 report by *the Marshall Project*: "Justice officials have also found themselves back in Miami, where seven black men died in police shootings during an eight-month span ending in 2011. In 2006, the department had closed an earlier civil rights investigation of the Miami police after the force pledged to make a series of changes sought by Washington. 'Unfortunately, many of the systemic problems we believed were fixed have reoccurred, evidenced by a steady rise in officer-involved shootings,' the then-head of the Civil Rights Division, Thomas Perez, wrote to Miami's mayor and police chief in July 2013" (*Marshall Project*, 4/23/2015).

[283] The Memorandum of Agreement between the DOJ and the City of Miami can be found at: https://perma.cc/R59Q-2YYX.

(*Miami New Times*, 9/6/2019).[284] However, as of June 2019, the Community Advisory Board (set up as a result of the Settlement Agreement) and police-reform advocates in Miami were calling for the termination of the Monitor, a former Tampa Police Chief. Although the Monitoring position had been announced as a full-time job, the Monitor instead had decided to run for Mayor of Tampa, had reportedly missed deadlines for the submissions of reports and had been difficult to reach (*Miami New Times,* 9/6/19). Although the Monitoring reports stated that the internal affairs unit and body-worn camera policies were in compliance with the MOA, community members openly questioned those conclusions (*Miami New Times*, 9/6/2019).

The Monitor was, in fact, elected Mayor of Tampa and took office on May 1, 2019[285] and was eventually replaced in September 2019 by a DOJ lawyer, rather than an independent monitor (*Miami New Times*, 9/6/2019).

Baltimore, Maryland (2017 – Ongoing).

The last Consent Decree reached by the federal government, immediately prior to the inauguration of Donald Trump, involved the City of Baltimore. The city's then-Mayor invited the DOJ to conduct an investigation into the Baltimore Police Department after the highly publicized in-custody death of Freddie Gary on April 19, 2015.[286] By August 2016, the DOJ had

> identified a pattern or practice of unlawful stops, searches and arrests; discriminatory policing; excessive force, including use of force against people with disabilities in violation of the Americans with Disabilities Act; and violations of the First Amendment right to observe and record police activity. The Division also identified concerns with BPD's handling of sexual assault investigations and transport practices. (USDOJ, 2017b, p. 48)[287]

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[284] Iannelli, J (2019, September 6). Justice Department Appoints New Police-Misconduct Monitor to Oversee Miami PD. *Miami New Times*. Retrieved from https://www.miaminewtimes.com/news/miami-police-get-new-federal-misconduct-monitor-to-replace-jane-castor-11259552.

[285] See, City of Tampa website, located at: https://www.tampagov.net/mayor.

[286] Broadwater, L. (2015, May 6). Baltimore mayor seeks federal investigation of police department, *The Baltimore Sun*. Retrieved from http://www.baltimoresun.com/news/maryland/politics/bs-md-ci-dojpartnership-20150506-story.html.

[287] For a of the events leading up to the DOJ investigation and negotiation of the Baltimore Consent Decree, see Greenberger, 2016, pp. 201-203.

According to the DOJ, their Baltimore findings were informed by "well-documented complaints from the Baltimore Fraternal Order of Police" and explanations from police union representatives "explaining the stress placed on officers by a staffing scheme that resulted in officers working double 10-hour shifts with only a few hours break between, and the impact of that stress on officers' capacity to police constitutionally and effectively." In addition, the DOJ reported that "meetings with individual officers helped [the DOJ] identify the ways in which lack of access to basic technology, such as in-car laptops and functioning computers at district headquarters, impaired their [work]" (USDOJ, 2017b, p. 12).

A Consent Decree was entered into by the Obama-DOJ and the City of Baltimore on January 12, 2017, eight days before the inauguration of the Trump Administration.[288] On February 15, 2017, the court scheduled a public hearing on the provisions of the Consent Decree to be held on April 6, 2017. On April 3, 2017, the Trump DOJ requested that the court postpone the public hearing, only to be quickly rebuffed by the court (U.S. v. Baltimore, Doc. 25, 4/5/2017).[289] At the time, the Baltimore Mayor advised that the City would "strongly oppose any delay in moving forward" (*New York Times*, 4/3/2017);[290] the Baltimore police commissioner referred to the DOJ's attempt to delay the implementation of the Consent Decree as "a punch in the gut" (*New York Times*, 4/9/2017)[291] and made public statements supporting implementation:

> "I want this consent decree," the Baltimore police commissioner, Kevin Davis, said at a news conference. "We know we have to get better. We know that over many, many years, things have occurred here that prevent

[288] The Baltimore Consent Decree can be found at: https://www.justice.gov/crt/case-document/file/925036/download.

[289] Court Order can be found at: https://htv-prod-media.s3.amazonaws.com/files/doj-motion-denied-1491420970.pdf.

[290] Stolberg, C. & Lichtblau (2017, April 3). Sweeping Federal Review Could Affect Consent Decrees Nationwide. *New York Times*. Retrieved from https://www.nytimes.com/2017/04/03/us/justice-department-jeff-sessions-baltimore-police.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer.

[291] Stolberg, S. (2017, April 9). 'It Did Not Stick': The First Federal Effort to Curb Police Abuse. *New York Times*. Retrieved from, https://www.nytimes.com/2017/04/09/us/first-consent-decree-police-abuse-pittsburgh.html.

> the Baltimore Police Department from being the best that it can be." (*New York Times*, 11/21/2017)[292]

In its first semi-annual report, released on July 18, 2018, the Monitoring Team questioned the capacity of the BPD to initiate sustainable reforms:

> …although BPD and City leadership are, to their credit, fully committed to reform, it is not yet apparent whether BPD has the capacity to implement the linchpin requirements of the Consent Decree. Will it be able to purchase, design and effectively utilize modern policing technology? Can it develop a robust system of supervision and officer accountability? Will it be able to hire and retain enough qualified patrol officers to fulfill the Consent Decree's community-oriented policing goals and maintain the morale of a Patrol Division that is currently overworked and stretched thin? These are open questions right now and, with only several months of active monitoring completed, the Monitoring Team cannot say what the answers are likely to be. What the first several months of monitoring have revealed is that, despite BPD's hard work, the challenges ahead are daunting. (Baltimore Monitoring Team 1st Semi-Annual report, pp. 6-7)[293]

By 2020, it was being reported that the reform process in Baltimore had "moved slowly, in part because of turnover in the mayor's and police commissioner's offices" (*Politico.com*, 6/29/2020). By January 2020, the Monitor was reporting.that the BPD was

> in the "easy part" of the reform process —policy revision, training, self-evaluation, planning [but that] BPD has yet to prove that it can do the "hard part." [BPD] has not yet shown that it will be able to implement and properly utilize new technology, employ and properly deploy sufficient personnel, ensure effective supervision, hold officers accountable, perform rigorous self-evaluation and self-correction, and obtain officer and supervisor buy-in so that constitutional, community-oriented policing becomes the Departmental norm. (Baltimore Monitoring Team, 4th semi-annual report, January 21, 2020, p. 28)[294]

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[292] Eder, S., Protess, B. & Dewan, S. (2017, November 21). How Trump's Hands-off Approach to Policing is Frustrating Some Chiefs. *New York Times*. Retrieved from https://www.nytimes.com/2017/11/21/us/trump-justice-department-police.html.

[293] Baltimore Monitoring Team, 1st semi-annual report (2018, July 18). Retrieved from https://www.bpdmonitor.com/resources-reports.

[294] Baltimore Monitoring Team, 4th semi-annual report (2020, January 21). Retrieved from https://www.bpdmonitor.com/resources-reports.

Chapter 4.

Background Literature on Section 14141 Enforcement

Issues and concerns regarding policing, police accountability and police reform in the United States are not new. In fact, there is substantial academic and professional literature relating to the many aspects of police accountability and reform, to include topics ranging from the challenges associated with organizational and cultural change, to those associated with externally-driven reform through political pressure, judicial intervention, criminal prosecution, and civil litigation. In addition, there has been much discussion about the potential for internally driven reform through policy, training, data collection and evaluation, and police leadership.

As noted by Armacost in her 2004 treatise entitled *Organizational Culture and Police Misconduct Police Reform*:

> Over the years, a number of prominent police departments have made efforts toward reform, often in response to the recommendations of independent commissions convened to investigate incidents of alleged wrongdoing by police. Still, misbehavior by law enforcement officers seems ubiquitous, and serious, lasting reform appears illusory. (p. 454)[295]

Armacost (2004) ultimately suggested that lasting reform cannot take place unless police agencies are willing to address systemic issues relating to police culture, rather than individual instances of police misconduct (p. 455).

The concept of looking at issues of ethics and integrity systemically and as organizational and cultural issues requiring comprehensive reform efforts is also not new or unique (see, for example, Hoffman, 1993; Livingston, 1999;[296] Swope, 2001; Walker,

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[295] Armacost (2004) quoted from a *Los Angeles Times* article which noted that: "Often, an investigation is undertaken, followed by recommendations for sweeping change, which are ignored or halfheartedly implemented. The cycle is so habitual that one steadfast aspect of each new report is a section wondering why the recommendations in past reports haven't been carried out" (pp. 454-455, quoting, McDermott, T. (2000, June 11). Behind the Bunker Mentality, *Los Angeles Times*).

[296] Livingston argued that "a conclusion drawn by many police scholars [is that] efforts at police reform will be most effective … when reform involves not simply adherence to rules in the face of punitive sanctions, but a change in the organizational values and systems to which both

2003; Armacost, 2004; Harmon, 2009; Walker & Macdonald, 2009, pp. 483-484; Simmons, 2010, pp. 381-382; Wolfe & Piquero, 2011, p.333, citing, Ivković, 2005, 2009; King 2009, ["[s]cholars have suggested that responsibility for officer misconduct ultimately resides at the organizational level"); Harmon, 2012, p. 35; and, Rushin, 2015, pp. 3 & 57). And, in fact, the recognition of this concept is an integral component of the basis for the use of the Section 14141 process which takes into account "patterns or practices" as opposed to individual officer conduct (Walker, 2017, p. 29 [stating that "[t]he DOJ [14141] program consolidated the view, already developing among police experts, that establishing professional and constitutional policing requires systemic organizational reform. Officer misconduct, in this view, is largely the result of poor management and a failure to establish the necessary accountability procedures"] (See also, Walker, 2018, p. 1819)).

In addition to consideration of organizational and cultural imperatives in reforming a police agency, the issue of organizational justice and the extent to which "organizations perceived as unjust and unfair by their employees are more likely to experience employee deviance" also needs to be examined in order to better understand both the causes and potential solutions of any structural litigation reform experience (Wolfe and Piquero, 2011, p. 333, citing Greenberg, 1993).

In this chapter, I identify the state of the literature with respect to theories relating to police reform; and specifically, with respect to externally-driven police reform efforts. The literature includes only a handful of substantive evaluation studies (to include PhD dissertations and research which collected original data)[297] as well as additional efforts to collect data from multiple jurisdictions to compare the effects of DOJ investigations

managers and line officers adhere" (Livingston, 1999, p. 850, citing Dixon, Law in Policing: Legal Regulation and Police Practices, p. 308 (1997); and, Jerome H. Skolnick & James J. Fyfe, Above the Law 211 (1993) p. 187 ["for reform to last, officers must come to adhere to different systems and values"]).

[297] See, Vera Institute of Justice Evaluation Studies of the Pittsburgh PA Consent Decree): Davis, et al, 2002; Davis, et al., 2005; RAND Corporation Evaluation Studies of Community-Police Relations and Traffic Stops over the course of the Cincinnati Collaborative Agreement: Riley, et al, 2005; Ridgeway, et al., 2006; Schell, et al., 2007; Ridgeway, et al., 2009; Ridgeway, 2009; Harvard Kennedy School evaluation of the Los Angeles Police Department: Stone, et al., 2009; and The Bromwich Group evaluation of Washington D.C. Metropolitan Police Department Uses of Force 2008-2015: Bromwich, 2016.

and interventions. I conclude the chapter with a discussion of the theory and data collected herein as it relates to prior research studies in this area.

I used the literature identified below to helped inform the findings made herein and to provide context to determine to what extent the Seattle experience can be generalizable to other jurisdictional experiences. To the extent my findings are generalizable, they can be used to inform future DOJ practices in their attempts to ensure the long-term sustainability of police reform efforts.

4.1. Police Reform Literature Status

By 2010, the DOJ noted that "more than 80 articles about §14141 litigation have been published in legal and other academic journals," however it was noted that only three evaluation studies (in Pittsburgh, Cincinnati and Los Angeles) "provide[d] measurable examples of positive structural, organizational and community changes resulting from §14141 intervention in these jurisdictions."[298] The DOJ subsequently convened a "one-day roundtable [consisting of police chiefs and other law enforcement executives, attorneys, case monitors, advocates and other federal staff] to take stock of the last 15 years of §14141 litigation and to discuss ideas and suggestions for future directions" (Clark, 2010, p. 6).

Since the time of the 2010 roundtable, additional studies have been conducted, using original data (usually in the form of stakeholder interviews, publicly available crime and population data, and court-appointed monitor and police department reports) to evaluate the quality and sustainability of §14141 imposed reform (Chanin, 2012; Rushin, 2015, Chanin, 2015) and to look at more specific issues, such as impact on crime and police productivity ("depolicing") (Rushin & Edwards, 2017; Chanin & Sheets, 2018; Devi & Fryer, 2020; Goh, 2020; Jaio, 2020), impact on civil suits against the police (Powell et

[298] I have not included the Cincinnati studies, conducted by the RAND Corporation as "an evaluation" study comparable to the Pittsburgh (Davis et al., 2002, 2005) and Los Angeles studies (Stone et. al, 2009). The Cincinnati studies were limited to the state of community-police relations in Cincinnati as the result of the implementation of the "Collaborative Agreement." The Pittsburgh and Los Angeles studies, however, were much more comprehensive, including a wide variety of data over and above the impact of those consent decrees on community-police relations.

al., 2017), impact on police management practices (Morgan et al., 2017), and impact on police misconduct and policy (Chanin, 2016).

There have been additional studies involving the collection of original data which have discussed issues of efficacy and sustainability on consent decrees as they related to multi-city comparisons, to include: Chanin, 2012 (Pittsburgh, Washington D.C., Cincinnati & Prince George's County, MD.); Chanin, 2014 (Pittsburgh, Detroit, Washington D.C., Cincinnati, & Prince George's County, MD); Chanin, 2015 (Pittsburgh, Washington D.C. & Cincinnati); Rushin, 2015 (Los Angeles and nationally);[299] and Rushin, 2016 (Pittsburgh, Washington D.C., Cincinnati, Prince George's County & Los Angeles).

In 2012, the Police Executive Research Forum (PERF) conducted its own assessment of §14141 investigations and interventions by convening a group of more than 80 academics, police executives, monitors, and DOJ and federal representatives. As recognized in a 2017 report from the DOJ, the PERF report

> quoted many police chiefs who have been through the process of a DOJ investigation as saying "that the end result was a better police department—with improved policies on critical issues such as use of force, better training of officers, and more advanced information systems that help police executives to know what is going on in the department and manage their employees." It further noted that, in many places, the reform agreement provided essential leverage to obtain the funding and political support necessary for reform. (USDOJ, 2017b, p. 38)

USDOJ (2017b), looking at the implementation of §14141 since its implementation in 1994, painted a very positive picture of the results of the evaluations that had been conducted thus far:

- The DOJ noted that the study conducted by the Harvard-Kennedy School of the Los Angeles Consent Decree concluded that public perceptions of the LAPD had improved, as well as police officer satisfaction. In addition, the DOJ quoted the Harvard-Kennedy report as noting that "oversight of the police department is stronger, and the quality as well as the quantity of enforcement activity are rising" (p. 38, citing Stone et al., 2009, p. 2);

[299] Rushin's PhD dissertation included examples from a wide variety of cities with consent decree experiences with a separate chapter discussing the Los Angeles Experience (Chapter 5: "Los Angeles: How Does a Best Case Happen?", pp. 125-170).

- The DOJ also commented on Chanin's evaluation of the Philadelphia, Los Angeles and Cincinnati Consent Decrees when he concluded that "best evidence on the DOJ's pattern or practice initiative suggests that after implementing mandated reforms, affected departments will likely possess a stronger, more capable accountability infrastructure, more robust training and a set of policies that reflect best practices" (p. 38, citing Chanin, 2015, p. 185);

- Finally, the DOJ also noted positive findings made by the Vera Institute of Justice evaluations of the Philadelphia Police Department, which found that the Philadelphia reform effort was "a success story for local police management and for federal intervention" (p. 38, citing Davis et al., p. i).

Since 1999, more than fifty academic and peer reviewed articles have discussed the applicability of §14141 to the effort to reform police agencies throughout the United States. A handful of academic scholars have, however, led the way, repeatedly adding data to the mix with respect to the ultimate question of whether the application of §14141 by the USDOJ leads to sustainable and positive change in directly affected police agencies.

The first academic articles theorized about the positive impact §14141 actions could have on policing, recognizing its emphasis on systemic reform (Livingston, 1999, p. 14 ["A consent decree's most obvious benefit is to focus the attention of the courts, local officials, and police on the systemic problems in a police department"]; Levenson, 2001; Walker, 2003; Stuntz, 2006; Harmon, 2009). The first criminological research which discussed §14141 did so from a broad context of police reform in comparison to other tools previously used (Walker, 2005; Ross & Parke, 2009; Walker & Macdonald, 2009).

Even with the plethora of academic research and application of theory to §14141 litigation, relevant academic articles have identified the need for additional and more up-to-date research and evaluation in this area.

Chanin (2015) recognized the need for "more consistent data" and a "more thorough, nuanced analysis" to include a broader "assessment of officer attitudes and organizational culture." Chain also recommended additional research to determine to what extent police departments could "achieve and sustain desirable levels of key outcomes, … despite a culture that may not reflect core reform values" (p. 184). In particular, Chanin suggested that "future research should continue to monitor these and

other pattern or practice jurisdictions, paying particular attention to identifying those factors that distinguish reforms that endure from those that erode" (p. 185).

It has been recognized that "except for the findings from a few narrow studies, we know little about how or how well the Section 14141 enforcement program works," although "there is some evidence that suggests that Section 14141 litigation works to spur institutional change, at least temporarily … few scholars have tried to tackle Section 14141 litigation with empirical rigor…" (Harmon, 2017, p. 618, citing Chanin, 2015; Davis et al., 2002; Stone et al., 2009). It has also been noted that "most of the existing research has been conducted in the theoretical realm, producing limited empirical evidence" (Powell et al., 2017, p. 581). As suggested by Chanin, "[d]espite its close connection to fundamental aspects of the American democratic process, the legitimacy and accountability of police bureaucracies, and to public safety, pattern or practice reform remains dramatically understudied" (Chanin, 2012, p. ii).

Chanin also noted that while theoretical writing on the management of reform in the policing sector exists, it "tends to be fragmented and underdeveloped" (Chanin, 2012, p. 203). Chanin further commented that as a consequence of the underdeveloped theoretical evaluation of police reform "two issues of particular relevance to the institutionalization of pattern or practice reform" are "underdeveloped … (1) Which factors most saliently affect the process of institutionalizing organizational reform in police bureaucracies; and (2) How does one evaluate the success of efforts to institutionalize change?" (Chanin, 2012, p. 205). Chanin made a particularly salient observation relating to the quick and generally overall support of "pattern or practice" reform by legal academics and police accountability experts:

> It is also unsurprising that legal academics and police accountability experts would champion a process predicated on the enforcement of constitutional rights and the rule of law. Pattern or practice reform represents the combined hopes of police reformers, civil rights activists, defense attorneys, and legal scholars: A credible, law---driven process that capitalizes on federal authority to identify and remedy unlawful police behavior prospectively, structuring comprehensive, agency---wide reform around a set of widely---accepted precepts. Yet much of this excitement has developed in the absence of empirical testing or considered theoretical examination. (Chanin, 2012, p. 329)

In that vein, a number of academic lawyers have theoretically examined §14141, as a police accountability mechanism (Livingston, 1999; Stutz, 2006; Simmons, 2008;

Harmon, 2009) and by 2016, academics began to look at theories and practices of community engagement in Consent Decree processes over the court of the Obama administration (e.g., Patel, 2016).

Even so, Walker (2012), like Chanin, was concerned about the lack of information available regarding the sustainability of reform efforts made by externally mandated DOJ-initiated reform:

> … reformers and police scholars alike have given little attention to the question of ensuring that achieved reforms endure and become a permanent part of an individual department or of policing in general. The police literature contains only a few references to the institutionalization or sustainability of reforms, and the discussions are typically very brief. Part of the problem, Stephen Mastrofski and James Willis importantly note, is that police scholars face enormous difficulties in tracking "changes in police organizations over long time periods." Scholars are naturally averse to examining subjects that pose serious measurement problems. Lawrence Sherman cynically noted more than thirty years ago that in studying the persistence of anti-corruption reforms it is almost impossible to determine if "a department was truly reformed to begin with." (pp. 57-58)

Walker then went on to note the absence of any "systemic inquiry into the current state of police departments where consent decrees or MOAs have been terminated to determine whether the achieved reforms are still viable several years after the fact" (pp. 64-65).

And, more recently, in 2017, more than 20 years after the passage of §14141, Alpert et al. noted that

> [i]n the most recent CDs, outcome measures have been added, and enormous amounts of qualitative and quantitative data are collected to establish compliance with the CD. However, these data are rarely analyzed or made public beyond the required summary reporting by the Monitors. (Alpert et al., 2017)

Walker (2018) was still expressing concern about the lack of empirical data relating to §14141 interventions, commenting that,

> several SLS settlements have been the subject of formal evaluations. Some evaluations confine themselves to a few issues, or even just one, while others assess a broader range of issues and use multiple methods to investigate them. There is, however, no evaluation that attempts a comprehensive assessment of all the reforms and goals of a single DOJ settlement. Because settlements involve a broad range of required reforms,

> with multiple impacts, a comprehensive assessment would be an extremely daunting challenge in terms of work effort and cost. (p. 1802)

Walker went on to conclude that given that "the goal of organizational transformation in policing has received little serious attention from police scholars … we have no real understanding of the conditions necessary for major reforms to be sustained over the long haul" (p. 1840).

4.2. U.S. Commission Reports

A traditional way for American municipalities to deal with police scandals was the creation of "blue ribbon" commissions to evaluate what went wrong and to make recommendations for improvement. As noted by Levenson (2001), however, "one way to track the history of police abuse in this country, as well as the failure of reforms, is to review the never-ending Commission reports documenting police misconduct" (pp. 10-11).[300]

In 1961, the U.S. Commission on Civil Rights concluded "police brutality in the United States is a serious and continuing problem in many parts of the country" (Hoffman, 1993, n. 5, citing, U.S. Comm'n on Civil Rights, Justice 26 (1961)). In 1965, the McCone Commission Report on the Watts Riots "identified the role of police abuse in that explosion of despair" (Hoffman, 1993, n. 31, citing Governor's Comm. On the L.A. Riots, Violence in the City – An End or a Beginning? Pp. 27-29 (1965); Levenson, 2001, p. 11). By 1968, "the [Kerner] Commission identified the problem of police abuse as a major cause of civil unrest in America's urban communities and made recommendations for reform" (Hoffman, 1993, n. 27, citing Kerner Commission, 1968, p. 1; Levenson, 2001, p. 11).[301]

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[300] For an overview of police scandals in New York since 1894, See, Baer & Armao, The Mollen Commission Report: An Overview, 40 N.Y. L. Sch. L. Rev. 73, 73 (1995). In addition, numerous committees and commissions have reviewed and recorded police scandals prior to the 1960's, to include "the Lexow Committee of 1894, the Curran Committee of 1913, the Seabury Committee of 1930, [and] the Harry Gross investigation of 1950…" (Levenson, 2001, n. 53).

[301] "Twenty-seven years later, the Tucker Commission, established by the California Assembly, found that the 'causes of the 1992 unrest were the same as the causes of the unrest of the 1960's, aggravated by a highly visible increasing concentration of wealth at the top of the income scale and a decreasing federal and state commitment to urban programs serving those at the bottom of the income scale'" (Hoffman, 1993, n. 31, citing Assembly Special Comm. on the L.A.

In 1972, in New York City, "the Knapp Commission," was created to investigate allegations of systemic corruption in that city's police department, and made numerous recommendations for external and internal oversight to control police misconduct (Levenson, 2001, pp. 11-12). Similar allegations of systemic corruption were identified twenty-years later and addressed by the "Mollen Commission" (1994).[302]

In 1991, the beating of Rodney King resulted in a public outcry about police use-of-force. That outcry led to the creation of the well-known "Christopher Commission" which examined excessive force issues at the Los Angeles Police Department. In addition, the same outcry led the Los Angeles County Board of Supervisors to convene the lesser-known, "Kolts Commission," whose recommendations led to the creation of the first municipally-created police monitor's office in 1993 (Hoffman, 1993, pp. 1484-1485, n. 127). Similarly, the *Christopher Commission* report identified systemic problems in training and policy that resulted in a pattern of excessive force on the part of LAPD officers (*Christopher Commission*, 1992, pp. xx & 154;[303] Rushin 2015, pp. 29-31). Other commissions reported on police abuse in Chicago (Chicago Police Department's Office of Professional Standards, 1990), New Orleans (Mayor's Advisory Committee on Human Relations, Report on Police Use of Force, 1993), and Boston (St. Clair Commission, Report of the Boston Police Department Management Review Committee, 1992) (Levenson, 2001, n. 113).

The shooting of Amadou Diallo (1994) and assault against Abner Louima (1997) by New York Police Department officers "sparked another round of commissions in New York City" (Levenson, 2001, p. 13). And the Rampart scandal in Los Angeles resulted in

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Crisis, To Rebuild is Not Enough: Final Report and Recommendations (1992) ("Tucker Report"), p.12).

[302] Mollen Commission (1994). Anatomy of Failure: A Path For Success, *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department*. Retrieved from https://archive.org/details/MollenCommissionNYPD/page/n229/mode/2up. "The Mollen Commission favored an independent panel to monitor the Internal Affairs Bureau of the New York police department. This recommendation also became a standard for future Commissions on police misconduct" (Levenson, 2001, p. 12).

[303] Retrieved from https://archive.org/details/ChristopherCommissionLAPD/page/n189/mode/2up?q=inspector+general.

its own commission reports, to include an LAPD "Board of Inquiry,"[304] an independent report commissioned by the police union,[305] and follow up reports commissioned by the Police Commission.[306]

Although some of the Commission reports did result in the creation of permanent oversight structures that have reportedly resulted in greater police accountability,[307] Levenson has argued that "Commissions and Reports have been used throughout the United States to investigate and address police corruption. If history repeats itself, however, these studies are more likely to serve as a historical chronicle of police abuse, rather than a cure" (Levenson, 2001, p. 13).

4.3. Causes of Police Misconduct

Many theories have been put forward suggesting the causes of systemic police misconduct go above and beyond the individual bad acts of "bad apples" within a police department.[308]

- It has been argued that police-community relationships have been damaged by "a law enforcement mentality" that treats young people in visible minority communities "as enemies" and due to political actors "whose constituencies

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[304] "Board of Inquiry into the Rampart Area Corruption Incident" (March 1, 2000). Retrieved from http://lapd-assets.lapdonline.org/assets/pdf/boi_pub.pdf.

[305] Chemerinsky, E. (2001) An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal. Loyola of Los Angeles Law Review, 34:545.

[306] Richard E. Drooyan, Report of the Rampart Independent Review Panel (2000). Retrieved from https://www.law.berkeley.edu/php-programs/faculty/facultyPubsPDF.php?facID=4878&pubID=16; Rampart Reconsidered: The Search for Real Reform Seven Years Later (2006). Retrieved from http://www.lapdonline.org/search_results/content_basic_view/32828.

[307] In particular, the Office of the Special Counsel to the Los Angeles County Board of Supervisors, which provided oversight in the form of semi-annual audit reports relating to the activities of the Los Angeles County Sheriff from 1993 through 2014 has been described as "arguably the most effective [civilian oversight of law enforcement program] in the country" (Walker, 2001; Walker & Archbold, 2014, p. 53). Even so, the program was disbanded by the Los Angeles County Board of Supervisors in favor of an Inspector General Program in 2014 after investigations identified a culture of abuse within the Los Angeles County jail system, overseen by the elected Sheriff (see, LA County OIG website, retrieved from https://oig.lacounty.gov/).

[308] "Policing scholars have increasingly recognized that 'the roots of police misconduct rest within the organizational culture of policing'" (Rushin, 2005, p. 5, quoting Simmons, 2008, p. 505). "Misconduct becomes routine primarily through the development of an internal organizational culture that passively permits wrongdoing. This sort of culture often develops through a lack of oversight mechanisms and is reinforced through training, punishment, and rewards … Organizational research shows that socialization and on-the-job training can make rule violation routine" (Rushin, 2005, p. 29).

are on the other side of the 'thin blue line' that separates [the] white middle- and upper-class" [] from [] minority communities." (Hoffman, 1993, p. 1469); Scott, 2000);[309]

- The "militarization" of police forces has been blamed for creating police cultures that support excessive force against lower income communities on a systemic basis (Hoffman, 1993; Levenson, 2001, p. 44 [to include the "declaration of war" against drugs or gangs]; Walker 2003, p. 10 [and the "clash between crime control and due process perspectives on the criminal process"]; [310] Harmon, 2009);

- Actual racial bias on the part of a cadre of officers has been identified as a potential factor in some cases of excessive force (Skolnick and Fyfe 1993; Hoffman, 1993, p. 1474);

- Inadequate supervisory and management attention for line officers (Hoffman, 1993, pp. 1474-1475; Scott, 2000; Harmon, 2012 [referring to police department "leadership and the local political process" as impacting "institutional police practices"]; Rushin 2014;

- Lack of "effective internal discipline or external controls or accountability" (Hoffman, 1993, p. 1482; Walker, 2010; Rushin 2014, p. 3205);

- Judges' willingness to "automatically accept law enforcement's version of its encounters with defendants;" (Levenson, 2001, pp. 41-42);

- "Localization, discretion, and the lack of a national regulatory mechanism" described as "facilitat[ing] widespread wrongdoing in the early-to-mid twentieth century" (Rushin, 2015, p. 2; Walker, 2003);

- A "warrior mentality that has dominated American policing for decades" (Walker, 2018, pp. 1796-1797; see also, Rahr & Rice, 2015; PERF, 2015); and,

- The willingness of police departments to accept the consequences of police misconduct as "a cost of doing business" (Rushin, 2015, p. 3 ["Departments could choose not to adopt proactive reforms as long as they were prepared to pay the costs of such a breach. And historically, many departments have done just that"].

As noted by Chanin (2012),

incidents involving police use of force reflect[] many of the most pressing and intractable social, economic, political, and civic problems in modern

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[309] "[N]ew collaborations between police and community present significant challenges in a constitutional democracy. At times, the 'majority rules' philosophy of the community and the conservative traits of the police combine to support police practices that the courts find threatening to the constitutional order" (Scott, 2000, p. 201).

[310] Citing, Herbert L. Packer, The Limits of the Criminal Sanction 149 (1968).

> America. The anatomy of a police shooting 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. (p. 2)

Others have also noted that

> tension between police and the community, brought on by the reality and the perception of widespread police abuse and racism, has been one of the main causes, and usually the precipitating cause, of each of the serous civil disorders in this century… (Hoffman, 1993, p. 1515; see also, Greenberger, 2016, p. 201; Patel, 2016, p. 857; Douglass, 2017)

In addition, the DOJ in its more recent reform agreements identified "inadequacies in law enforcement agencies' recruitment, hiring, and promotion systems [as] significant drivers of police misconduct" (USDOJ, 2017b, p. 32). The DOJ also identified the impact of "fatigue and stress" on officer "health, judgment, and performance," which "thereby increase the risk of police misconduct." Failures to provide the "necessary equipment and technology to support constitutional policing" has also been identified as a factor in allowing misconduct to occur or continue on a systemic level. Finally, the DOJ identified "links between [police] misconduct and institutional failures outside of police departments, in areas such as social services, medical and mental health care, jails, and court systems" (USDOJ, 2017b, pp. 32-33).

4.4. Consequences of Police Misconduct

The academic literature is replete with cautions regarding the consequences of police misconduct. The *Mollen Commission* (1994), appointed to investigate allegations of corruption within the New York Police Department, made the following observation as it related to "drug-related corruption":

> The seriousness of drug-related corruption must not be minimized. Many have mistakenly characterized today's corruption as cops "merely" stealing from drug dealers – or, in other words, punishing those who deserve to be punished. This is wrong. Today's narcotics corruption involves not only cops stealing from dealers, but cops using their authority to permit dealers and narcotics enterprises to operate freely and flourish on the streets of our City. Even worse: today's corruption involves officers using their police powers to actively assist, facilitate and strengthen the drug trade. Thus, the victims of corruption are not the drug dealers on the streets of East New York. Indeed, they are often corruption's beneficiaries. The victims of today's corruption are the thousands of law-abiding individuals who live in

> the high-crime, drug-ridden precincts of our City… [Drug-related corruption] breeds [a] sense of abandonment and hostility that poisons relations between the community and corrupt and honest cops alike. And corruption victimizes the millions of law-abiding residents of this City who depend upon the credibility and effectiveness of the police to fight the war against crime that threatens us all. (p. 15)

Chemerinsky (2001) painted a similarly bleak picture of the consequences of the "noble cause" corruption that was uncovered as it related to the Los Angeles Police Department's "Rampart Scandal," when he referred to it as "the worst scandal in the history of Los Angeles," arguing that "[n]othing is more inimical to the rule of law than police officers, sworn to uphold the law, flouting it and using their authority to convict innocent people" (p. 549). Chemerinsky was not alone in the recognition that officers manufacturing probable cause, using excessive force to enforce "street justice," and lying in court "subverts the justice system by removing the opportunity for a fair trial and relying on proof beyond a reasonable doubt as a basis of guilt" (Merrington, Lauch, Bell & Keast, 2014, p. 20; Caless, 2008).

At the same time, shortly after the "Rampart Scandal" became public knowledge, public confidence in the police was found to be impacted, leading to the potential for jury nullification, and "additional costs in retaining and recruiting officers" with police recruits not being interesting in joining "a besmirched department" (Levenson, 2001, p. 17; see also, Miller, 1998, p. 189 ["Designing institutional rules and procedures that deter and punish police misconduct, but allow police the necessary discretion to control crime effectively has proven an arduous task"]; Chanin, 2012, p. 228 [noting that "performance crises," including individual instances of high profile police misconduct, can negatively affect "employee morale and organizational support for leadership"]; USDOJ, 2017b, p. 1 [commenting that "when police departments engage in unconstitutional policing, their actions can severely undermine both community trust and public safety"]).

In addition, the very concept of "community policing" is based on the premise that the police require community cooperation to achieve the goals of crime prevention and suppression – "[c]itizen cooperation, in turn, is diminished by patterns of abusive police conduct that undermines public trust" (Walker, 2009, p. 483).

4.5. Police Conduct Control Mechanisms

Even prior to the passage of §14141, there were numerous tools available in police reform, both internal and external. Each of these tools, however, has been criticized as ineffective in its own way.

4.5.1. External control mechanisms

- Federal civil rights litigation pursuant to section 1983: It has been suggested that civil damage awards are "inherently unreliable as [a] primary federal tool against urban police abuse." Multiple reasons have been provided for this conclusion to include, 1) the willingness of political operatives to consider civil liability as a cost of doing business, rather than a motivation to change police practices;[311] 2) the inherent difficulty in proving excessive force and unlawful arrest cases; and 3) the common practice of indemnifying involved officers for any damages that are granted (Franklin, 1981, p. 194 ["Individual and class actions brought by victims [of] police misconduct have questionable remedial or deterrent efficacy"]; Hoffman, 1993, pp. 1509-1511; Miller, 1998; Gilles, 2000; Levenson, 2001; Kim, 2002; Walker, 2003, pp. 18-19; Silveira, 2004, pp. 603-604; Jeffries & Rutherglen, 2007, pp. 30-31 ["Damages actions are notoriously unsuccessful in vindicating police abuse. Except in a few high-profile cases, usually accompanied by video-tapes or other incontrovertible evidence of misconduct, those who seek damages for excessive force by law enforcement routinely fail"]; Harmon, 2009; Walker & Macdonald, 2009; Rushin, 2014; Rushin, 2015).
- Federal criminal exclusionary rules: The Supreme Court has acknowledged that "police actions unrelated to evidence gathering … are impervious to the deterrent effect of the exclusionary rule." Legal scholars have tended to agree: "Since the judge is not the policeman's superior there is nothing that prevents the latter from

[311] See, Hoffman, 1993 & Curriden, 1996, using the Los Angeles Police and Sheriff Departments as examples of police departments that ignored large litigation awards and "were content to pay millions of dollars in civil rights damage awards in the five-year period before the King beating without initiating any significant police reforms" (Hoffman, 1993, pp. 1509-1510). See also, Chanin, 2012, p. 9 [The "evidence suggests that many 'police departments do not keep track of which officers were named [in civil lawsuits] what claims were alleged, what evidence was amassed, what resolution was reached, or what amount was paid,'" (citing, Schwartz, 2010, p. 1023).

doing as he pleases while forwarding cases on a take it or leave it basis." (Livingston, 1999, p. 821; Levenson, 2001; Harmon, 2009; Walker & Macdonald, 2009; Rushin, 2014;[312] Rushin, 2015).

- Federal and state criminal prosecutions: The high standard of proof required to convict an officer of a crime has always been recognized as a factor limiting this means of controlling officer behavior. In addition, "attacking local police departments [though the prosecution of their officers] is also politically perilous;" (Gilles, 2000, pp. 1410-1411; see also, Levenson, 2001, pp. 21-23 ["criminal prosecutions of police officers by either federal or state authorities are still relatively rare and occur only in the most egregious cases"];[313] Walker, 2003, pp. 19-20; Harmon, 2009; Walker & Macdonald, 2009; Rushin, 2014, p. 3204; Rushin, 2014, p. 3203 ["As the numbers demonstrate, the DOJ only had the resources to investigate a fraction of civil rights [criminal] claims []. Moreover, the DOJ only sought criminal charges in less than 1 percent of the cases. Among those cases where the DOJ actually went to trial on § 242 violations, acquittals were not uncommon"]).
- Commission investigation and reports: Often noted as failing to achieve reform due to their ability to only make recommendations and the lack of any mechanism for follow-up to implementation of those recommendations (Levenson, 2001). As noted by Walker: "blue ribbon commissions have made important contributions to American policing … Commissions at both the national and local levels, however, suffer from one inherent weakness: they lack the capacity to implement their own recommendations … By their very nature, commissions are temporary bodies that disband once the final report is released" (Walker, 2003, p. 21; Walker & Macdonald, 2009, p. 497-498).

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[312] "Some studies show that judicial policymaking in the form of the exclusionary rule can instigate change in police departments. These studies find that police departments faced with the increased cost of evidentiary exclusion are sometimes more likely to punish officers engaged in wrongdoing, reward officers that obtain evidence legally, and choose not to promote officers that put cases in jeopardy by obtaining evidence illegally. But another strong current of research suggests that court efforts to alter police department behavior through the judicial decree have been of limited use" (Rushin, 2014, p. 3199).

[313] Levenson also noted that "the criminal prosecution of so-call rogue police officers may actually have a negative effect on deterring police misconduct. Because criminal prosecutions are relatively rare and occur only in the most egregious cases, it is easy for other officers [including command staff] in a police department to dismiss the charged officers as aberrations" (Levenson, 2001, pp. 22-23).

- Civilian oversight of police: “There is mixed evidence about the effectiveness of citizen oversight of police” (Walker & Macdonald, 2009, p. 498-499). Challenges to local oversight organizations include political compromises in the creation of oversight programs, lack of resources, and police, political and union resistance to the needs of such agencies to independence and transparency (Zeidman, 2005; Rosenthal, 2018; see also, Rushin, 2017a, p. 6 [“It is often expensive and unpopular for local political leaders to invest in oversight designed to reduce police misconduct…In most police departments, correcting a pattern of police misconduct is not as simple as changing an internal policy. It requires oversight. It requires additional manpower. It requires technological tools. This leads to an uncomfortable realization. Fighting police misconduct is expensive”]).
- Accreditation: An attempt by states to ensure officers are able to engage in policing activities only after receiving appropriate training and maintaining appropriate standards. (See, Rushin, 2014, p. 3204 [“Other mechanisms for spreading best practices in law enforcement, like accreditation, also deserve some recognition, although accreditation’s usefulness is limited by the fact that it is voluntary and intermittently used by local police agencies across the country”].

4.5.2. Internal control mechanisms

- Internal supervision of officers: It has been “long lamented that the ‘low visibility’ of much police work is a factor that complicates – or even frustrates – the supervision of line officers” (Livingston, 1999, p. 820). In addition, it has been noted that there is little impetus for police departments “to be introspective and examine their conduct” in the absence of external intervention (Jerome, 2004, p. 6).
- Administrative Discipline: The failures of police administrative discipline to effectively address police officer misconduct is replete in the literature. (See, for example, Simmons, 2010, p. 410 [“The characteristics defining police culture-such as the code of silence, violence, and lack of internal discipline-make it difficult for the public to trust police and may make the public skeptical of [internal] efforts to hold police accountable. By their inherent nature, the operations of police institutions and investigations of misconduct allegations are ‘shrouded in secrecy’ and shielded from the public.”

- Early Intervention Systems: Legal scholars have noted that the expensive nature of the data systems needed to implement a working early intervention system is often an impediment to the creation and sustainability of such a supervision tool. (See, Walker, 2018, p. 1840 [“early intervention systems … require continuous attention, and there may be a natural tendency for complex programs to slowly erode and lose their focus”]).

4.5.3. General comments on police accountability mechanisms

While the above-noted commentaries point out the limitations to traditional police reform strategies, each strategy has certainly made “some positive contribution within the limits of its purview” (Walker & Macdonald, 2009, p. 500).

> Epp argues that the combined effect of tort litigation and other reform efforts has been a broader culture of “legalized accountability,” a pervasive effort by the law enforcement profession to reduce liability risks through written rules and regulations. Walker, focusing on a broader range of reform strategies, labels the same development “the new world of police accountability.” (Walker & Macdonald, 2009, p. 500; Walker, 2005)

Even so,

> experts have criticized [the] traditional approaches to police misconduct [as being] litigation-based and adjudicatory in nature … although the adjudicatory nature of these measures makes them well-suited to addressing individual incidents, they offer little hope in spurring systemic change because they fail to emphasize proactive problem-solving. (Simmons, 2010, p. 391)

In addition, as commented on by Rushin (2014),

> [a]round the end of the twentieth century, a growing number of legal academics agreed that [] existing regulatory mechanisms were insufficient. These measures [could] not force local police departments to adopt reforms aimed at curbing misconduct. Instead, these traditional regulatory tools only incentivize reform by raising the cost of unconstitutional behavior. (p. 3191)

And Levenson (2001), while commenting that “the traditional remedies for dealing with police misconduct … [have been] individually and collectively [] inadequate to deal with the true nature of police misconduct;” also argued that the remedies “should

not be abandoned. Rather, a closer examination of each remedy reveals why it must be complemented with new models of police reform" (p. 18).

4.6. Depolicing

A recent examination of eleven jurisdictions that were investigated by the Department of Justice sought to determine whether police officers reacted negatively to DOJ investigations and settlements by through the act of "depolicing" (Chanin & Sheats, 2018).[314] Although the research found "little or no quantitative evidence of depolicing in the context of pattern or practice reform" (Chanin & Sheats, 2018, p. 118),[315] additional data were recognized as being necessary to determine whether "police officers under DOJ pattern or practice agreements are differentially compliant with rules, norms and community expectations, in their practices, regardless of what their arrest data show" (Chanin & Sheats, 2018, p. 121).

Even so, evaluation studies in Pittsburgh ("the Vera Institute study") and Los Angeles ("the Harvard-Kennedy School study") both attempted to test the theory that police enforcement activities are reduced as the result of the implementation of consent decrees. Neither study found evidence of "depolicing" and the Los Angeles study suggested that, instead, the evidence supported a positive impact on both the quantity and quality of police activity (Davis et al., 2002, pp. 54-57; Stone et al., 2009, pp. i, 31-32).[316] In both cities, however, police officers insisted that officer productivity was

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[314] For a definition of "depolicing," see Cooper, F. R. (2002). Chanin & Sheats (2018) further describe the concept of "dissent shirking" as a concept underlying depolicing as "a common expression of protest over the production of disliked output" (citing Brehm & Gates, 1999, p. 30). "Economists and rational choice theorists have argued that such shirking is in fact an understandable response to policies that increase the cost of on-the-job error or abuse" (citing Prendergast, 2001). "Others have suggested that dissent shirking may not be the product of strategic thinking but instead an emotional response motivated by feelings of anger and alienation" (p. 107, citing "Ferguson effect," 2014; and Sutton, 2015).

[315] Chanin & Sheats (2018) still found, however, that: "[d]espite qualitative support for depolicing under these conditions, this analysis shows no evidence that officers responded to external criticism and intensified oversight brought on by the pattern or practice reform process by policing less proactively" (p. 105).

[316] As recognized by Chanin & Sheats (2018), however: "Whatever the explanation, news reports from several cities, including Cincinnati (Howlett, 2001; Werthheimer & Adams, 2001), Seattle (Ho & Castro, 2002), Chicago, (Lyderson, 2008), and New York (Celona, Cohen, & Golding, 2014), detail officers' descriptions of depolicing. More systematic research has also uncovered claims of depolicing from officers targeted by heavy external criticism (Oliver, 2015; Wolfe & Nix, 2016)" (p. 108).

negatively impacted by the implementation of the federal consent decrees (Davis et al., 2005, pp. 16-27; Stone et al., 2009, pp. 19-21).[317] In Seattle, the federal monitor also examined claims of depolicing, in the face of police officer claims that they were less willing to be proactive while under the constraints of the Consent Decree. The Monitor, however, found no long-term evidence of depolicing (Ninth Systemic Assessment, 2017, pp. 59-63).[318]

The LAPD study noted one important factor that would explain how officer perceptions might differ from the reality of officer consent decree productivity. The study noted that even before the implementation of the Los Angeles consent decree, officers had strong distrust of the LAPD's accountability systems – as such, it appeared that such distrust would have already had a long-term impact on officer productivity that was not necessarily related or impacted by the existence of the Consent Decree (Stone et al., 2009, p. 20). That fact, in addition to the inherent conflict identified by policing scholars between police officers' desire to enforce the law and limits put on officer actions by requirements of Constitutional policing may mean that officers' complaints regarding their ability to be "pro-active" may simply be inherent in the profession of policing and not significantly impacted by consent decree implementation.

Negative impacts on policing identified early-on in consent decree implementation appear to be mitigated over time as the reforms become more accepted by rank and file officers (see, for example, Stone et al., 2009, p. 30 ["Some depolicing may have occurred in the first two years of the Consent Decree, … but there is no sign

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[317] As noted by Chanin (2012), "Depolicing is a common concern among police officials in jurisdictions facing DOJ intervention" (p. 184); for example, see also, claims of depolicing in Portland, Oregon (Bernstein, M. (2012, November 23). Portland police union leader says officers are reluctant to use force and are getting injured because of DOJ agreement. *The Oregonian*. Retrieved from http://www.oregonlive.com/portland/index.ssf/2012/11/portland_police_president_says.html; and, New Orleans (*Frontline*, 11/13/2015).

However, Walker identified a more nefarious aspect of police claims of depolicing, calling them a "form of [] political blackmail employed by police unions to tell mayors and other officials that if you scrutinize us too closely, or limit our actions, crime will go up and the public will blame you. This has been called 'playing the crime card'" (Walker, 2017, p. 13).

[318] Even so, a Seattle Police Department officer ended up being widely quoted when he described his concerns with police accountability at the SPD by telling a reporter that: "[p]arking under a shady tree to work on a crossword puzzle is a great alternative to being labeled a racist and being dragged through an inquest, a review board, an FBI and U.S. attorney investigation and a lawsuit" (Leo, J. (2001, July 30). Cincinnati cops out. *U.S. News & World Report,* 131, p. 10, as cited in Chanin & Sheats, 2018, p. 106).

of depolicing since 2002…"].[319] That finding appears to have been supported by a study which examined the impact of consent decree imposed reforms in thirty-one jurisdictions, and found "a statistically significant uptick in crime rates" immediately following the entry of consent decrees, followed by decreased crime rates over time (Rushin & Edwards, 2017, p. 730; see also Davis et al., 2002, making similar findings with respect to misdemeanor arrests by Pittsburgh Police officers).[320]

And even though Chanin & Sheets reported that "the field of criminal justice has very little theoretical or empirical insight into the duration of depolicing," they then went on to document reasons why such "dissent shirking" can be expected to be temporary:

> The emotional response explanation allows for the possibility that depolicing will subside even if oversight is unchanged. Underlying this view is the assumption that officers are willing and able to overcome the feelings of anger or frustration that motivate depolicing. The narrative surrounding police performance also tends to be fluid, as public criticism and calls for increased accountability are typically short-lived (Chermak, McGarrell, & Gruenewald, 2006; Weitzer, 2002). As the conversation changes, the thinking is that, so too will officers' behavior, as public opinion of the police improves, incidence of depolicing will subside. Stone et al.'s (2009) study found that the low levels of depolicing that occurred in response to the LAPD CD ended after 2 years lending some empirical support to this position. (Chanin & Sheats, 2018, p. 110)[321]

Regardless of the ultimate conclusions regarding the existence of depolicing in the long term, as the result of consent decree implementation, Douglass (2017) pointed

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[319] In evaluating the results found in Los Angeles, Rushin (2016) was even more emphatic that, contrary to officer perceptions, depolicing did not occur in the long-term: "No matter how you break it down, LAPD officers appeared to be more aggressive after federal intervention than before. These statistics are even more impressive, considering the fact that LAPD officers likely had fewer opportunities to execute arrests at the end of federal intervention than at the start. This is because the total number of reported crimes in Los Angeles declined over this time period by 43.8%. This makes the increase in total arrests and minor arrests even more impressive. If officers do feel more reluctant to engage in proactive street policing, the arrest and stop numbers show no evidence of such hesitation" (p. 133).

[320] "We found some evidence of a decline in clearance rates for misdemeanors coinciding with the signing of the decree. The percentage of Part II crimes cleared went from the low 50s in the three years prior to the decree to the low 40s for the three years following the decree. However, by 2000, the proportion of misdemeanors cleared had climbed back into the high 40s" (Davis, et al. 2002, p. 55).

[321] Additional factors as cited by Chanin & Sheats (2018), also support the "time-limited nature of depolicing:" 1) police leaders suggest that officers' long-term motivation to keep their cities safe will eventually override "individualistic and subcultural concerns" associated with depolicing; and 2) over time, officers hired over the course of consent decree implementation will consider it to be the status quo and be more willing to work within newly created policies and practices (p. 110).

out an ongoing challenge when it comes to police morale and opportunities for change as a result of externally mandated reform:

> Regardless of how warranted the investigation and justified the findings, the extended focus on the department's failures undermines officer morale and fosters resentment, which increases resistance to reform. It may also reinforce the community's perception that the police are resistant to reform and that the problems are intractable. (p. 332)

4.7. Sustainability of Reform

Issues relating to the sustainability of the Seattle Reform effort will be discussed in detail in Chapter 8, *infra*. However, as noted by Chanin (2015), "Scholars know little about the bureaucratic response to reform and thus remain relatively ignorant about how and why innovations in policing continue to erode" (p. 164, citing Walker, 2012). And, in fact, even though the Vera Institute of Justice conducted a follow-up to its 2002 evaluation of the Pittsburgh Bureau of Police (PBP) in 2005, and found that the PBP "did undergo major changes and, so far, the changes have remained in place," (Davis et al., 2005, p. 41), since that time, there have been repeated concerns that the PBP has, in fact, reverted back to poor policing practices (Walker & Macdonald, 2009; Chanin, 2012, pp. 32, 183 & 311; Walker, 2012, p. 64; Rushin, 2017a, pp. 241-242).

When Chanin (2016) evaluated the sustainability of consent decree reforms in Pittsburgh, Washington D.C., Cincinnati, Prince George's County and Los Angeles, he found that "the record of police department efforts to achieve and sustain organizational reform is at best mixed" (p. 71). A key issue that Chanin identified as in need of additional research was the question of whether "a department [can] achieve and sustain desirable levels of key outcomes … in spite of a culture that may not reflect reform values?" (p. 110).

Interestingly enough, much of the literature speaks to the need for a regime change, in the form of a reform-minded Chief and command staff, in order to achieve consent decree compliance. In fact, much credit for what was perceived as a successful reform effort in Seattle was attributed to the hiring of a reform-minded Chief and the hiring of some command staff from outside of the Seattle Police Department (see Chapter 7, *infra*). However, the question of regime change *after* compliance raises its own issues. As recognized by Chanin (2012):

> A … component of the organizational context thought to affect sustainability is the continuity of support for change among agency leaders and high-level staff. Leadership turnover brings with it the possibility of a shift in department commitment to the settlement, and has the potential to move agency priorities away from accountability, in the process rendering long-term sustainability less likely. (p. 301)

And, in fact, that is exactly what was reported to have occurred in Pittsburgh, with the election of a police union-supported Mayor and his almost immediate termination of the Chief who saw the PBP through the Consent Decree (Rushin, 2017a, pp. 241-242).

The DOJ has spoken of the importance of stakeholder engagement in the sustainability of the reform process:

> All stakeholders must feel invested in the remedies presented in the [DOJ's] reform agreements. Communities must be invested for the long-term sustainability of reforms. Individual officers who, day-to-day, will carry out the reforms must be invested for the long-term durability of reform. And police and local leadership must be invested to provide the leadership and support a long-term commitment reform requires. (USDOJ, 2017b, p. 18)

Even if the DOJ were to be able to effectively engage all stakeholders in support of long-term sustainability of reform, the need to have outcome measures that can be used to evaluate reform sustainability in the long-term remains, "beginning with systematic metrics that establish broad, agency-wide performance" (Chanin, 2015, p. 167). As recommended by Chanin (2015):

> Mandating the dissemination of use of force statistics, officer disciplinary decisions, and civil litigation results would be a solid step toward facilitating evaluation of future settlement agreements. As would requiring independent monitors to set and report on outcome-related goals, rather than continuing to perform what amounts to an exclusively process-driven assessment. (p. 184)[322]

[322] Chanin (2015) was responding, in part, to issues and concerns relating to the viability of measuring the impact of Section 14141 litigation on police practices. As indicated by Walker & Macdonald (2009): "Measuring the impact of consent decrees and MOAs on routine policing poses a number of very difficult methodological problems. In theory, the research questions are fairly straightforward. Are there fewer incidents of use of excessive force following the reforms compared with beforehand? Are there fewer incidents of race discrimination in arrests and traffic stops (racial profiling)? Are there fewer citizen complaints? Do citizens have a more positive opinion of the police department? Are there any unintended adverse consequences arising from aspects of the Consent Decree or MOA? These might include lower police officer morale, less proactive police work ("de-policing"), and reduced crime-fighting effectiveness. It is also entirely possible that consent decrees and MOAs have no measurable impact on policing whatsoever. Investigating these questions, however, encounters a number of serious obstacles. The central

Some of the participants interviewed in the first Pittsburgh evaluation study expressed concern about whether the Police Bureau "would return to 'business as usual' with low accountability and frequent misconduct" and the Vera researches concluded with a message that "there is still work to be done and that the momentum created by the decree" needed to be sustained. In the words of one community leader: "It's not just a matter of management, but a culture needs to change. Five years is barely enough to achieve change." Another respondent was quoted as suggesting that sustainability required a ten-year probationary period "during which the Police Bureau would be required to submit written reports to the Department of Justice" (Davis et al., 2002, p. 47).

In a 2016 evaluation of "the durability" of the reform effort in Washington D.C., it was concluded that the Department and its use of force policies "'continue[d] to be consistent with best practices in policing' and with the provisions of the earlier MOA," although the evaluation also noted that "the quality of use of force investigations has deteriorated over the past seven to eight years." In addition, the evaluation concluded that "MPD's record in successfully reducing its use of the most serious types of force, including firearms, even during periods of increased crime …speaks for itself," and found "no evidence that the excessive use of force [had] reemerged as a problem." The author, the former court-appointed monitor for the MPD, Michael Bromwich, suggested that the evaluation "clearly demonstrates that it is possible to enact and sustain reform when a commitment to such action is made at the highest leadership levels" and noted that: the "MPD is plainly a very different, and much better, law enforcement agency than it was when DOJ began its investigation in 1999" (Bromwich, 2016, pp. 25, 53-54 & 114-115).

The Bromwich findings regarding the need for progressive and dedicated leadership to sustain change appears consistent with Chanin's (2012) earlier findings that "maintaining leadership continuity is also considered a pivotal component of sustaining changes to agency policy, operations and culture" (*citations omitted*) and that

problem, … is the absence of valid and reliable data for the time period before implementation of the Consent Decree and MOA reforms. On many of the important questions, there are no data whatsoever (e.g., public attitudes about the police). On others, the available data are not usable for purposes of research. Data on use of force incidents, for example, are often non-existent, incomplete, or erroneous" (pp. 530-531).

"the ability to maintain continuity of the support for reform … is central to an effort to institutionalize change" (*citations omitted)* (p. 215).[323]

Chanin (2012) also suggested that the means by which reform is achieved will ultimately have a long-term impact on the sustainability of any changes. "A centralized, top-down approach… is more likely to produce short-run efficiencies. Such an approach may contribute to creating a hostile implementation process, however, and may result in less sustainable, long-term reform" (p. 180). And along with other commentators (see, for example, Gilles, 2000; Levenson, 2001; Simmons, 2008; Patel, 2016; Douglass, 2017; Walker, 2017; & Walker, 2018), Chanin further suggested that "sustainable reform is more likely in those communities characterized by civil society organizations, members of the media, local academics, and others, who remain actively engaged with issues of police accountability in the years following implementation" (p. 314). Chanin further concluded that although "it is rather hard to define, and its effects – like many other aspects of a jurisdiction's environmental context – are impossible to quantify, there appears to be a link between community involvement and the ability to sustain pattern or practice reform" (p. 320). In addition, Chanin and others also have suggested that including more stakeholders in Settlement Agreement negotiations "can increase the legitimacy of the settlement in the eyes of potential opponents and would be critics (citations omitted) … and give key stakeholders a sense of ownership over both the process and the content of the agreement" (p. 352; see also, Simmons, 2000; PERF, 2013; Patel, 2016; & Walker 2016).[324]

Chanin (2015) specifically examined the sustainability of §14141 initiated reforms and calling for "further scholarly inquiry" into the issue:

> The field would also benefit from future research that moves beyond the use of outcome data to evaluate sustainability, beginning with an assessment of officer attitudes and organizational culture more broadly. In addition to contributing to more thorough descriptive knowledge, examining the relationship between outcomes, officer behavior, and department

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[323] Chanin (2012) went on to say that "[i]nstitutional change doesn't appear possible over the long term in the absence of a credible leader who sees value in the settlement's principles and actively works to ensure that they remain closely enforced and high on the department's list of priorities" (p. 300).

[324] Quoting ACLU Cincinnati attorney Scott Greenwood: "There has to be very strong community buy-in in the process. Reforms cannot be sustainable without community involvement" (PERF, 2013, p. 29).

> culture would help to broaden understanding of those factors that explain institutionalization success and failure. To what extent do these elements show a consistent picture of agency efforts to pursue and institutionalize reform? Can a department achieve and sustain desirable levels of key outcomes, for example, despite a culture that may not reflect core reform values? … Finally, future research should continue to monitor these and other pattern or practice jurisdictions, paying particular attention to identifying those factors that distinguish reforms that endure from those that erode. (pp. 184-185)

Finally, Chanin (2015) also recognized the need to confirm hypotheses made by other commentators to include to what extent support from middle management is critical to sustainability (citing, Ikerd, 2010), or to what extent "robust efforts to educate officers to the 'nature, goals, and benefits' of [] reforms would impact long-term sustainability" (citing, Walker, 2012, p. 91) (p. 185). Rushin joined Chanin in his conclusion that "more research [] is needed to understand the extent to which §14141 reforms are sustained after federal intervention ends" (p. 120).

Walker (2018) subsequently called for more research into the sustainability issue:

> More research, involving other departments experiencing major accountability-related reforms, is needed to determine whether the picture that emerges from these two evaluations [Pittsburgh & Los Angeles] is unique to the two departments involved or is representative of the general impact of court-mandated reforms on officer conduct. It is premature to conclude that the challenges to the police subculture prompted by the SLS's [Special Litigation Section's] efforts will be successful in the long run. Nonetheless, the possibility of a significant change to the traditional police officer subculture exists and that represents an important achievement of the SLS program. (p. 1837)

4.7.1. Sustainability through municipal civilian oversight

A number of commentators have suggested, and the DOJ appears to have recognized, the need for some form of external oversight continuity to exist upon the completion of a consent decree to ensure sustainability of reforms. Walker & Macdonald (2009), specifically noted how the role of the municipal police monitor model of accountability "closely parallels the strategy of organizational change embodied in Section 14141" (p. 499).[325] Dukanovic (2016) also discussed the pros and cons of using

[325] Walker & Macdonald describe the "police auditor model of accountability" as involving "a police auditor [who] reviews the policies and practices of the departments for which it is responsible and makes recommendations for change … as a permanent agency, a police auditor

internal auditors or monitors to ensure reform sustainability; interestingly, even though Dukanovic noted the danger of an "internal" auditor or monitor suffering from "regulatory capture" over time, he failed to consider the use of a municipally appointed monitor, auditor or Inspector General to continue reform efforts (pp. 929-931).

Walker (2012) argued that "assuming that accountability reforms are instituted, … the best way to ensure the continuity of those reforms [would be] the police auditor form of oversight" (p. 84). After describing those aspects of the police auditor and monitor programs that helped to ensure ongoing oversight over police reforms, Walker concluded by arguing that: "police auditors are not only a necessary instrument in terms of sustaining police reforms, but can be a major instrument in a new and broadly defined police reform effort generally" (pp. 89-90).

The DOJ itself, noted the need for civilian oversight agencies to "provide another mechanism for community members to engage with police practices." The DOJ pointed out that "many of [its] reform agreements [] create, expand, or reform independent civilian complaint review boards or other independent civilian review systems, such as an Inspector General" (USDOJ, 2017b, pp. 29, 32; see also, Chanin, 2016, p. 107 [commenting on the "relatively strong external accountability mechanisms" created by the DOJ in Los Angeles]).[326]

Even so, community advocates, have been critical of the DOJ's efforts in this regard. For example, *Politico.com* reported that "Clevlanders complian that the new police commission and an older civilian police review board lack the power to compel reform or discipline officers." Suggestions have been made that DOJ agreements "shouldn't shy away from requiring restructuring of city government to increase

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office has the power to revisit an issue and determine whether previous recommendations have been implemented." Walker and Macdonald also described the "police auditor" form of oversight as involving "permanent governmental agencies with responsibility for auditing or monitoring the activities of law enforcement agencies." (pp. 499 & 515-516). See also, De Angeles, Rosenthal & Buchner, 2016, for a comprehensive description of civilian oversight of law enforcement agency schemas.

[326] The DOJ identified the following cities as examples where jurisdictions were required to "create a system of civilian or independent oversight:" Los Angeles (2001), Washington D.C. (2001), Cincinnati (2002), New Orleans (2013), Portland, OR (2014), Albuquerque (2015), Cleveland (2015), Ferguson (2016), Newark (2016) & Baltimore (2017) (USDOJ, 2017a, p. 63).

accountability" (*Politico.com*, 6/29/2020; see also, criticisms of Los Angeles accountability mechanisms as quoted by Chanin, 2016, pp. 107-108).

Other commentators have suggested that the DOJ needs to initiate a "follow-up process" to check on the status of reform efforts after the dismissal of consent decree litigation (see, for example, Walker & Macdonald, 2009; Dukanovic, 2016).

4.8. Costs

One of the most controversial aspects of consent decree implementation involves the costs attributed to the implementation of reform, to include the administrative and personnel costs required for independent monitoring of the reform process (Jaio, 2020). The average annual costs of monitoring alone have been estimated to run anywhere from $880,000 (Seattle) to $2.2 million (Los Angeles) (Rushin, 2015, Fig. 4.1; see also Kupferberg, 2008, n. 168 [regarding monitoring costs for Los Angeles and New Jersey]; and, PERF, 2013, p. 34, [comparing the Monitoring costs paid by several jurisdictions]). According to findings made by the Police Executive Research Forum (PERF) (2013), after convening a summit on §14141 investigations,

> The costs of achieving compliance, and the legal costs paid to monitors, are sometimes contentious. Some police chiefs believe that consent decrees that continue for many years have been too costly, and that rules about achieving [] compliance [] are overly strict. On the other hand, several chiefs said that the costs, while high, are worth it, in terms of improving police departments as well as reducing lawsuits that can also be costly. (p. 7) [327]

And the costs of monitoring are only a small portion of all of the costs potentially associated with consent decree compliance. Start-up costs for the Los Angeles consent

[327] According to an LAPD Commander, the Los Angeles Consent Decree "cost us a total of $15 million for monitoring. It would have been only $11 million if we had finished in five years. But I think the money was well spent in terms of preventing future litigation and gaining credibility with the community. So yes, it was a lot of money, but I think we got our money's worth" (PERF, 2013, p. 34). However, the costs of implementation were controversial and opposing positions have been expressed: "Towards the end of the Consent Decree monitoring, the then-President of the [Los Angeles] Police Protective League [] argued publicly that the [court appointed monitor] was 'wast[ing] taxpayer dollars [with] incessant, meaningless auditing that does nothing to enhance public safety or 'reform' the LAPD.'" In addition, "[p]olitical critics of the Consent Decree [] focused their attacks on the high cost of monitoring services. [A member of the City Council] publicly criticized the cost of things like airfare and food paid to monitors who needed to travel from out of state to perform their duties" (Rushin, 2015, p. 161).

decree were estimated at between $30 and $50 million annually[328] (Levenson, 2001; Ross & Parke, 2009), and the Cincinnati consent decree estimated $13 million in start-up costs and $20 million annually to ensure compliance (Walker, 2003).[329] As noted by Ross & Parke (2009): "[s]tartup and maintenance costs linked with successful compliance of consent decrees are enormous" (p. 204). And more than one commentator has suggested that "without financial assistance from either the [state or] the federal government, some departments will be unable to institute the reforms that are necessary to prevent future abuse" (Levenson, 2001, p. 29; Ross & Parke, 2009, p. 204; see also, Walker, 2003, pp. 49-50).[330]

In addition, costs are associated with the completion of a formal DOJ investigation, both on the part of the DOJ itself[331] and the City attempting to comply with DOJ information requests (Ross & Parke, 2009; see also, Harmon, 2009, p. 15, n. 7, & n. 82 ["A full investigation is intrusive and costly for a police department no matter how it is resolved").[332] And, as noted by more than one commentator, additional costs in the form of additional lawsuits once a pattern or practice of illegality has been found may also be in the mix for a police department:

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[328] Rushin (2015) estimated the costs of implementing reforms in Los Angeles, at "around $80-90 million. When factoring in the cost of hiring the external monitor in Los Angeles, which came in at around $2 million a year, the Los Angeles price tag likely surpassed $100 million" (p. 106). See also, Rushin, 2017a, pp. 209-211, for a description of costs associated with consent decree implementation in Los Angeles.

[329] In 2012, Carl Marquardt, Counsel for Seattle Mayor Michael McGinn commented that, "[i]n Seattle, we calculated an overall cost of $40 million dollars for implementation of DOJ's original proposal, and estimated between $6 million and $7 million to comply with DOJ's proposed sergeant-to officer ratio" (PERF, 2013, p. 34).

[330] Even Walker, a strong supporter of Section 14141 actions, also recognized the challenges associated with the costs associated with DOJ required reforms: "Given [] serious financial constraints affecting all state and local governments [], there is serious cause for concern about the ability of some cities to bear the costs of agreed upon police reforms" (Walker, 2003, p. 50).

[331] "In 2000, the DOJ requested $100 million in additional funding to expand the number of police department investigations under § 14141. This increase in funding was supposed to hire an additional sixteen new investigators each year—suggesting that investigations are a costly endeavor. The average investigation 'can take years as investigators wade through piles of internal records and personnel files'" (Rushin, 2014, p. 3226, quoting, Stockwell, J. (2002, December 22). Rights Investigation of Police Continues, *Washington Post*).

[332] The authors offered the following observations and questions: "It is also costly for the DOJ to conduct investigations and several questions emerge: does it make sound public policy to spend millions in conducting these investigations, and is it good public policy for the DOJ attorneys to spend their time and budget conducting these investigations?" (Ross & Parke, 2009, p. 205).

> [I]nvestigative procedures undertaken by the DOJ might have potentially negative consequences for the jurisdictions and agencies involved. Findings from investigation reports could lead to an increase in Section 1983 lawsuits filed against the city and police department as a result of newly discovered evidence of organizational misbehavior. (Powell et al., 2017, p. 582, citing Harmon, 2009; Silveira, 2004)

Arguably, however, many of the costs associated with consent decree reforms are no more than the cost of a jurisdiction having failed to provide adequate funds to support their police department in the first place. In the case of Cleveland, for example, the DOJ investigation identified inadequate equipment and training that was the result of ongoing, long-term failures on the part of the City to effectively fund the Cleveland Division of Police.[333] In Seattle, the lack of a working data platform to help supervisors identify problematic officer conduct was identified as a cause of the SPD's failure to supervise and administratively adjudicate police misconduct.[334] As such, the argument goes, if the City had appropriately invested in constitutional policing in the first place, the costs associated with consent decree compliance would never have been needed (Walker, 2017).[335]

In addition, many commentators have argued that compliance with a consent decree and the resulting impact of an agency engaging in constitutional policing are likely to result in substantial cost savings for the jurisdiction. As recognized by Levenson,

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[333] Investigation of the Cleveland Division of Police (2014, December 4). U.S. Department of Justice. Retrieved from https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf.

[334] Investigation of the Seattle Police Department (2011, December 16). U.S. Department of Justice. Retrieved from https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/5436d96ee4b087e24b9d38a1/1412880750546/spd_findletter_12-16-11.pdf.

[335] As argued by Walker (2017), "[w]ith respect to the direct financial costs of consent decrees, discussions to date fail to take into account the fact that the reforms mandated by consent decrees (e.g., an EIS, computerized arrest and force reporting systems, etc.) are today recognized as essential ingredients of a professionally managed urban police department. The Cleveland police department, for example, lacked a modern computer infrastructure for officer reports. Officers lacked in-patrol car computers and were completing routine reports by hand on paper forms. In addition to being inefficient in terms of officer time, the lack of a computerized records system prevents a department from systematically analyzing patterns of officer conduct. Thus, a consent decree should not be blamed for cost of improvements that a department should have implemented long ago" (p. 24). Walker (2018) also persuasively argues that "Many of the cost estimates for pattern or practice settlements are [] inappropriately inflated. Many of the costs are for reforms (e.g., an early intervention system, or the cost of installing a computerized record-keeping system) that were long overdue and would have been incurred had the departments in question been properly managed to begin with" (n. 210).

> [i]t takes a major police scandal for the public to notice the many different costs of police corruption, [which] may include [] potential civil verdicts against the city,[336] the costs of lack of confidence in the police department, and the decline of support and confidence in the criminal justice system. (Levenson, 2001, p. 17; see also, Chanin, 2012, pp. 4-5)

Other costs have also been associated with police misconduct. For example, the City of Cincinnati suffered approximately "$14 million in property damage, hospital bills, legal fees, and police overtime pay" in the wake of violence caused by a police shooting in 2001 (Chanin, 2012, p. 4). Chanin (2012) also identified additional costs associated to decreases in business revenue due to a boycott organized by civil rights groups , and additional "intangible costs, including a loss of police legitimacy, an erosion to the rule of law, weakened police-community relations and the perpetuation of racial stereotypes and structural inequities…" (pp. 4-5).[337]

Accordingly, during its 2012 summit, PERF heard from a number of police chiefs who were supportive of the results of their consent decrees, believing the benefits to be worth the costs:

- "The process of having a consent decree can actually be a benefit to your department. You can leverage the Justice Department to get some things that you desperately need. When I was chief at the Metropolitan Police Department in Washington, we would not have been able to make the changes we made without the Consent Decree. We would have encountered pushback from the union, and we would not have obtained the funding needed to develop an early intervention system and underlying technology infrastructure to support it" (PERF, 2013, p. 34, quoting

[336] "Estimated in the Rampart Scandal [to be] between $125 million and $1 billion…" (Levenson, 2001, p. 17).

[337] Walker (2017) also argued about additional "human and social costs of police misconduct. The human costs involve the pain and suffering of individuals who are unfairly stopped, frisked and searched by the police, and are physically brutalized by officers. There are the costs to people who are unfairly arrested and detained in jail because they are unable to raise bail. The costs of arrest and detention include an arrest record and possible loss of job or inability to take care of family responsibilities because of detention. To the extent that stops or arrests exert a labeling effect on people, those police actions are likely to cause individuals to undertake more serious delinquency or adult criminal activity, thereby imposing severe costs to themselves and society at large. Finally, human costs of unjustified fatal shootings by police are immeasurable, although in recent high profile cases the 'going rate' in court settlements [is estimated] to be between $4 and $6 million for unjustified fatal shootings" (p. 25).

Philadelphia Police Commissioner Charles Ramsey, former Chief of Police of Washington D.C. Metropolitan Police);

- "When they announced their desire to enter into a consent decree, it seemed intimidating at first. But I could see that they opened a door for me that my labor union had closed. And the door they opened included funding and political support for all my initiatives for the department" (PERF, 2013, p. 35, quoting Bob McNeilly, former Chief of Pittsburgh Police Department);
- "Prior to the Consent Decree in Cincinnati, we paid out $10 to $11 million to settle a number of lawsuits. But since the Consent Decree, the ACLU has not sued the Police Department. That is a tremendous savings" (PERF, 2013, p. 35, quoting retired Cincinnati Chief Thomas Streicher);
- "Without the force of a court order behind us, I doubt we would have obtained the funding that we needed from the state, over a sustained period of time, to develop the systems that the New Jersey State Police put in place to ensure internal transparency" (PERF, 2013, p. 35, quoting John Farmer, Dean, Rutgers University).

In response to concerns over costs, the USDOJ, in 2017, represented itself as attempting to reduce costs associated with monitoring on a holistic basis:

> The Division's current generation of reform agreements generally provide that the independent monitor should stop reviewing the agency's compliance with certain provisions of the agreement once the agency has fully implemented those provisions, allowing the scope of the agreement to be narrowed over time and for the Monitoring team to focus its efforts on areas where the agency is still struggling. In a number of instances where a law enforcement agency has accomplished significant, sustainable reform but discrete issues remain, the Division has terminated a court-supervised consent decree prior to full compliance and entered into a separate transition agreement to address the remaining issues. Such transition agreements reduce the overall burden of compliance and acknowledge the progress the agency has made toward effective, constitutional policing. (USDOJ, 2017b, pp. 35-36)

One of the most common refrains cited by a number of commentators, however, is the argument that, although expensive, §14141 litigation "may ultimately pay for itself through decreased litigation costs" (Rushin, 2015, p. 117; Walker, 2017, pp. 24-25; Powell, Meitl, & Worrell, 2017; Walker, 2018; Rushin, 2017a).[338] Even so, Rushin

[338] Rushin (2015) used the LAPD experience as an example for this conclusion: "the LAPD spent around $17,477,740 to settle civil rights suits filed in 2001, and $13,187,100 to settle civil rights

commented that “the financial burden of structural reform litigation falls on local police agencies over a relatively short period of time” (Rushin, 2015; Rushin, 2017a). As such, municipalities, particularly those with poor property tax bases, could easily face short term budget deficits which would be difficult to overcome even if long-term savings could be anticipated (Rushin, 2015, pp. 109-110; 117-118). Rushin (2015) specifically used the examples of Camden, New Jersey (whose police department budget of $65 million in 2011 compared poorly with its tax revenues of only $24 million for that same year) and New Orleans, which was forced to increase municipal taxes substantially when faced with the costs associated with its consent decree (Rushin, 2015, p. 118).

The costs associated with externally mandated police reform also have the potential to put the police department at odds with city officials. As previously mentioned, police chiefs have recognized the ability to “force the reallocation of scarce resources … when local political actors are unwilling to make the necessary investments in police reform” (Rushin, 2015, pp. 109-110; PERF, 2013). Such a circumstance could ultimately take vital funds from other important city services, regardless of comparable needs. And, as argued by Rushin (2017), the “forced allocation of scarce municipal resources raises some serious concerns. Decentralization in American policing leads to wide resource disparities between municipalities. The result is that some jurisdictions lack the necessary resources to invest in policies and procedures to reduce misconduct” (p. 211).

A 2019 Criminal and Justice Institute report, written with the intent to help jurisdictions avoid becoming the subject of a federal consent decree warned that consent decrees “require a substantial commitment of resources from the jurisdictions that are legally bound to comply” (CJI, 2019, p. 6). In essence, “federal intervention transforms heightened investment in the police department from a luxury to a legal necessity” (Rushin, 2017a, p. 211). The ultimate lesson to be learned, however, appears to be that “from a purely fiscal perspective, unlawful police behavior is expensive” (Rushin, 2017a, p. 217), as is the cost of police reform in support of constitutional

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suits in 2002. By 2008 and 2009, these numbers fell to $2,194,729 and $626,599. It is not difficult to imagine these types of yearly savings quickly adding up to pay for the high initial cost of structural police reform” (n. 179). See also, a quote from a Detroit official stating that “the amount of money that we have saved on lawsuits that we have endured for years, particularly for deaths in our holding cells, have paid for the cost of implementation of the monitoring 2 or 3 times” (n. 24).

policing. In other words, the costs of policing have the potential to catch up with a municipality one way or the other.

4.9. City & Police Leadership

One of the most common conclusions amongst commentators and academics is the finding that the success of an externally mandated reform is largely dependent on the support of reform-minded police chiefs and municipal or county political leadership. In fact, there has been suggestion that without the support of these local leaders, it would be virtually impossible to achieve sustainable reform (Rushin, 2015, p. 170; Chanin, 2016; Rushin, 2017a; Scott, 2017; Jaio, 2020).

In Pittsburgh, it was reported that "the initial shock and disbelief among city officials that followed the news of the federal investigation soon turned into dogged determination to take a negative and turn it into a positive" (Davis, et. al, 2002, p. 10). The researchers evaluating the implementation of the Pittsburgh decree concluded that the Chief played "the most important role" in the successful implementation of the Consent Decree (Davis et al., 2002, p. 12; see also, Walker & Macdonald, 2009, pp. 527-528 [referring to a February 2005 "Conference on Pattern or Practice Litigation" in Washington D.C. wherein "there was a broad consensus of opinion … that the leadership of the then-police chief [of Pittsburgh] was the most important factor contributing to the success in Pittsburgh"]). Walker & Macdonald (2009) also noted "the critical importance of leadership" in consent decree implementation, using the experiences in New Jersey and Los Angeles as examples (p. 528). [339] See also, Chanin, 2012, p. 103 ["In short, the presence of strong leadership that places a high priority on

[339] According to Walker & Macdonald (2009), conference participants noted that "[w]hen the New Jersey State Police neared the successful implementation of its consent decree in 2006, there was widespread agreement among leaders in the agency that it had dragged its feet for the first two years and that progress toward implementation only began with the arrival of a new superintendent. Some observers, meanwhile, argued that the LAPD began making significant progress toward implementation of the 2002 consent decree after the arrival of Chief William Bratton in 2002" (p. 528).

the policy implementation process is seen as being critical to overall success (citation omitted)"].[340]

Chanin (2012), having evaluated consent decree implementation in four jurisdictions,[341] found that "police leadership had a significant effect on the implementation of pattern or practice reform" and specifically identified evidence from Cincinnati that "emphasize[d] the potential value of not just supportive but capable, proactive political leadership" (pp. 189 & 182; see also, Stone et al., 2009 [regarding the impact of Chief Bratton on the LAPD reform effort]).[342]

At the same time that Chanin was making his findings, Walker (2012) was similarly commenting on the importance of police leadership in achieving reform commenting that "the enforcement of department-generated policies depends entirely on the will of the police chief executive," although Walker continued by identifying the challenges faced by even a reform-minded police chief: "In turn, the will of the police chief depends on the commitment of that person, his or her administrative skills, and the power of countervailing forces such as political influence, the police union, and the police officer subculture" (p. 67).[343]

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[340] Chanin (2012) also noted the importance of "support from political principals," as well as "the consistent provision of resources, [and] the support of executive branch leadership for pattern or practice reform [as being] particularly critical at the earliest stages of the process" (p. 181).

[341] Pittsburgh, Washington D.C., Cincinnati & Prince George's County.

[342] Chanin (2012) used interviews with Professor Sam Walker and Merrick Bobb (described as "a lawyer and police accountability authority") conducted in 2010 – about 2 ½ years before Bobb was appointed as the monitor for the Seattle Consent Decree, concluding that: "Implicit in [the] argument [that police leadership is essential to externally mandated reform] is the notion that patrol officers will embody the reform effort only when normative and cultural signals from the top of the organization stress the importance of compliance" (pp. 189-190).

[343] In support of this contention, see quotation from an LAPD Commander who served with the LAPD's Civil Rights Integrity Division from 2000 to 2005: "We went through three mayors and three chiefs of police over the course of the decree. So it obviously transcended political administrations and the administrations of chiefs of police. I think it's fair to say that there was a perception that Bernard Parks, who was Chief of Police when the Consent Decree was negotiated, was not completely behind it. And I think that played into the fact that Chief Parks' tenure was not extended by the police commission. But Chief Parks did start to move on it and take some degree of ownership of it. Later, when Chief Bill Bratton took over in 2002, he had a much different leadership style. I think he clearly understood what had to be done; he provided a strong sense of leadership; and I think ultimately that was one of the main things that helped us move the Consent Decree along" (PERF, 2013, p. 30).

In a later work, using data from five jurisdictions,[344] Chanin (2014) reasserted "leadership" as "a key factor in explaining the success of implementation efforts." Chanin went into detail, identifying Cincinnati as "initially hostile to the reform effort," D.C. leadership as "allow[ing] the process to fade from view" toward the end of Chief Ramsey's tenure, and the "complexity of the reform effort" in Prince George's County, as barriers to reform due to the level of involvement by the police leadership-of-the-day (p. 45). Chanin then went on to describe the "most successful leaders" as having been "actively involved in the reform," leading to successes in Pittsburgh, D.C. and Cincinnati (p. 50; see also, Dukanovic, 2016).

Rushin (2015) added to the commentary, correlating the impact of changes in leadership in consent decree jurisdictions with the success of reform efforts. Rushin cited "the hiring of [] outside, reform minded police chief[s] who support[ed] the goals of the federal intervention," and highlighted the hiring of Seattle's Chief Kathleen O'Toole (who had previously been appointed as the Monitor for East Haven, Connecticut) as positively impacting reform efforts. Like other commentators, he also noted the impact of the hiring of Chief Bratton on the Los Angeles reform effort (pp. 110-111, 166-167; see also, Scott, 2017). Rushin also commented that his "[i]nterviewees emphasized that supportive leadership was necessary if a department was to change its organizational culture" (p. 123). Rushin also emphasized, however, that "leadership must be supportive not just in the police department, but also within the broader city government" (p. 167). Rushin went even further than other commentators, pointing out that "there is no evidence so far that the DOJ can use §14141 to overhaul a police department with intransigent leadership" and that "it seems that in each successful case of structural reform litigation in American police departments, supportive leadership has played a critical role in the measure's success" (p. 167).[345] Other commentators went on to agree with Rushin, including Scott (2017), who concluded that:

> there is not much evidence yet to suggest that federal pattern-and-practice lawsuits can correct what a reluctant or incapable chief cannot. Indeed,

[344] Now including Detroit, in addition to the jurisdictions used in his 2012 dissertation.

[345] Rushin (2016) compared the experience of the Los Angeles consent decree, which he referred to as a success, with DOJ attempts to reform the Alamance County Sheriff's Department (North Carolina). The Alamance County Sheriff resisted the DOJ reform efforts, taking the DOJ to court to fight their allegation of unconstitutional policing. Rushin went on to argue that Alamance County experience was an example of the limitations of federal intervention via § 14141 in the face of a resistant police leader.

> where these federal consent decrees seem to have been most successful in bring about lasting reform, the jurisdictions being sued have hired a competent reform-minded police chief who in turn has used the Consent Decree as leverage to expedite the reforms that he or she was predisposed to push. (p. 610, citing Davis et al., 2002 (regarding Pittsburgh) & Stone et al., 2009 (regarding Los Angeles))

By the time Rushin published his book on *Federal Intervention in American Police Departments* (2017), he was arguing that "there is little evidence … to suggest that the DOJ can use federal intervention to overhaul a police agency with defiant and stubborn leadership" (p. 166). Scott (2017), was likewise concluding that: "federal pattern-and-practice lawsuits can serve as useful leverage but not as a sufficient reform force in themselves" (pp. 610-611, citing *Washington Post*, 11/13/2015, and *The Marshall Project*, 4/23/2015).

4.10. Community & Constituency Engagement

In its most recent publications (all published prior to the tenure of the Trump administration), the DOJ Civil Rights Division emphasized its interest in engaging with the community over the course of consent decree investigations, settlement agreement negotiations and the implementation of reform.[346] In its 2017 report describing its §14141 work, the DOJ went into significant detail to explain how it engaged community prior to negotiating a Settlement Agreement:

> Before negotiations over a reform agreement begin in earnest, however, the Division seeks community input regarding remedies to the issues identified in the Findings Letter. The Division holds community meetings and draws on relationships built during the investigation stage to involve the community in building solutions. Often the Division will present specific briefings on its findings to community representatives and hold meetings focused on particular aspects of those findings designed to drill down on specific remedies. The Division always encourages community representatives to present specific proposals for reform, in writing or at a

[346] As commented on by Douglass (2017): "Over time, the [DOJ] came to recognize the value of broader community participation and the community's role expanded beyond merely providing relevant evidence to participating in the process of shaping and monitoring the reforms. Currently, the DOJ 'almost always conducts a series of community or town hall meetings in different locations designed to create a form for members of the community to speak to their experiences and insights. These face-to-face meetings also help build relationships between community members and the lawyers, investigators, and community outreach specialists conducting the investigation.' This evolution reflected the recognition that community involvement and support for consent decrees is a crucial factor in whether they succeed." (p. 328, quoting Simmons, 2008, p. 519).

> community meeting, and works to incorporate those proposals into its reform agreements. (USDOJ, 2017b, p. 17)

The DOJ also commented that its "current generation of consent decrees require some form of community outreach and engagement, including mechanisms to institutionalize strong relationships between the law enforcement agency and the community it serves." In addition, the DOJ emphasized its commitment to the establishment of "Community Committees or Councils," community-based mediation programs, and data collection and transparency "to make data available to the public in a responsible and accessible format" (USDOJ, 2017b, pp. 29-30, 31; see also, DOJ 2017a).[347]

Starting with Seattle in 2012, the DOJ began ensuring the inclusion of some form of "community engagement" section in all settlement agreements with large urban police departments. These sections required the affected cities to create some form of structure to involve community in the Consent Decree reform process. (Patel, 2016, p. 816). Even so, community advocates have expressed "a high level of frustration with the outsider role inherent with non-party status" (Patel, 2016, p. 817). In Seattle, fairly early in the process, the organization created to assist in the reform of the SPD, the Community Police Commission (CPC), attempted to intervene as a party;[348] but that request was denied by the court.[349] Even though the CPC was granted "amicus curie status" to file motions on topics of interest, CPC research participants, like community advocates in other cities as described by Patel (2013),[350] expressed a strong sense of

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[347] DOJ (2017a) provided "examples where the Civil Rights Division required law enforcement agencies to develop and maintain community connections and partnerships; and foster positive interactions between officers and community groups, youth groups, and individuals … These examples may include requirements for town hall meetings, small group dialogues, ongoing assessment and improvement plans for community engagement efforts; and appointment of community liaison officer(s)" (p. 69).

[348] U.S. v. Seattle, Document No. 90 (filed 10/24/2013).

[349] U.S. v. Seattle, Document No. 106 (filed 11/26/2013)

[350] Patel (2013) described community advocate frustrations in Puerto Rico (pp. 828-833 [describing the ultimate refusal of the Puerto Rico Police Department to work with a group created to promote community participation in the Consent Decree reform process, the "Communitarian Work Group in Regards to the Police Reform," over a dispute over maintaining "the confidentiality of information and draft proposals."]; New Orleans (pp. 834-838 [describing unsuccessful community attempts to intervene in the Consent Decree litigation, a report from the "Community United for Change" organization finding "a definite disconnect [between] the people of New Orleans and the monitoring team, and concluding that "the New Orleans consent decree process, despite improvements in a number of other areas, has made little progress in the area of

frustration at being excluded from what they perceived to be important parts of the reform process.

With respect to Seattle, Patel (2013) suggested that the Seattle consent decree "highlights several shortcomings and opportunities found in the community engagement process, such as contestation over the scope of community members' involvement, both in terms of the type and form of input" (p. 818). The CPC, created by a Memorandum of Understanding entered into simultaneously with the Settlement Agreement, included police union members and specified specific policy areas for which the CPC was responsible: community engagement, accountability, investigatory stops and data collection, officer assistance and support, and transparency and public reporting.[351] Even though Patel recognized "praise from scholars and positive reports regarding the Seattle CPC's involvement in shaping the direction of the policies implemented as part of the Consent Decree reform process," he also noted, "genuine concerns remain regarding the actual power granted communities to shape police policies" (p. 825). Finally, Patel made findings consistent with the interviews conducted in support of this research study:

> Today, members of the CPC question the DOJ's motives in creating the oversight body and worry their function is to rubber stamp the parties' reforms, rather than engage in community-driven decision making to effect a long-term shift in power between police and communities subject to police practices. (p. 824).

community engagement. The rigorous intervention practice with this suit suggests discontent on the part of several community constituents and government agencies"]; Portland, OR (pp. 838-847 [while highlighting an "historic" opportunity for community to participate in a two-day "fairness hearing" before the settlement agreement was approved by the court and the granting of "enhanced amici status" to a community group, ultimately noted that "by forcing the community to contest and organize simply to validate its role in the process, limited, community-based resources [were] taken away from innovative solution generation over substantive issues within the reform process"]; Cleveland (pp. 847-851 [describing community concerns with the Settlement Agreement-created Community Police Commission relating to its effectiveness and selection processes]; Albuquerque (pp. 851-856 [describing community criticism of settlement agreement created "Community Policing Councils," and concluding that by failing to "prioritize[e] community voices, the Consent Decree's remedies fail[ed] to capitalize on community knowledge and pose significant accountability problems from a democratic perspective"]; and Ferguson (pp. 862-867 [noting community criticism of the settlement agreement created "Citizen Review Board," intended "give disenfranchised residents a voice," as the result of "broad language [used] for many of its requirements."]

[351] Memorandum of Understanding (dated July 27, 2017), Section III.B. Retrieved from http://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/120727FINAL_MOU.pdf.

As recognized by Patel, most of the literature relating to DOJ consent decree inclusion of community engagement provisions has been positive. Walker (2018) specifically noted that "the first generation of consent decrees [were] barebones documents, devoted entirely to the required reforms, with little discussion of the context of those reforms." Walker then went on to credit the DOJ for its "second generation settlements" which "by contrast typically provide introductory narratives describing the social, political and historical context of the police department as a way of explaining the pattern of misconduct that has been found." Walker believed that these changes were an

> effort to provide the public with a better understanding of police problems [and] reflects one of the most important developments in thinking about policing in America in recent years … the importance of public trust and confidence in local police agencies as a necessary predicate to enhancing legitimacy of and public cooperation with those agencies. (pp. 1808-1809).

Walker (2017) also positively noted the DOJ's recent inclusion of "formal procedures for giving community residents a direct voice both in the investigation stage of the DOJ's pattern or practice program and in the implementation of a settlement," specifically noting the Seattle, Portland and Cleveland agreements (p. 18; see also, Walker, 2018). Similar positive comments were made by Chanin (2017a) with respect to the Ferguson agreement which he described as being "oriented toward the community and includ[ing] several provisions designed 'to promote and strengthen community partnerships and positive interactions between officers and Ferguson residents" (p. 267).

The inclusion of community outreach provisions in the "second generation" of Settlement Agreements did not come from nowhere. There was initially substantial criticism of the decision by Congress not to allow private parties the opportunity to initiate actions for relief nor to intervene in DOJ actions (see, for example, Miller, 1998, pp. 173-178; Gilles, 2000, p. 1385-1386; Silveira, 2004; Harmon, 2009) and the lack of opportunity for community involvement to "influence the negotiation, design, or implementation of a Section 14141 consent decree" (Miller, 1998, p. 178; Gilles, 2000, pp. 1413-1414, 1425; Levenson, 2001, p. 30; Silveira, 2004; Simmons, 2008;

Kupferberg, 2008;[352] Ross & Parke, 2009, p. 203; Simmons, 2010, p. 379; Chanin, 2012;[353] Walker, 2018[354]).

In addition, the DOJ, after conducting a "roundtable" involving 100 law enforcement officials, researchers and consultants, acknowledged that "from the outset, there seemed to be consensus among participants that in addition to legal representatives, the [reform] process should involve police officials, subject-matter experts, labor unions and community representatives as well as other relevant parties" (DOJ, 2011, p. 4). Even so, there still appears to be disagreement between the DOJ and some commentators on whether third parties should be permitted to participate in settlement agreement negotiations, with the DOJ excluding third parties from being directly involved in settlement negotiations as a matter of practice and some commentators calling for direct community and police union involvement in those negotiations (see, for example, Chanin, 2017a, p. 265 [arguing that "while [community groups] may appreciate the opportunity to meet with and express their preferences to DOJ staff, proxy access cannot replace formal participation in the negotiation process"]).

Multiple authors, however, have opined that "local support for reform among community leaders and individual citizens is critical to implementing and sustaining organizational change" (Chanin 2017b, p. 267, citing Chanin, 2015, Skogan, 2008 & Walker, 2012). And many commentators have cited the Cincinnati collaborative agreement as having been successful, in large part, due to its heavy reliance on

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[352] Noting criticism of civil rights groups and community members who were never notified of a joint motion by the DOJ and the State of New Jersey to end consent decree oversight (p. 153).

[353] Chanin (2012) argued that "[s]imply the process of participating in negotiations can increase the legitimacy of the settlement in the eyes of potential opponents and would-be critics (Tyler 2003; Tyler and De Cremer 2005). Participation can also give key stakeholders a sense of ownership over both the process and the content of the agreement." With those thoughts in mind, Chanin recommended that "parties to the settlement process adopt a broad, grassroots effort to incorporate the views of the community. Whether through the use of focus groups, interviews, surveys, or other techniques, providing unorganized community members a chance to participate in the development of the settlement agreement - and thus ownership over the process and the content - has the potential to galvanize support for the reform effort and begin to develop the kind of broad commitment needed to sustain the initiative long after the DOJ and the monitor teams have left town" (p. 352).

[354] Walker (2018) referred to a 2009 unpublished report created by "an ad hoc meeting of police accountability experts," that "discussed a variety of issues related to Section 14141 litigation" and recommended to the DOJ that it "should make the involvement of community groups in pattern or practice investigations, negotiations, and litigation standard operating procedure from the beginning of the process" (n. 221).

community involvement (Simmons, 2008; Chanin, 2012; PERF, 2013; Chanin, 2014; Rushin, 2015; Greenberger, 2016; Patel, 2016; Scott, 2017; Walker 2017).

4.11. USDOJ Resourcing

Many academics and commentators have discussed the problems associated with limited DOJ resources and the impact they have had on the ability of the USDOJ to fairly and objectively pursue problem departments throughout the U.S.

Early DOJ messaging indicated an intent at first to only bring cases that were "sure, solid, cases that help establish good law," with the recognition that the Civil Rights Division would need to "borrow resources from other divisions" in order to fully implement the law (Curriden, 1996 [quoting then then-Deputy Attorney General in charge of the Civil Rights Division]). In 1998, in an attempt to ensure its first two consent decrees had a wider impact on police departments nationally, the DOJ was giving advice to police departments seeking to avoid the attention of the DOJ's Special Litigation Section by suggesting that they "would be well-advised to undertake changes in their operations consistent with the provisions of the [first two DOJ initiated consent decrees in] Pittsburgh and Steubenville" (Livingston, 1999, pp. 819-820).[355]

By 2013, DOJ was once again providing advice on how to avoid a federal investigation and a consent decree, by advising departments to

> 1) adopt[] strong policies on key issues such as use of force; (2) ensure[] that officers are trained and managed so the policies will be followed; and (3) develop[] strong management and supervision measures, … to help ensure that police managers are aware of and can quickly respond to problems as they develop. (PERF, 2013, pp. 7-8)

And, while DOJ Settlement Agreements and MOU's were described as "very useful tools for people in other jurisdictions to review, because everyone can see the kinds of practices and mechanisms for good police services that have been agreed between a jurisdiction and the Department of Justice," agencies were warned that they could not be used as "a cookbook for what every department needs to do. There are unique

[355] Referencing, Cop Brutality (1998, March 15). Weekend All Things Considered, National Public Radio (featuring Steven Rosenbaum, Chief of Special Litigation, Civil Rights Div., U.S. Dep't of Justice).

circumstances facing each jurisdiction, and the delivery of police services is not the same everywhere" (PERF, 2013, p. 11 [quoting the then-Chief of the DOJ's Special Litigation Section]).

While many commentators complained about the lack of resources available to the DOJ to systematically attack unconstitutional police practices on a nation-wide scale (see, for example, Miller, 1998; Jerome, 2005; Jeffries & Rutherglen, 2007; Harmon, 2009; Walker & Macdonald, 2009; Harmon, 2012; Chanin, 2012; Rushin 2015; Rushin, 2017a), it was Rushin (2015) who identified these resource limitations in the most dramatic way, referring to the chances of being targeted by the DOJ as being akin to "a messy and imprecise … enforcement lottery" (pp. 64-65). With this description, Rushin highlighted the lack of procedural justice described by city officials all over the country (to include Seattle) when they professed shock and surprise that their city was targeted by the DOJ above all other poorly performing police agencies in the country.

Rushin (2017) elaborated on this point when he identified the following problems with §14141 enforcement actions: first, the DOJ only responds to police misconduct "via piecemeal litigation after it successfully identifies a problem police department;" second, "between 1994 and 2013, the [DOJ] investigated only 0.017% of police departments annually … and, the [DOJ] intervened in only 0.006% of the police departments annually." Rushin argued that "given these lottery-like odds, a rational police chief has little motivation to change his behavior because of the unlikely threat of federal intervention" (pp. 17-18). Ultimately, Rushin commented that the federal government lacks both the ability to systemically identify those departments engaging in systemic unconstitutional behavior and the necessary resources to target all of the departments it may identify.

4.12. Consent Decree Success Stories

"Efforts at police reform will be most effective when the police organization itself is involved in the process and, ultimately, when reform involves not simply adherence to rules in the face of punitive sanctions, but a change in the organizational values and systems to which both managers and line officers adhere"
(Livingston, 1999, p. 850).

There have been a number of consent decree success stories, according to commentators and academics, all which seem to have involved one common factor: a police leadership committed to reform. The stories, coming out of Pittsburgh, Cincinnati, Los Angeles, Washington D.C. New Orleans and Seattle, all involved either new chiefs brought in to enact reforms (Los Angeles & Seattle) or reform-minded chiefs who either eventually embraced the reform effort (Pittsburgh, Cincinnati & New Orleans) or who invited the DOJ into the city in the first place (Washington D.C.).

In describing the Los Angeles case as a success, Rushin (2015) built on findings made by Harvard researchers (Stone et al., 2009) and by Chanin (2012), finding that federal intervention "forced Los Angeles to make a concerted investment in police reform measures [which] … led to substantial improvements in how the LAPD internally audited and responded to officer behavior." Rushin also noted that "the initiation of federal intervention also correlated with a change in leadership atop the LAPD [that] … contributed to the measure's success in Los Angeles." Finally, Rushin concluded that the according to the data he reviewed, the LAPD was able to reform "without significant overall cost … through reductions in civil liability for civil rights violations [and without] … any reductions in police efficiency or effectiveness." However, Rushin, also concluded that §14141 litigation appears "most effective in agencies that are supportive of external intervention" (p. 170).

In Washington D.C. a Republican Attorney General was quoted as saying: "these reforms have been implemented without impairing the ability of the police department to fight crime. In fact, last year we saw a decline in the number of murders and in the crime indexed in the District of Columbia." And, officer involved shootings reportedly fell 78% from 1998 to 2000 with excessive force complaints falling 36% from 1999 to 2000 (Kim, 2002, p. 777;[356] see also, Chanin, 2012).

The court-appointed monitors were often effusive when completing their work, to include the D.C. monitor who reported in January 2008 that the MPD "has substantially

[356] Citing, U.S. Dept. of Justice, Attorney General News Conference with D.C. Mayor Anthony Williams and D.C. Police Chief Charles Ramsey (2001, June 13). Retrieved from http://www.usdoj.gov/crt/split/mpdpressconf.htm.

transformed itself for the better since the late 1990s" (D.C. Monitor Report, 2008, p. 4)[357] and the New Jersey monitor who concluded that "the agency appears to have become self-monitoring and self-correcting to a degree not often observed in American law enforcement" (New Jersey Monitoring Report, 2007, p. 4).[358] Similarly, the Cincinnati Monitor's final report referred to its reform process as "one of the most successful police reform efforts ever undertaken in this Country" (See Cincinnati Monitoring Report, 2008, pp. 55-56).[359] And although the reforms in Cincinnati appear to have endured (Chanin, 2015;[360] Simmons, 2010; Chanin 2016; Greenberger, 2016; Chanin, 2017a, p. 265 [referring to Cincinnati as being "widely lauded as a model for effective, durable reform"]; Scott, 2017), even though the court-appointed monitor in D.C. was generally positive about the sustainment of reforms in Washington in 2016, Chanin reported "the picture in Washington DC [as being] difficult to interpret" (Chanin, 2015;[361] Bromwich, 2016).

New Orleans, which started with conflicts between the City and the DOJ regarding the hiring of a monitor and the costs associated with the reform effort, has also been described as a success. The federal judge assigned to the decree, in an article written with NOPD staff, asserted that as a result of the Consent Decree, the "MOPD

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[357] Michael Bromwich, Twenty-Third Quarterly Report of the Independent Monitor 4 (2008). Retrieved from http://www.policemonitor.org/080131report.pdf.

[358] Public Management Resources, Monitors' Sixteenth Report iv (2007), available at http://www.state.nj.us/lps/monitors-report-16.pdf.

[359] The report concluded that: "The Cincinnati Collaborative has been the most ambitious police reform effort ever attempted in this Country. The implementation of both a Department of Justice Memorandum of Agreement and a court ordered Collaborative Agreement increased the complexity of this endeavor. The Parties' performances under the Agreements were initially halting and defensive. With time and the emergence of impressive leadership throughout the Cincinnati Community, significant compliance with the Agreements were achieved resulting in the Cincinnati Collaborative being one of the most successful police reform efforts ever undertaken in this Country."

Retrieved on 10/26/20 from: https://www.cincinnati-oh.gov/police/linkservid/97D9709F-F1C1-4A75-804C07D9873DC70F/showMeta/0/.

[360] With respect to Cincinnati, Chanin (2015) concluded that "[s]ix years removed from DOJ and monitor oversight, the Department has experienced little or no backsliding, a finding supported by consistent reductions in undesirable outcomes, including use of force incidence and allegations of abusive or unlawful behavior. In short, the reform effort in Cincinnati appears to have transformed the CPD" (pp. 179-180).

[361] Chanin (2015) noted that "[s]ignificant reductions in force-based civil litigation and related payouts since 2003 suggest that both the frequency and severity of MPD misconduct has declined. [However,] [a] spike in allegations of misconduct complicates the picture, as does the startling number of MPD officers that have faced criminal charges in the postreform years" (p. 183).

has build the infrastructure to manage change effectively" and that "[n]ow, other police agencies are looking to the New Orleans Police Department for guidance on implementing reforms" (Morgan et al., 2017, 276, citing Crockett, 2017;[362] NOPD, 2017;[363] PERF 2016;[364] and Texas A&M University, 2016[365]).

Even so, Chanin suggested that in some cases, such as Prince George's County, meaningful reform "failed to take root" and that reform efforts in Pittsburgh "appear[ed] to have taken a significant step backwards in the years following the implementation of the Consent Decree" (Chanin, 2012, p. 323; Chanin, 2015). At the same time, Walker (2017) was arguing that while "true, there has been backsliding in some departments, but in no case has a DOJ settlement completely failed" (p. 29).

In addition, Chanin (2012), made what appears to have been an astute observation of the circumstances under which some of the Consent Decrees in his study were terminated, pointing out that the termination of the decrees appeared to be "a fait accompli, an event pre-determined to occur at a mutually agreed-upon date, almost regardless of what the facts dictate" (pp. 336). Specifically, he noted that,

> Notwithstanding the delays and inefficiencies experienced while implementing key components of the settlement agreement, two of four agencies (Pittsburgh and Cincinnati) were released from DOJ oversight on time. Two other agencies (Washington D.C. and Prince George's County were released after the settlement terms were extended by two years, though notable deficiencies remained in each department. (p. 336)

And even though decrees in Los Angeles and Detroit have become almost legendary due to the length of time before their ultimate termination (twelve years and thirteen years respectively), and even though Chanin (2012) recognized "counter-

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[362] Crockett, J. (2017, January 16). NOPD police chief to meet with U.S. House Speaker. *WDSU6 News*. Retrieved from http://www.wdsu.com/article/nopd-chief-to-meet-with-us-housespeaker-monday/8601095.

[363] NOPD. (2016, August 23). NOPD hosting Baltimore Police Department leadership this week. Retrieved from http://www.nola.gov/nopd/press-releases/2016/20160823-nopdhosting-baltimore-police-department/Office of the Consent Decree Monitor.

[364] Police Executive Research Forum. (2016, July–September). New Orleans Police Implement Peer Intervention Program, 30(2). Retrieved from http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2016/debate_2016_julsep.pdf.

[365] Implementation of police department consent decrees: Working together toward institutional change. (2016, November 3–5). Texas A &M University School of Law and Tarleton State University.

examples" in the experiences of the state of New Jersey (ten years) and the Pittsburgh Office of Municipal Investigation (nine years), his suggestion that "the DOJ prefers to limit the implementation process to a maximum of the original contract date plus two years" seems to ring true.[366] In the Seattle example, although the City has recently entered year-eight of its consent decree process, the DOJ supported the initial finding of "full and effective compliance" after five and one-half years and opposed the Court's finding that the SPD had fallen partially out-of-compliance in year-six.[367] I would argue that the Seattle example appears to support Chanin's overall conclusion that, for various reasons, to include "issues of politics," "concerns over federalism," "matters of symbolism," and the law of "diminishing returns," the DOJ has strong incentives to complete consent decrees "on time" or as shortly thereafter as possible, regardless of the actual impact of the reform effort.

4.13. Future Research

As previously described, even though §14141 has been in use for more than twenty years and has been used to create consent decrees and memorandums of agreement involving more than forty jurisdictions, academic research into the areas of effectiveness and sustainability remains elusive. Some of outstanding research questions include:

- "What changes have [consent] decrees produced and what unintended consequences have they brought about?" (Livingston, 1999, p. 858). To include the need for further empirical evidence to support the framework developed by

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[366] Chanin (2012) further theorized that "issues of politics and concerns over federalism seem to have as much, if not more influence over how and when affected departments will be released from DOJ oversight, than do matters of technical reform in police operations." Chanin recognized "other plausible [theories] as well:" to include, that "matters of symbolism" are taken into account – where the importance of sending a message to the department and the public of the DOJ's faith in the department are considered, as well as the recognition of the harms of long-term reform efforts that could undermine departmental and city leadership and community faith in local policing. Finally, Chanin noted that "the concept of diminishing returns" could be applied to the continuing use of DOJ resources on any one specific police department (pp. 336-338).

[367] See U.S. v. Seattle, Document No. 3-1 (Settlement Agreement), filed July 27, 2012; Document No. 422 (DOJ Motion in Support of finding of Full and Effective Compliance), filed October 13, 2017; Document No. 528 (DOJ Motion in Opposition to Finding of Non-Compliance), filed February 13, 2019. The DOJ also supported a finding of compliance on the part of the LAPD, which was subsequently ridiculed by the assigned federal judge who subsequently extended the consent decree by an additional three years (see Chapter 2.3, Section II.B., supra).

the DOJ to impose police reform through policies, training, supervision and discipline, and involving the following questions:

- Does the Consent Decree process "accomplish what it is designed to do?" (Chanin, 2012, p. 356)
- Is the DOJ framework "capable of controlling discretion and holding officers accountable?" (Chanin, 2012, p. 356)
- Does the DOJ framework result "in limiting the use of excessive force?" (Chanin, 2012, p. 356)
- "Are there interaction effects or unforeseen outcomes, either positive or negative?" (Chanin, 2012, p. 356)
- "Is an agency-wide approach to managing misconduct truly more effective than individualized efforts that focus on deterrence through officer liability and administrative sanctions?" (Chanin, 2012, p. 356).

- "The extent to which leadership in Section 14141 reform implementation conforms to a punctuated equilibrium pattern of change" (Chanin, 2012, p. 192);
- The identification of "those factors shaping DOJ and monitor termination decisions" (Chanin, 2012, p. 337);
- What are the differences between the use of consent decrees and memorandum of agreement and what are the strengths and weaknesses of each? (See, Chanin, 2012, p. 366).
- At what point can it be determined that a "critical mass" of officers have accepted mandated reforms? (Walker, 2012, n. 212);
- The implication of the relationship between the various elements supporting a reform effort (to include available resources, police and political leadership, external monitoring and the presence of the DOJ) (Chanin, 2014, p. 50);
- "Mov[ing] beyond the use of outcome data to evaluate sustainability, beginning with an assessment of officer attitudes and organizational culture more broadly." To include determining whether "a department [can] achieve and sustain desirable levels of key outcomes [] despite a culture that may not reflect core reform values?" (Chanin, 2015, p. 184; see also, Rushin 2015, p. 124 ["Can the DOJ force reform on a municipality that adamantly opposes it?"]);

- The Monitoring of pattern or practice jurisdictions, “paying particular attention to identifying those factors that distinguish reforms that endure from those that erode” (Chanin, 2016, p. 110; see also, Rushin, 2015, p. 120, “[More research [] is needed to understand the extent to which §14141 reforms are sustained after federal intervention ends”];
- The need “to identify which types of regulations are most closely tied with depolicing” (Rushin & Edwards, 2017, p. 776; Chanin & Sheats 2018);
- “Determin[ing] whether the picture that emerges from these two evaluations [the Pittsburgh and Los Angeles evaluations] is unique to the two departments involved or is representative of the general impact of court-mandated reforms on officer conduct” (Walker, 2018, p. 1837; see also, Rushin 2015, p. 170).
- The development of “a model for comprehensive evaluations of the impact of systemic police reform efforts” (Walker, 2017, p. 23; see also, Alpert et al., 2017; Powell, et. al, 2017).

Chapter 5.

Structural Reform Litigation & Police Reform Theory

As a form of "structural reform litigation," §14141 has been subject to general criticism due to its inherent conflict with the concept of local control of the police and its application has been evaluated using various forms of police reform theory. Unfortunately, academics and policing professionals have not applied police use-of-force theory to the application and implementation §14141 investigations and resultant settlement agreements and consent decrees. In fact, as discussed in this Chapter, police use-of-force theory is particularly appropo when it comes to evaluating the DOJ's activities, even more so than generalized concepts of federalism. It also incorporates important concepts such as fairness, procedural justice, proportionality and reasonableness.

5.1. Arguments for and Against Policing-Related Structural Reform Litigation

Although the passage of §14141 occurred with relatively little fanfare as it was passed as part of the larger Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA), its use has been controversial from the start and liberal versus conservative political philosophies have tended to either support or oppose the application of its authority by the USDOJ.

Even those supporting its wide application have recognized the inherent limitations of §14141 when used solely as a tool of litigation. As recognized by Harmon,

> with existing resources, it is impossible to imagine that §14141 could be used to force change in more than a handful of departments each year. Even if the Special Litigation's budget were doubled or tripled, the Section still could not be expected to examine more than a tiny fraction of large police departments. (Harmon, 2009, p. 21)[368]

[368] Even while recognizing its limitations, Harmon (2017) later argued in support of the application of Section 14141, concluding that: "[t]he Department of Justice's use of Section 14141 might encourage policing reform in multiple ways. First, [] it could reduce constitutional violations by forcing reforms that decrease violations in departments with substantial patterns of them. Second,

(see also, Miller, 1998, p. 173 [arguing that the decision to authorize only the U.S. Attorney General to bring §14141 actions "will greatly reduce the frequency of such suits"]; see also, Harmon, 2012). And as recognized by many academics and commentators, the first line of defense for unconstitutional policing will always have to be the municipalities and the police departments themselves (Hoffman, 1993, p. 1514; Livingston, 1999, p. 822 [arguing that "[t]he decrees do not, and perhaps cannot, ensure the humanistic leadership within police departments that is vital to ongoing police reform. In some contexts, the entry of Section 14141 decrees may even undercut opportunities for such leadership to emerge"]; see also, McMickle, 2003; Jerome, 2004; Walker & Macdonald, 2009).

In addition, the lack of a "political will to intervene" on the part of the DOJ and the lack of resources necessary "to fight pushback from reform-resisting police departments," have a negative impact on the ability of §14141 to be used as a "long-term enforcement" option against systemic civil rights violations (Dukanovic, 2016, p. 912).

5.1.1. Arguments for Policing-Related Structural Reform Litigation

When §14141 was first passed, the "scholarly response … was strongly positive" (Harmon, 2009, p. 20, footnotes 69 & 70, quoting Stuntz (2006), p. 798 [referring to it as "the most important legal initiative of the past twenty years in the sphere of police regulation"]; also citing, Stuntz (2001),[369] Armacost (2004), and Jeffries & Rutherglen (2007); see also, Simmons (2010)).[370]

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by suing some departments to enforce constitutional rights, it could induce other departments to adopt reforms to avoid the costs and intrusiveness of suffering Section 14141 enforcement. And third, by identifying institutional conditions that lead to constitutional violations and best practices to address them, it could reduce information costs for departments seeking to reduce misconduct for other reasons" (p. 623).

[369] "The best legal tool for regulation at the department level is neither the exclusionary rule nor damages - the two remedies whose merits are so extensively debated in the law reviews - but injunctions. That is why the passage of 42 U.S.C. § 14141 (1994) . . . may be more significant, in the long run, than Mapp v. Ohio, which mandated the exclusion of evidence obtained in violation of the Fourth Amendment" (Stuntz, 2001, n. 134).

[370] As noted by Chanin (2012), however, "[i]t is [] unsurprising that legal academics and police accountability experts would champion a process predicated on the enforcement of constitutional rights and the rule of law. Pattern or practice reform represents the combined hopes of police reformers, civil rights activists, defense attorneys, and legal scholars: A credible, law-driven process that capitalizes on federal authority to identify and remedy unlawful police behavior

In June 2020, as police related protests took place all over the country, Professor Christy Lopez, a former DOJ official who supervised §14141 investigations under the Obama administration was referenced in the *New York Times* as believing that "in many cases nothing short of a consent decree could overcome obstacles like entrenched racism and union opposition." She believed that even though only "a tiny percentage of the nation's 18,000 police departments" were the subject of federal consent decrees, "they set a tone, established best practices and put police leaders on notice that they, too, could come under scrutiny if they showed a 'pattern or practice' of civil rights violations" (*New York Times*, 6/13/2020).

In support of the effectiveness of §14141, one academic noted that unlike civil actions pursuant to §1983, which permits victims of police abuse to sue for damages in federal court, §14141 "imposes direct political costs on local government agents" and cannot simply be seen as "a cost of doing business." Harmon further suggested that a police chief facing the potential of "a federal takeover of his department" will have the incentive to make civil rights a department priority (Harmon, 2009, p. 47; see also, Levenson, 2001, p. 26, citing 1991 House Committee Report[371]). Other commentators recognized the deterrent value of §14141 actions as it relates to departments that will voluntarily undergo reforms in an attempt to avoid DOJ intervention (Harmon, 2012, p. 36; Scott, 2017, pp. 611-612).

From a systemic viewpoint,

> [t]he statute allows the DOJ to define the boundaries of legitimate policing by establishing best practices … Historically, there has never been any concerted federal effort to define these sorts of best practices. [The statute] represents the first real opportunity for the federal government to define the boundaries of legitimate behavior within the field of local law enforcement; (Rushin, 2015, p. 52)

(see also, Livingston, 1999, p. 845; Jerome, 2004, p. 5; and, Walker, 2017, p. 8, ["[p]rior to the first DOJ consent decree, there was … no equivalent set of accountability-related best practices"]).

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prospectively, structuring comprehensive, agency-wide reform around a set of widely-accepted precepts. Yet much of this excitement has developed in the absence of empirical testing or considered theoretical examination" (pp. 329-330).

[371] H.R. Rep. No. 102-242(I) (1991), available at 1991 WL 206794, at 138; see also, *United States v. City of Columbus*, 2000 WL 1133166, at 4 (S.D. Ohio 2000).

Along that same vein, commentators and evaluators have identified the potential for §14141 to be used to educate departments that have not yet been subjected to its provisions, and reduce the risk of police misconduct throughout the country (Miller, 1998, p. 191; Livingston, 1999, pp. 843-844; Jerome, 2004, p. 5; Harmon, 2009; see also, PERF, 2013, p. 9 [quoting Professor Sam Walker as saying that "[n]o police department should be in a position where it can be sued by the Justice Department, because the past cases make clear what is expected of them to achieve professional, bias-free and accountable policing"]).[372] In addition, in 2019, the Crime and Justice Institute (CJI) reviewed twenty-one consent decrees settled between 1997 and 2017 in order to

> identif[y] the most common issues [and] summarize[] the mandated requirements for the purpose of easy consumption by law enforcement leaders [with] [t]he intent [to] provide any police executive or stakeholder the opportunity for easy self-assessment of the agency's alignment with policies, trainings, and practices extracted from consent decrees. (CJI, 2019, p. 8)

Even though most agree that "the nature of consent decrees is coercive … [and] perhaps one of the most threatening vehicles for police reform," it has also been recognized that there has been, historically, a "lack of alternatives [available] in making local policing more accountable" (Jaio, 2020, p. 9; see also, Hoffman, 1993, p. 1515, 1526 [arguing that "[a]n active federal role is essential to a comprehensive system of police accountability" and is a necessary "weapon of last resort if local institutions are unable or unwilling to act in the face of widespread abuses"]; Levenson, 2001, p. 28; Kim, 2002, p. 769 [noting that "42 U.S.C. 14141 was intended to 'close [the] gap in the law' created by the modern equitable standing doctrine, which forecloses an individual

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[372] However, at least one article has professed that "no evidence exists that agencies are impacted by the [consent decrees] of other departments" (Alpert, et al., 2017, p. 243), although the authors did acknowledge that the Baltimore Police Department used other Consent Decrees while it was negotiating its own consent decree with the DOJ. Contrary to the suggestions of Alpert, et al., while I was serving as the Independent Monitor for the City and County of Denver, I became aware that the Denver Police Department (DPD) did, in fact, conduct a review of all consent decrees in existence at that time in order to forestall what was considered an imminent DOJ investigation in 2004. The DPD subsequently made substantive changes in their use of force policies and no formal DOJ investigation was ever announced. See also, Jerome, 2005, p. 5 [representing that "the existence of the Justice Department's potential 'hammer' prompted many police departments to review their policies and procedures and implement additional systems for accountability, in order to avoid a Justice Department investigation. Agencies have also looked to the measures that were incorporated into the Justice Department agreements as progressive and necessary accountability practices"]. Jerome, however, did not identify any specific departments that conducted such policy reviews.

from obtaining injunctive relief against police misconduct absent a likelihood of future harm to that particular plaintiff"]; Walker, 2003; Walker & Macdonald, 2009, p. 480; Chanin, 2012 [arguing that "[u]ntil the passage of … Section 14141, there was no available means to regulate malfeasant police departments"];[373] see also, Rushin 2015, p. 1, arguing that

> under the right circumstances, structural reform litigation is uniquely effective at combating misconduct in police departments. It forces local municipalities to prioritize investments into police misconduct regulations. It utilizes external monitoring to ensure that frontline officers substantively comply with top-down mandates. And it provides police executives with legal cover to implement wide-ranging reforms aimed at curbing misconduct.

Even given the coercive nature of consent decrees, perceived positives for local police chiefs and local political operatives who are reform-minded have been identified. As suggested by the *New York Times*, "Chiefs may want consent decrees in order to insulate them from political and union opposition to change, as well as make it easier to demand money to pay for reforms" (*New York Times*, 1/14/2017;[374] see also, Livingston, 1999, n. 172; Davis et al. 2002, p. 12; PERF, 2013, p. 42, [noting that "a federal investigation can force otherwise reluctant local elected officials to provide funding that is needed to implement reforms [and assist in] overrul[ing] labor union opposition to certain changes in policies or practices"];[375] Rushin, 2015, p. 114; Rushin, 2017a). As identified

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[373] Chanin (2012) noted that proponents of Section 14141 have argued that "enforcing Section 14141 is exactly the type of function the federal government is meant to perform. Local governments [] have no capacity to choose to violate constitutional law. Regardless of which crime control strategies a jurisdiction prefers or what percentage of the budget a city council allots to public safety, local police behavior must comport with the rights and liberties established under the constitution. Section 14141 grants to the federal DOJ authority to enforce those legal principles, and the performance of those duties is not only consistent with federalism principles, but represents a clear example of a divided government in action" (p. 375; Chanin 2017b, p. 267). Chanin also argued that given "that the rights of suspected criminals and police accountability are undervalued by the traditional political process, it would seem to lend credibility to the use of federal power to drive reform" (Chanin, 2017b, pp. 267-268).

[374] Dewan, S. & Oppel, R. (2017, January 14). Efforts to Curb Police Abuses Have Mixed Record, and Uncertain Future, *New York Times*. Retrieved 11/7/20 from, https://www.nytimes.com/2017/01/14/us/chicago-police-consent-decree.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer.

[375] Walker commented on the significance of the content of the 2013 PERF report, which largely supported the prior work relating to Section 14141 enforcement: "The 2013 PERF report on the Justice Department's pattern or practice program is notable for its lack of hostility to the program and the number of favorable statements about the program from chiefs or former chiefs or current commanders who experienced consent decrees. In past decades, one would have expected to hear a stream of criticisms of federal intervention and expensive court-enforced requirements.

by Chanin, these positive factors contributed to officials in Cincinnati, Baltimore, Cleveland and Albuquerque, "among others," actually requesting §14141 investigations from the DOJ (Chanin, 2017a, p. 261).

In addition, as explained by numerous commentators, the use of outside, independent monitors offer "a less distorted view of the progress of police reform" (Levenson, 2001, p. 28; for arguments in favor of the appointment of independent monitors, see, Chapter 3.2, *infra*, citing Davis et al., 2002; Davis et al., 2005; Walker & Macdonald, 2009; Clark, 2010; Chanin, 2012; PERF, 2013; Chanin, 2014; & USDOJ, 2017b). Oftentimes, a positive report from a federal monitor may be more readily accepted by suspicious members of the public than any commentary that can be provided by a police chief on his or her own behalf (Chanin, 2017b).[376]

The "second generation" of consent decree reforms (as identified by DOJ, 2017b; Walker, 2018 & Jaio, 2020) have arguable evolved from "bare-knuckled 'command and control' decrees to orders that emphasize data-collection, measurement, process and participation" (Jeffries & Rutherglen, 2007, p. 35). Jeffries & Rutherglen (2007) argued that "[i]f sensitively handled, such decrees can be 'accountability reinforcing'" while also arguing that [there is every reason to believe and little reason to doubt that these decrees have been effective in raising the professionalism of delinquent departments, improving managerial knowledge and oversight, and thereby reducing the incidence of constitutional violations" (Jeffries & Rutherglen, 2007, p. 32, and n. 167, citing Davis et al. 2002; see also, Simmons, 2008, p. 497 [which argued that §14141 actions "offer[] the possibility for collaborative problem-solving among stakeholders to identify problems, implement institutional reforms, and monitor progress"]; and, Douglass 2017, p. 328 [which argues that "[t]he evolution of the [DOJ's] approach to pattern and practice cases

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Instead, … chiefs and former chiefs with consent decree experience from Cincinnati, Washington, D.C., and Los Angeles testified that, despite much pain at the outset, their departments were much improved as a result of the Consent Decrees" (Walker, 2018, p. 1798).

[376] In support of the position that "federal intervention has the ability to restore legitimacy to the affected department, which in many instances had lost the support and the confidence of the community," Chanin (2017b) quoted a former federal monitor "at length:" 'If you have an organization that has lost public trust and confidence … it's going to view even your successes with suspicion and doubt. … And so now to have a court or monitor validate that you've been implementing best practices, that you're in compliance, that your investigations are thorough. … I think this process restores legality and legitimacy' (p. 268, quoting R. Davis, personal communication, 2009, December 18).

reveals a move away from the traditional adversarial, litigation model to a restorative justice model]").

Also, §14141 actions have been argued to promote transparency in policing, which also has the potential to increase public faith in the criminal justice system (See, Kupferberg, 2007, p. 161 [commenting that "data has been made available solely through consent decree provisions, and where consent decrees or other forms of outside monitoring do not exist, the public will often have no idea what individual officers or police departments are up to"]).

Finally, even though consent decrees are expensive, evaluation studies have shown that those costs are often retrievable through reductions in civil liability and that consent decrees, contrary to expectations, do not result in long-term increases in crime or "depolicing" (See, Davis et al., 2002; Stone et al., 2009; Rushin, 2016; Rushin & Edwards, 2017; USDOJ, 2017b, p. 39; Rushin, 2017a; Jaio, 2020).

5.1.2. Arguments against Policing Related Structural Reform Litigation

On the other side of the equation, strongly held criticism of §14141 litigation has been made, to include by former Trump-appointed Attorney General Sessions and by the Trump DOJ. Although a memorandum issued by AG Sessions on November 7, 2018 was reported as a death-knell for consent decrees under the Trump-DOJ (see, *New York Times*, 11/8/2018;[377] *Seattle Times*, 11/10/2018),[378] the verbiage used to evaluate whether or not the DOJ should consider pursuing a consent decree was not particularly ground breaking.[379]

The memo declared that,

> [s]tate governments are sovereigns with special and protected roles under our constitutional order. Accordingly, the [DOJ] must ensure that its practices in such cases are in the interests of justice, transparent and

[377] Benner, K. (2018, November 8). Sessions, in Last-Minute Act, Sharply Limits Use of Consent Decrees to Curb Police Abuses, *New York Times*. Retrieved from https://www.nytimes.com.

[378] Horwitz, S. (2018, November 10, 2018). Sessions deals police reform a blow as he leaves AG's office, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[379] Memo retrieved from https://www.justice.gov/opa/press-release/file/1109681/download.

> consistent with the impartial rule of law and fundamental principles, including federalism and democratic control and accountability.

The memo purported to "provide[] guidance on the limited circumstances in which such a consent decree may be appropriate." The memo cited federal law that identified consent decrees as "extraordinary remedies that 'raise sensitive federalism concerns,'" and noted that such decrees

> can deprive the elected representatives of the people of the affected jurisdiction of control of their government, … have significant ramifications for state and local budget priorities … [and] … may "improperly deprive future officials of their designated legislative and executive powers" (citing, *Frew v. Hawkins*, 540 U.S. 431, 441 (2004).

As such, the memo concluded that the DOJ "should exercise special caution before entering into a consent decree with a state or local government authority."

In fact, nothing said in the memo, even an instruction that "approval of senior leadership" of the DOJ was required before entering into a consent decree should have been particularly controversial. Instead, it was how the language in the memo was interpreted by senior DOJ officials that put a stop to the use of consent decrees by the Trump DOJ. That conservative interpretation has resulted in no new consent decrees or MOA's during the entirety of the 1997-2021 term of the Trump administration. Interestingly, there is no reason to believe that the memo actually needed to be amended by Biden administration officials in order to begin anew the use of §14141 (now 12601) against police departments engaging in a pattern or practice of unconstitutional policing.[380]

Amongst the arguments made against pursuing §14141 actions include:

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[380] Even so, as previously noted, the Biden administration did explicitly rescind the Trump era memorandum in an April 16, 2021 internal memorandum signed by newly appointed Attorney General Merrick Garland. The internal memorandum specifically noted that the Trump administration memo was inconsistent with prior DOJ practice of allowing career prosecutors to make consent decree related decisions. See, Internal DOJ Memorandum entitled: "Civil Settlement Agreements and Consent Decrees with State and Local Government Entities." Retrieved from full.pdf (nyt.com). See also, Philo, K. (2021, April 16). Biden Policy Shift Kicks Down the Door to Police Misconduct Probes, Courthousenews.com. Retrieved from https://www.courthousenews.com/biden-policy-shift-kicks-down-the-door-to-police-misconduct-probes/.

- "That the DOJ's enforcement of §14141 is overly political, with decisions on which jurisdictions to investigate made for partisan rather than policy reasons" (Ross & Parke, 2009; Chanin, 2016, p. 70; Rushin, 2016);
- The choice of departments for a DOJ investigation is akin to "a messy and imprecise … enforcement lottery" (Rushin, 2015, pp. 64-65; Rushin, 2016; Rushin, 2017a, p. 107; see also, Chanin, 2017a, pp. 261-263, acknowledging criticism of "the ambiguous legal and evidentiary standards underlying the DOJ's investigation process");
- The inability of the DOJ to enforce §14141 "with sufficient frequency to change the calculus of reform for many police departments engaged in misconduct" (Levenson, 2001, p. 28; Harmon, 2012, pp. 50-51, 53, ["while these remedies may be used to influence some additional departments to adopt promising remedial measures, they are unlikely to drive significant national reform"]; in addition, the cases are "expensive to investigate and difficult to prove;" Rushin, 2017a, p. 128 [recognizing the labor-intensiveness of §14141 investigations and the inability of the DOJ "to target every city apparently engaged in misconduct"]);
- The "process is anti-democratic" (Chanin, 2016, pp. 70 & 376-380) and "[f]ederal intervention inherently begets issues of political legitimacy" (Livingston, 1999, p. 819; Simmons, 2010, p. 402; see also, Chanin, 2012, p. 18, citing Fiss, 1978,[381] Fuller, 1978,[382] Horowitz 1977,[383] and, Horowitz, 1983;[384] Gilles, 2000, n. 34; Ross & Parke, 2009); see also, statements of then-AG nominee Jeff Sessions (*New York Times*, 1/14/2017)[385] and an editorial statement from the *Law Enforcement Alliance of America* in response to possible federal intervention in Columbus, OH;[386] similar

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[381] Fiss, Owen M., *The Civil Rights Injunction*, Bloomington, IN: Indiana University Press (1978).

[382] Fuller, Lon L., "The Form and Limits of Adjudication*," Harvard Law Review*, Vol. 92 (1978).

[383] Horowitz, Donald L., *The Courts and Social Policy*, Washington D.C.: The Brookings Institution (1977).

[384] Horowitz, Donald L., "Decreeing Organizational Change: Judicial Supervision of Public Institutions," *Duke Law Journal*, Vol. 32 (1983) pp. 1265-1307.

[385] Referring to consent decrees as "dangerous" and "writing in 2008 that they 'constitute an end run around the democratic process."

[386] "A … battle is now being waged … pitting the legal weight and limitless financial resources of the U.S. Justice Department against [a municipal government's] right to control its own police department. At stake is no less than the fate of local agencies everywhere to control their own destinies versus an emerging pattern by the … Justice Department aimed at federalizing municipal police departments …" (Chanin, 2017b, pp. 266-267, quoting, Richer, B. (2000, March

arguments suggest that the Consent Decree process is "antithetical to federalism" (Chanin, 2012, pp. 374-376; Duckanovic, 2016, p. 944-945; Chanin 2017b, pp. 266-269);[387]

- That the costs of the reform efforts are extraordinarily expensive without any assurance that they will bring "meaningful, durable organizational change" (Chanin, 2016, p. 70; Ross & Parke, 2009, p. 205; see also, Levenson, 2001, p. 29). It is also noted that "there remain questions about the feasibility of this regulatory approach in poorer communities" (Rushin, 2015, p. 117; see also, Walker, 2003, p. 49; Powell, 2017, citing, Chanin, 2014, and Davis, et al., 2002; Ross and Parke, 2009, pp. 204, 208);
- That the process is "too adversarial" (Dukanovic, 2016, pp. 929-930, ["The complaints center on claims that: lawyers are talking with other lawyers, the agreements are too complex and lengthy, negotiations are time-consuming, case monitors can be problematic, and police unions can serve to undermine agreed-upon changes"]; see also Clark, 2010, p. 3, ["some police officials reported that this litigation creates a negative stigma on a police department, which takes a long time to overcome in a community … Some also suggested that §14141 litigation is needlessly complex and takes too long to resolve"]; Jaio, 2020, p. 9 [noting the "coercive nature" of consent decrees and the initial negative reactions to the decrees from impacted police officers and departments]);
- "The process is an ineffective means of balancing the defense of constitutional rights with other policy-related concerns" (Chanin, 2012, pp. 364-5, ["Ultimately, critics suggest that this exclusive focus on remedying constitutional violations too often ignores the complexity of the task, minimizing the importance of other important factors, including the jurisdiction's limited resources, electoral preferences, and so

18). Feds Threaten to Take Over Ohio Police Department, *LEAA*. Retrieved from https://www.mail-archive.com/ctrl@listserv.aol.com/msg38090.html.

[387] When faced with the prospect of federal intervention, Los Angeles Mayor Richard Riordan "argued that while reform was necessary, it should happen through the leadership of local officials – not through a full-scale federal takeover … Riordan argued, '[T]here's no one better to make reforms than the Chief, the command staff, the Police Commission, the inspector general, the independent task force, the council and myself.' He concluded that the current leadership in the City of Los Angeles 'can solve [its] own problems.'" (Rushin, 2017a, p. 184).

on"]; see also, Chanin, 2017b, p. 265, citing Christensen & Wise, 2015,[388] and Fletcher, 1982);[389]

- "Various critics have claimed that federal intervention into the affairs of local police agencies decrease police efficiency, thereby increasing crime." Additionally, "one of the most common arguments made … is that [Structural Reform Litigation] will decrease police aggressiveness" (Rushin, 2015, p. 120; [390] see also, Chanin, 2012, p. 184[391] & Rushin & Edwards, 2017) and morale (Levenson, 2001, p. 28; Davis et al., 2005; Ross & Parke, 2009; Dukanovic, 2016, p. 941; Rushin & Edwards, 2017, pp. 199-202);
- "There remain significant questions about whether [Structural Reform Litigation] can forcefully transform a police agency where local political leaders and police executives oppose the intervention" (Rushin, 2015, p. 117; see also, Chanin, 2012, p. 159; Rushin, 2017a; Scott, 2017, pp. 610-611, citing, *Washington Post*, 11/13/2015 & *Marshall Project*, 4/23/2015; Rushin, 2017a;[392] Jaio, 2020).

5.2. Police Reform Theory

In this section, I use police reform theory and police use-of-force theory to evaluate the Seattle reform effort and make recommendations for future reform efforts. In addition, I discuss how a review of the literature relating to police reform assists in

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[388] Christensen, R. K., & Wise, C. R. (2015). Law and management: Comparatively assessing the reach of judicialization. In F. M. Van der Meer, J. RaadschildersXXX & T. Toonen (Eds.), *Comparative civil service systems in the 21st century* (pp. 237–254). New York, NY: Palgrave Macmillan.

[389] Fletcher, W. A. (1982). The discretionary constitution: Institutional remedies and judicial legitimacy. *Yale Law Journal*, *91*, 635–697.

[390] Rushin went on to comment, as have other commentators, on a lack of evidence to support the depolicing hypothesis (Walker & Macdonald, 2009, pp. 524-525; Rushin, 2015, pp. 120-122; Rushin & Edwards, 2017; Chanin & Sheats, 2018; see also, Stone, et. al, 2009 (Regarding Los Angeles Consent Decree) and the Seattle Police Monitor (Ninth Systemic Assessment, 2017, pp. 59-63).

[391] Chanin (2012) also suggested that negative reactions by street-level officers to consent decree reforms "may subside over time (and many of those whose feelings do not change may leave the agency either through natural and forced turnover)" (p. 290).

[392] Pointing out that "[i]t can be particularly difficult to change the culture of a large, complex organization through forceful external mandates. To bring about sustainable change in a police department, you need both procedural changes enacted through external mandates and cultural change that results in organizational buy-in;" and arguing that "[f]ederal intervention is not a silver bullet. Real, long-lasting police reform requires local cooperation and dedication to succeed" (Rushin, 2017a, pp. 108, 166).

understanding the reaction of the Seattle Police Department to the external reforms demanded by the USDOJ.

5.2.1. Background Theory

As indicated in the Chanin dissertation, “there is not an existing theoretical framework that lends itself seamlessly” to the application of structural reform litigation as it relates to policing (Chanin, 2012, p. 25). In fact, the prior evaluation studies (Davis, et al., 2002, 2005 and Stone, et al., 2009) were not “rooted in theory” and made “no attempt to couch their analyses in terms of broader administrative, organizational, or policy questions” (Chanin 2001, p. 20). As such, Chanin reported his need to rely on research conducted in multiple fields to include “organizational change, business, sociology, public management, educational reform, and policing scholarship” (Chanin 2001, p. 203). Similarly, this dissertation also relies on diverse fields of study with respect to the analysis of available data relating to the Seattle consent decree process.

First and foremost, it appears that theories of organizational culture and change need to be an important part of any analysis, to include the evaluation of various change management models as they relate to the structure and culture of the Seattle Police Department (Chanin, 2012; Rushin, 2015). In addition, it is necessary to examine literature and theory as it applies to sustaining organizational change in the public sector, particularly as it relates to policing (Armenakis, 1999; Armacost, 2004; Buchanan, et al., 2005; Davis, et al., 2005; Stone, et al., 2009; Ikerd & Walker, 2010; Walker, 2012; Chanin, 2015; Bromwich et al., 2016).

Risk management theory also needs to be applied as a potential factor in decision-making by police and City administration, the Department of Justice and the Independent Monitor (Archbold, 1988).

Rational choice theory also needs to be applied across the entirety of the Consent Decree process as a means to explain how and why cities (and, in particular, the City of Seattle) engaged in policing practices likely to give rise to a federal investigation and law suit and the decision-making process that took place during the negotiation and acceptance of consent decrees. For example, in Seattle, the cost of the federal investigation and ensuing law suit was significantly greater to the City then self-

initiated reform would have been. So, why was a city, known for its progressive politics, unable to identify and address issues of police misconduct without federal intervention? Similar questions needed to be asked with respect to the Seattle Police union's initial opposition to the Consent Decree process (Seattle Police Monitor, First semi-annual report, April 2013, pp. 2-3, 5)[393] and the eventual perception of police rank and file support for the reforms enacted as a result of the Consent Decree (Seattle Police Monitor, Seventh semi-annual report, September 2016).[394]

Deterrence theory needs to be used to similar effect to ask why the prospect of a federal investigation was not able to deter City or police officials from allowing the Department as a whole to engage in a pattern or practice of civil rights violations in the first place (Armacost, 2004, pp. 459, 464).

Regulatory capture theory, although in existence for decades (Chanin, 2012, p. 139, citing Bernstein, 1955; Kohlmeier, 1969), has only been rarely applied to police reform efforts (Prenzler, 2000; Chanin, 2012; Savage, 2013). Given the structure of most federal monitoring teams, including the Seattle team, to include former police executives and the very nature of the reform process as a process of collaboration and compromise, it was considered to be important to determine to what extent the Monitoring Team or the Department of Justice may have compromised or collaborated too much or may have otherwise minimized challenges associated with reforming the Seattle Police Department (Levenson, 2001, p. 30; Chanin 2011, p. 139-140).[395]

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[393] Retrieved from https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/542c0a37e4b0801eab71294c/1412172343193/Seattle_First_Semiannual_Report_Final.pdf.

[394] In the final semi-annual report of the Independent Monitor, it was noted that "[i]t is becoming more and more evident that many officers have come to understand that the Consent Decree encapsulates best practice and contributes to their effectiveness and safety. It appears that the necessary cultural change has begun to at least some meaningful extent" (Compliance Status & Seventh semi-annual report, p. 2. Retrieved from https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/57ea7e30ff7c50214e95adce/1474985521872/Seventh+Semiannual+Report--FOR+FILING.pdf.)

[395] Chanin discussed the potential for application of the theory of regulatory capture to the Prince George's County monitor's "forgiving approach" to the implementation of the Department's Early Warning System. He noted that "[t]he academic theory underlying this concept describes the fate of government regulators who come to identify with the industry they are charged with regulating (citation omitted). As a result of this convergence of world views, the regulator loses 'requisite levels of impartiality and zealousness' and is thus not capable of enforcing the law effectively (Prenzler 2000, 662). Regulatory capture is more likely to occur in cases of frequent personal

Literature and theory on the ultimate impact of court-imposed reforms was also examined (Chanin, 2012, p. 367, citing Cooper, 1988, pp. 88-89, citing Canon & Johnson; Chanin, 2014).

5.2.2. Project Theory

As data collection progressed, however, it became clear that a key challenge in the implementation of the Seattle Consent Decree related to issues of procedural justice. Seattle officials, police executives and rank and file officers were so offended by the roll-out of the DOJ investigation and what they believed to be a lack of transparency and accountability of the DOJ's investigation, that even though they recognized systemic problems within the Department, they were resistant to any externally mandated change until a change in Mayoral administration, and even then, throughout much of the implementation process.

The first and most common assertion made by City and police officials was that a finding by the DOJ that 20% of the force evaluated was excessive was outrageous and unfounded and was the product of an investigation that was rushed and politically motivated. Even though the same participants commonly acknowledged entrenched problems and lack of accountability within the organization, the refusal of the DOJ litigators to share their methodology and data (unless and until formal discovery occurred during the course of litigation) made Seattle officials feel as though they had been "railroaded" and led to a lack of trust of the DOJ and, ultimately, the Monitoring Team.

As such, a primary finding of this research concludes that police use-of-force, police accountability, and procedural justice theories should be applied to the DOJ vis-à-vis their enforcement of police reform through the Consent Decree process. Just as police use-of-force theory explains that police officers should only use that level of force necessary to overcome resistance, this dissertation argues that the DOJ should act in a

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contact between regulator and regulated (Kohlmeier 1969). It seems logical to conclude that capture may be accelerated if regulators are former members of the regulated industry and thus may understand if not share those values driving the regulated industry." Chanin (2012) quite correctly went on to note that "[t]he very nature of the pattern or practices monitor's job presents the risk of capture. Monitor teams meet very regularly (bi-monthly in some cases) with affected department leadership and spend several days at each site visit working through department files and observing day-to-day operations" (p. 139).

similar way in forcibly reforming a police department. Relatedly, the police use-of-force continuum used in most police training, should, in the future, be used by the DOJ in determining how to best use force in ensuring the reform of any particular police department, using externally driven reform tools.

As previously mentioned in Chapter 1.2, the Royal Canadian Mounted Police (RCMP) has utilized a particularly useful use of force continuum in its training, that can be easily transformed into a use-of-force model that can, and should be used by the USDOJ. The RCMP model can be found, *infra*, in Figure 1.1; and the transformed use-of-force continuum for the DOJ can be found, *infra*, in Figure 1.2.

While City-based participants disagreed as to whether excessive force was actually used in requiring the use of a consent decree to reform the Seattle Police Department, there was a strong consensus amongst all City and police officials that the DOJ investigation lacked any transparency and accountability and, therefore, had no actual legitimacy in the reform effort.

This above-noted visual (Figure 1.2) could be used by the USDOJ to evaluate their own "use of force" against a municipal police agency and contribute to a common vocabulary approach to future §12601 investigations and interventions. Like the use-of-force training graphic upon which it is based (the "IMIM"), this graphic could be used by the upcoming Biden DOJ to "assess and manage risk through justifiable and reasonable intervention." As with the IMIM, this graphic "is designed to reflect the rapidly evolving and dynamic nature" of DOJ interventions identifying intervention options to be used based on the totality of the circumstances.

I argue that the use of this graphic, as a philosophy behind DOJ intervention, would be consistent with the DOJ's language as articulated in several consent decrees that "[o]nly the force reasonably necessary under the totality of the circumstances shall be used to lawfully perform department duties and resolve confrontations effectively and safely" (see, CJI, 2019, p. 12).

The DOJ is expected to take into account the entirety of the situation, to include "tactical" considerations, such as local politics, police leadership, the local police culture, the nature of local police controversies and misconduct, and budgetary considerations. The DOJ would also take into consideration the impact of merely announcing its

presence (through public monitoring) and interest in the challenges faced by the jurisdiction.[396] Depending on the overall circumstances, DOJ communications would range from cooperative and collaborative to directive and could move from informal (via private and/or public meetings with city and/or police officials) to more formal offers of technical assistance or directions on how to avoid federal intervention. Technical assistance (to include targeted grants) and collaborative reform-based projects could be implemented if there is reason to believe they might be effective in ensuring constitutional policing practices; and litigation would only be considered or initiated where there is passive or active resistance to the DOJ's efforts such that there is no reason to believe that reform can be achieved with lesser levels of intervention.

Just as a police officer has the right to immediately jump to a higher level of force when faced with aggressive active resistance, the DOJ might need to start off with a formal investigation and insist on the use of a consent decree and the appointment of a monitor (similar to what occurred in Seattle), but only with substantial evidence to support that no lesser use of force would achieve similar results. Just like police officers, the DOJ would be expected to use time on its side, slowing down events as necessary and approaching their ultimate goal of police reform in a tactical way. And just as police officers are expected to use concepts of procedural justice to elicit cooperation from the public (see Walker, 2017, p. 19 [arguing that "legitimacy in policing … is arguably the most important rethinking of policing in some years"], the DOJ would need to minimize traditional litigation strategies, in favor of more transparent methods that would be more likely to obtain cooperation and collaboration from city officials (see, for example, Patel, 2016, p. 802 ["[W]hen police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective"]; see also, Rushin & Edwards, 2017, p. 770, 773 [arguing that police morale is negatively affected when officers are not given the opportunity to have input into changes in policies and practices]).[397]

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[396] Similar to how a police officer would take into account how his or her "mere presence" might impact the level of cooperation received in a potential use-of-force situation.

[397] Chanin (2017a) took specific note of the importance of procedural justice as it related to Section 14141 actions, in recognizing that "[w]hatever the actual merits of these critical views, the notion that pattern or practice investigations lack legitimacy serves to undermine the very procedural justice that is sought through the DOJ's intervention and feeds a negative discourse that is counter to the evidence on positive dialog increasing legitimacy (Mazerolle, Bennett, Davis,

5.2.3. Theory Used to Evaluate Consent Decree Use & Implementation

In 1999, after only two consent decrees had been entered, Livingston was theorizing about some of the challenges in the use of §14141 actions in controlling officer conduct. Livingston suggested that "[i]n the adversarial context of Section 14141 litigation, [] line officers may already be resentful and defensive about the charges leveled at their departments" (Livingston, 1999, p. 851). Further, she noted that,

> [s]uch perceptions have their costs of officer morale and motivation. They may even frustrate the effort to minimize illegality: for if public employees perceive they are being treated as untrustworthy, they will act accordingly, and no amount of laws or controls will remedy the situation, they will make things worse. (p. 852)

Chanin (2012) commented on the status of the theoretical framework as it related to then-existing research into federally initiated consent decrees. Specifically, Chanin noted that "there is not an existing theoretical framework that lends itself seamlessly to [evaluating the Consent Decree process]." As such, Chanin

> based [his] specific research design and analytical decision on existing theoretical literature … [which allowed him] to benefit from the rigor of earlier research on policy implementation and institutionalization while maintaining an analytical flexibility that may not be possible in other research build around well-established theoretical constructs. (p. 25)

Chanin further noted that

> beyond the notion that policy implementation is a complex and inherently difficult task [citation omitted], there is no central theoretical principle, nor a prevailing organizational structure to these findings. Like many early efforts, these works are ad hoc, with narrow, often conflicting findings. (p. 78)

Even so, Chanin was able to use a framework developed in 1989 by Mazmanian and Sabatier,[398] to evaluate consent decree implementation considering the following factors:

Sargeant, & Manning, 2013; Tyler, 2006). An investigation seen as unsubstantiated, overly political or otherwise biased, may also further complicate a department's effort to galvanize support for the reform process among the rank and file" (p. 263). In fact, Chanin might have well have been speaking specifically to what took place in Seattle where the initial reaction of the Chief and the Mayor was to conclude the DOJ investigation was politically motivated and based on a corrupt methodology (see, Chapter 7.2, *infra*).

[398] Mazmanian, Daniel A. and Paul A. Sabatier, eds., *Implementation and Public Policy*, Lanham, MD: University Press of America (1989).

1) “problem tractability,”[399] 2) “policy design factors,”[400] 3) “Contextual/Environmental Factors,”[401] and 4) “Implementing Agency Factors.”[402] Overall, Chanin noted the importance of “institutionalizing change” as a consensus within “a vast, diffuse, often conflicting and confusing” organizational change literature. Chanin also identified the difficulties in forcing change from outside an organization,[403] the strong resistance often seen from police organizations to change,[404] the importance of “continuous, uninterrupted leadership” and “the support for change among mid-level managers”[405] as being a critical part of ensuring sustainable reform (Chanin, 2012, pp. 76, 79, 211 & 218; see also, Chanin 2014, p. 40, citing Fernandez & Rainey, 2006[406] and Santos, 2013[407] [arguing that “[t]he presence of strong, supportive leadership that places a high priority

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[399] Looking at “those elements related to the tractability of the public problem at issue. On the theory that some problems are simply easier to solve than others” (Chanin, 2012, p. 91).

[400] Relying on “[t]he second prong of the Mazmanian---Sabatier framework [which] is built around the argument that ‘policymakers can substantially affect the attainment of legal objectives by utilizing the levers at their disposal to coherently structure the implementation process” (Chanin, 2012, p. 94, quoting, Mazmanian & Sabatier 1989, p. 25).

[401] Citing the impact of “socioeconomic conditions and technology, … the degree of public and media support for the policy initiative, … the attitudes and resources of constituency groups, … [and] the existence of support from political, legal, and financial sovereigns” (Chanin, 2012, pp. 98-102).

[402] Evaluating “agency characteristics that may affect the implementation process,” to include “the disposition of street-level implementers, …the disposition of organizational leadership, … the existence of a well-devised and highly organized internal strategy for implementation, … [the] existence of incentives for promoting street-level compliance, … [and] the availability of implementing agency labor, capital, and political resources” (Chanin, 2012, pp. 102-106).

[403] See also, Rushin: “It can be particularly difficult to change the culture of a large, complex organization through forceful external mandates. To bring about sustainable change in a police department, you need both procedural changes enacted through external mandates and cultural change that results in organizational buy-in” (Rushin, 2017a, p. 108).

[404] “American police departments have won a reputation for reticence, insularity, and an intense desire to manage the narrative on issues of concern (citation omitted). This impulse is pronounced in cases involving sensitive or controversial matters, of which officer misconduct and externally driven reform certainly qualify (citation omitted)” (Chanin, 2017b, p. 269).

[405] Chanin (2016) suggested that “[s]taff willingness to adopt new operational protocols is often couched in terms of organizational culture. Policing scholars have consistently found cultural change-measured in terms of individual officer preferences, norms, and values-predictive of institutionalized reform. The sustainability of pattern or practice reform is at least in part likely to be a function of the degree to which street and mid-level officers, as well as department leadership, have come to view both the letter and the spirit of the settlement as central to the department’s mission and reflective of the department's broader approach to policing” (p. 74).

[406] Fernandez, S., & Rainey, H. G. (2006). Managing successful organizational change in the public sector. Public Administration Review, 66(2), 168–176.

[407] Santos, R. B. (2013). Implementation of a police organizational model for crime reduction. Policing: An International Journal of Police Strategies & Management, 36(2), 295–311.

on the implementation process has also been shown to be critical to overall success"] and, at p. 41 [discussing "the default cultural orientation of police departments" as tending to resist change from outside influences]).

Walker identified the DOJ pattern or practice approach to police reform as "embrac[ing] the concept of 'Accountability-Based Policing' that relies primarily on internal police department procedures rather than juridically enforced standards of constitutional law as the principal tool for holding police officers accountable for their conduct" (Walker, 2018, n. 163, citing, Harris, 2009;[408] Goldstein, 1997, pp. 157-186;[409] DOJ, 2017b, p. 30 [regarding "reform of written policies … [as] a central aspect of the Division's reform agreements"]; and, Walker & Archbold, 2020 [pending publication]). However, as previously identified, there was a recognized need for the DOJ to address a department's "organizational culture … when seeking to institutionalize police reform" (Ikerd & Walker, 2010, p. 15 [Recommendation No. 1]). Walker later identified "organizational transformation in policing [as involving] three distinct dimensions": first, "rejection of the idea that police misconduct is caused by just a few bad officers," second, rejecting "the piecemeal approach to police reform in which specific police actions – searches, interrogations, uses of force, and so on – are addressed separately", and third "the recognition that much police misconduct is rooted in specific crime-fighting policies" (Walker, 2018, pp. 1819-1820).

Recognizing these difficulties, the DOJ also noted that

> when the Division finds a pattern or practice of police misconduct, it usually finds that pattern or practice is the product of many decades of dysfunction that has become engrained in police culture. Reversing that process requires enormous effort and commitment. (USDOJ, 2017b, p. 36)

Further research has also identified "police morale problems" as having the potential to interfere with reform efforts. "Proactive efforts to address morale problems would not only facilitate sustainable organizational change (Chanin, 2015), but may help to

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[408] See, generally, David A. Harris, How Accountability-Based Policing Can Reinforce—or Replace—the Fourth Amendment Exclusionary Rule, (2009) 7 Ohio State J. Crim. L., 149.

[409] Goldstein, H. (1977). Policing a Free Society, 157-86; NAT'L ADVISORY COMM'N ON CIVIL DISORDERS (drawing upon his various articles in the 1960s).

strengthen police–community relations" (Chanin-Sheats, 2018, p. 120, citing Greene, 1989;[410] Wolfe & Nix, 2016[411]).

Most recently, it has been argued that resistance to consent decrees "can be traced to a strong police subculture, widespread misbehaviors, and local political traditions … The police subculture is difficult to change as loyalty to and solidarity with fellow officers are viewed paramount among police officers" (Jaio, 2020, p. 6). As such, Jaio argued that "[i]nstitutionalized policies and practices should be accompanied by a change in police culture to ensure individual and organizational accountability in the long run" (Jaio, 2020, citing *Cleveland.com*, 5/27/2015;[412] Walker, 2005).

As might have been expected, the experience in Seattle closely followed the predictions of the aforementioned theory. In fact, issues relating to police culture, morale and motivation was a constant refrain amongst research participants affiliated with the city, with concerns about line officers being resentful and defensive at the top of their list of concerns. "Problem tractability" was identified as a concern, once again, based on what was perceived to be the SPD's culture of arrogance and the ascension of command staff who were unwilling to listen or learn. The DOJ approach of immediate implementation of change with respect to SPD use of force and other policy initiatives did appear to substantially affect the attainment of consent decree objectives through an aggressive implementation process. And the presence of public and media support for the policy initiatives did seem to eventually overcome internal SPD resistance. Further the ability of the city to eventually devote the resources necessary to the creation of a data platform was a key factor in implementation of consent decree required reforms as they related to supervision of front-line officers. Although most survey participants suggested that there was not, in fact, "a well devised and highly organized internal strategy for implementation," the strong agency leadership that was eventually provided,

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[410] Greene, J. R. (1989). Police officer job satisfaction and community perceptions: Implications for community oriented policing. Journal of Research in Crime & Delinquency, 26, 168–183.

[411] Wolfe, S. E., & Nix, J. (2016). The alleged Ferguson effect and police willingness to engage in community partnership. Law and Human Behavior, 40, 1–10. Retrieved from http://dx.doi.org/10.1037/lhb0000164.

[412] Gomez, H. J. (2015, May 27). Cleveland consent decree provides blueprint for long-elusive police reforms: The big story. *Cleveland.com*. Retrieved from http://www.cleveland.com/metro/index.ssf/2015/05/cleveland_consent_decree_provi.html.

along with the needed capital and political resources, led to a successful implementation effort overall.

Although, as predicted by the literature, there was initially strong resistance to change in Seattle, there were points in which there appeared to be support for change among command staff and mid-level managers. And, ultimately, as suggested by Walker (2018), there was ultimately a rejection of the concept that the SPD's problem was "just a few bad officers," an acceptance of the need to address the multiple policies and practices which were disengaging the SPD from its community and a need to ensure SPD crime-fighting policies were consistent with constitutional policing.

Even so, the Seattle experience was replete with examples of challenges to consent decree enforcement, as further examined in Chapter 7.

Chapter 6.

Challenges to Section 14141 Enforcement

> *"The implementation of pattern or practice settlement reform agreements is a complex and multi-faceted process … [involving a department's] ability to implement 'constituent' pieces of a settlement agreement [and sustain that implementation effort] … [O]ne cannot overlook the difficulty inherent in bringing comprehensive, externally-driven, rights based reform to departments that have proved to be both dysfunctional and resistant to change … This dysfunction may be compounded by an insular, defensive organizational culture, … that is skeptical of outside experts"*
> **(Chanin, 2012, pp. 106, 159-160).**

§14141 actions fall victim to multiple challenges, to include resistance from police unions, an insular police culture resistant to change, local and federal politics, and a long-standing lack of DOJ resources. All these challenges combine to make police reform through an external means a challenging activity. Some of the more significant challenges to §14141 enforcement actions are discussed in this chapter.

6.1. Police Unions

Perhaps the most common challenge to police reform, as identified in the literature, is opposition from police unions. In fact, such opposition was considered so substantial that when an "implementation committee" was created in Pittsburgh, "participation of the union was considered too risky given that it expressed strong opposition to the decree" (Davis et al., 2002, p. 10).[413] In addition, the union which reportedly, had "vehemently opposed" the decree, as a result, had a strained relationship with the Chief who was tasked with ensuring a successful implementation effort. Even so, and even though the union made continuing statements against the

[413] It has been suggested, however, that it was the decision to exclude the union from the process that "helped to engender a very contentious, almost hostile, implementation environment" (Chanin, 2012, p. 178).

decree, according to the court-appointed monitor, “it did nothing overt to derail the process” (Davis et al., 2002, p. 13).

And interestingly, even though unions have actively opposed §14141 reform activities in many different cities (to include Seattle) (see, *infra),* it has been a general union opposition to changes in policies and practices that have contributed to requests for investigation by officials in many different cities (see, PERF, 2013, p. 42), to include Cincinnati, Baltimore, Cleveland, and others (Chanin, 2017a, p. 261, citing *The Atlantic*, 5/28/2015,[414] *Washington Post*, 5/6/2015,[415] U.S. DOJ, 2014,[416] and, *Albuquerque Journal*, 4/3/2014[417]). And, in fact, §14141 enforcement actions have been recognized as a way to assist progressive police leaders in reforming their departments, while avoiding the “cumbersome collective bargaining process” (Rushin, 2017a, p. 186; see also, Rushin, 2015, p. 126 [using the Los Angeles consent decree as an example]).

Given that “addressing systemic excessive force is one of the core functions of the [DOJ’s] pattern-or-practice cases” (USDOJ, 2017b, p. 27), changes in use of force policies are a standard tool of DOJ settlement agreements. And as a result, there is a tendency of officers to complain that new use of force policies and robust investigations of officer uses of force put officers in danger as they become less likely to use force, even when necessary, out of fear of being investigated or punished for violating the new, more restrictive policies (see Davis et al., 2002, p. 51; *Seattle Times*, 5/29/2014;[418]

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[414] Semuels, A. (2015, May 28). How to fix a broken police department. The Atlantic. Retrieved from https://www.theatlantic.com/politics/archive/2015/05/cincinnatipolice-reform/393797/.

[415] Bui, L., & Hedgpeth, D. (2015, May 6). Baltimore mayor seeks Justice review for police dept.; state of emergency lifted. *Washington Post*. Retrieved from https://www.washingtonpost.com/local/baltimores-mayor-and-maryland-governor-talk-of-nextsteps-in-city/2015/05/06/762b13a6-f3de-11e4-84a6-6d7c67c50db0_story.html?utm_term¼.a51f4e3c3d78.

[416] U.S. DOJ. (2014). Justice Department and City of Cleveland agree to reform police after finding a pattern or practice of excessive force. United States Department of Justice, Civil Rights Division, Special Litigation Section. Retrieved from https://www.justice.gov/usao-ndoh/pr/justice-department-and-city-cleveland-agree-reform-divisionpolice-after-finding.

[417] McKay, D. (2014, April 3). Mayor calls for action on APD. *Albuquerque Journal*. Retrieved from https://www.abqjournal.com/378243/mayor-calls-for-action.html.

[418] Miletich, S., Sullivan, J. & Carter, M. (2014, May 29). Seattle cops sue over DOJ reforms, *Seattle Times*. Retrieved from https://www.seattletimes.com.

Cleveland.com, 5/28/2015;[419] Hardaway, 2019, pp. 142-143 [describing the law suit filed by Seattle police officers against the DOJ and the court-appointed monitor]).

As a result, police unions have commonly attempted to intervene in settlement negotiations, usually with the intent to attempt to block reforms which they perceive as unnecessarily burdensome on rank and file officers. In general, however, the DOJ has successfully opposed those attempts to intervene (Rushin, 2015, pp. 90, 94; Rushin, 2017a, pp. 139-140).[420]

It has also been recognized that active union opposition to §14141 actions "has the potential to manifest in ways that threaten the viability and legitimacy of reform-based accountability systems" (Chanin, 2012, pp. 310). Given that possibility, Chanin argued in favor of including unions in settlement negotiations, commenting that:

> Inclusion [] precludes the kinds of direct challenges that [have] occur[ed] in Pittsburgh and Washington, D.C. Having participated in the negotiation, union leadership in Cincinnati [had] a much less legitimate case to make for criticizing the settlement in the press or actively working to dismantle the reform effort, either in court or through legislation. In effect, bringing the unions in [gave] the FOP ownership over both the content of the settlement and the process of reform, and has the potential to reduce the level of opposition from members of the rank and file. (Chanin, 2012, p. 313; see

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[419] Macdonald, E. (2015, May 28). Cleveland Police Union Says Justice Department Reforms Would Endanger Police, *Cleveland.com*. Retrieved from http://www.cleveland.com/metro/index.ssf/2015/05/union_head_says_aspects_of_cle.html.

[420] See, for example, Fuoco, M. (1997, March 5). Police Recoil: Union Chief Says No Extra Step if Court Approves City-Justice Pact. *Pittsburgh Post-Gazette* [noting Pittsburgh police union denied opportunity to intervene in its consent decree negotiations], cited by Levenson, 2001, p. 30; see, also United States v. City of Los Angeles, 2:00-cv-11769-GAF-RC (C.D. Cal. Jan. 4., 2001) [order denying the Los Angeles Protective League's motion to intervene], cited by Rushin, 2015, p. 94. However, the federal judge overseeing the Portland, Oregon consent decree, went against the prevailing judicial opinions by granting the Portland police union's request to intervene as a party. "In so holding, the court reasoned that the PPA had a significant and protectable interest because the terms of the proposed settlement agreement conflicted with certain provisions of the labor agreement existing between the city and the PPA, because the disposition of the action could impair or impede the PPA's continuing ability to protect and enforce its contractual rights, and because the city could not adequately represent the PPA's interest since the city and the PPA were antagonists in the collective bargaining process" (Patel, 2016, n. 320). In addition, a request to intervene by the LAPD Police Protective League, which was dismissed by the assigned federal judge, was ultimately granted on appeal, when the appellate court found that the Police Protective League had a "protectable interest" in the Consent Decree litigation, *U.S. v. City of Los Angeles*, 288 F. 3d 391 (2002); In a 2012 case involving the New Orleans police union's motion to intervene, however, the court found that the Consent Decree "would not impair or impact the property interest of the officers (*U.S. v. City of New Orleans*, No. 12-1924, 2012 WL 12990388, at 9 (E.D. La. Aug. 31, 2012). (see, Hardaway, 2019, pp. 184, 187).

also, Simpson, 2008, p. 495; Ikerd & Walker, 2010, pp. 18-19; Clark, 2010, pp. 4-5; Rushin & Edwards, 2017; Walker, 2017)

However, Rushin & Edwards also identified good reasons for the DOJ to avoid the inclusion of unions in settlement negotiations. Specifically, where it believes police unions might attempt to use the process to undermine reform efforts rather than supporting an "appropriate balance of accountability measures to ensure constitutionally acceptable policing practices. This sort of cooperative rulemaking may also produce inferior reforms" (Rushin & Edwards, 2017, p. 775). In addition, as noted by Chanin,

> Making space for union representatives at the negotiating table, [] runs the risk of delaying the process considerably or derailing it altogether. Labor and management rarely see eye to eye, particularly on issues that involve the potential for increased officer discipline, the loss of autonomy and discretion, and the assignment of public blame for an ongoing pattern of police misconduct. (Chanin, 2017a, p. 264)

Even so, there is an inherent danger in declining to include unions in the settlement agreements and/or as a sufficient part of the implementation process as it relates to the ultimate sustainability of consent-decree initiated reforms. "There is some evidence to suggest that pattern or practice jurisdictions are susceptible to backsliding after a settlement agreement has been terminated. Opposition to the reform effort from officer unions has played a part in this regression…" (Chanin, 2017b, p. 264, citing Chanin, 2012, Chanin, 2015, and, *Washington Post,* 11/13/2015).[421]

Walker aptly described the current challenges faced in determining the extent to which unions should be included in §14141 actions, particularly in the negotiation of settlement agreements and as parties to the ultimate litigation:

> Since they emerged as a powerful factor in policing in the late 1960s, police unions have been a largely negative force with regard to police accountability. Unions have almost consistently opposed all measures designed to improve police-community relations, particularly the creation of citizen review boards. For this reason, David Sklansky points out that today many police scholars have "little affinity" for a vision of democratic governance of the police that includes "participation by, or deliberation

[421] For example, in an interview with Chanin on March 1, 2010, "the former head of the Washington D.C. officer's union made clear that his organization remained intent on undoing the DOJ's reforms: 'And if you don't respect ... the ability of the union to have input, whatever you do is going to be undone ... And eventually, even the good things that may have been done by [the reform] process could be undone because it wasn't done the right way. And if you don't respect the process from the beginning, you're building a house of cards'" (Chanin, 2017a, p. 264).

> among, police officers themselves" … The question remains, however, whether including representatives in similar community police commissions will also serve to advance accountability related reforms or produce only conflict and dysfunction. (Walker, 2018, p. 1817)

Realistically, by all appearances, the answer of to what extent union participation in §14141 actions should be allowed appears to simply be: "it depends." In some cases, union participation may assist with buy-in from rank-and-file officers resulting in sustainable change; in other cases, it may be that the union leadership is the very cause of the need for the §14141 action, and they may need to be excluded from the solution for any real progress to be made. One would hope, however, that if a police union were named as a party, the assigned federal judge would be able to control the union if it were to become obstreperous and refuse to become part of the solution, instead of the problem.

And, even if the DOJ has opposed union intervention at the time of settlement negotiations, the DOJ has agreed in several decrees (to include Seattle and Cleveland) in union participation in the implementation process by giving union members representation on those cities' "Community Police Commissions" (See, Patel, 2012; USDOJ, 2017b; Walker, 2017; Walker, 2018) and, in one of its more recent consent decrees, the DOJ required the court-appointed monitor to meet with representatives of the rank and file officers on an ongoing basis (USDOJ, 2017b, p. 23). In addition, the DOJ meets with union representatives, to the extent they will cooperate, during the course of its underlying §14141 investigation (USDOJ, 2017b, p. 10 [also describing specific feedback provided by officers in Baltimore (p. 12) and Cleveland (p. 17)]).

A … battle is now being waged … pitting the legal weight and limitless financial resources of the U.S. Justice Department against [a municipal government's] right to control its own police department. At stake is no less than the fate of local agencies everywhere to control their own destinies versus an emerging pattern by the … Justice Department aimed at federalizing municipal police departments …

(Richer, B., Law Enforcement Alliance of America, n.d.)[422]

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[422] Retrieved from [CTRL] Feds Threaten To Take Over Ohio Police Department: (mail-archive.com).

6.2. Police Culture

In the early 1990s, the *Christopher Commission* discussed a pattern of excessive force that, they believed, was based on an organizational culture of "hardnosed" aggressive policing that led to conflict between the LAPD and minority communities. "As the *Christopher Commission* was told by a high-ranking LAPD officer, excessive force was treated leniently because it did not violate the internal LAPD 'moral code' that permit[ed] 'some thumping' as a matter of course" (Hoffman, 1993, p. 1475, citing *Christopher Commission* Report, 1991, pp. 57-60, 97-100 & 151-178; see also *Mollen Commission*, 1994, p. 69 [concluding that in order to address corruption in the New York Police Department, "the department must transform [the] police culture"]; see also, DOJ Findings Letter, Albuquerque Police Department, 2014, p. 36 [finding that "[t]he department's lack of internal oversight has allowed a culture of aggression to develop"]).[423]

Commentators familiar with the LAPD referred to "the LAPD mentality," described as "a philosophy of aggressive policing that explain[ed] the [beating of Rodney King], and the failure of more than a dozen LAPD officers to intervene, as part of a subculture of policing [that] was not an isolated incident" (Hoffman, 1993, pp. 1481-1482).

And, as noted by other commentators, the issue is not just about race, ethnicity or social background. "It is a stark reminder that the culture of a police department can leave an even greater impression on an officer than the culture in which he or she was raised" (Levenson, 2001, p. 14). Levenson went on to identify the following factors as "predictors of police misconduct" as they relate to the culture of any individual police department: 1) an "insulated police department … that excludes scrutiny by others;" 2) a department's own particular "Code of Silence" – determined by what level of misconduct that is tolerated before it would be reported on by another officer; 3) the extent to which the department relies on "professional policing" versus "community policing;" 4) the extent to which the department's discipline system is perceived as fair or unfair; and, 5) the adequacy of "screening, training, and supervision" (Levenson, 2001, pp. 14-16). Levenson concluded that

[423] Retrieved on from: https://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf.

> ultimately, however, the determination that must be made is whether the officers in a department operate in a manner and with an attitude that condones or ignores police misconduct. It is this "culture" problem that must be addressed if meaningful reforms are going to result. (Levenson, 2001, p. 16)

In evaluating the "LAPD Rampart Scandal" in 2000, Chemerinsky (2000) defined police culture as "the unwritten rules, mores, customs, codes, values, and outcomes - that creates the policing environment and style" (p. 559; see also, Walker, 2012, pp. 68-69, citing *Mollen Commission*, 1994, p. 51, defining "the officer subculture [as] the set 'attitudes and values that shape officers' behavior'"]).

In 2003, the then-Monitor of the Los Angeles Sheriff's Department, who would later become the court-appointed monitor for the Seattle Police Department's consent decree, commented that "many police reform advocates conclude the police organizations are hopelessly insular, endlessly self-referential, and mistrustful of outsiders" (Bobb, 2003, p. 158). At the same time, Walker (2003) was commenting on his "new paradigm of police accountability:"

> … that was taking into account …that to be effective any reform must (a) reach deep into the police organization; (b) have some direct impact on the day-to-day behavior of police officers; and (c) ultimately change, or at least begin to change, the culture of police organizations. (p. 9; see also, Jerome, 2004, p. 3 ["Organizational and cultural change, especially in insular organizations such as police departments, takes time and it takes leadership"])[424]

And even though many police leaders, when publicly addressing issues of misconduct that arise in the media, tend to talk in terms of "bad apples" as the perpetrators of misconduct (Swope, 2001; Rushin, 2015), Simmons described the consequences of accepting the "bad apple" theory of police misconduct: "efforts to address police misconduct, no matter how sincere, are doomed to fail if they consistently emphasize the behavior of individual officers rather than address the 'distinctive and influential organizational culture' of police institutions" (Simmons, 2008, p. 506; see also, Walker & Macdonald, 2009, p. citing Armacost, 2004, p. 509 [as "argu[ing] that it is

[424] When discussing the literature relating to "police officer subculture," Walker (2018) identified "[t]he pioneering work" in that area as having been written by Westley, W. (1970). Violence and the Police: A Sociological Study of Law, Custom, and Morality [emphasizing the norms of solidarity, hostility to the public, and secrecy]. He also cited, Herbert, S. (1998). Police Subculture Reconsidered, 36 Criminology 343 (n. 383).

necessary to change not just the formal procedures of a law enforcement organization but also the informal aspects of the organizational culture that play a powerful role in shaping officer conduct on the streets"]; see also, Ikerd & Walker, 2010, p. 15 [arguing that "a Department must address the organizational culture when seeking to institutionalize police reform [and] the management of a police department must make efforts to 'win the hearts and minds of officers in the department' to develop a culture that supports the proposed change"]).

However, Walker (2012) pointed out the impact of demographic changes on policing culture:

> [t]he traditional concept of a homogenous subculture resistant to change appears no longer valid. The police officer work force is now far more diverse than in the past. Some elements of that work force are more receptive to change than others. Significant variations have been found among police departments with regard to receptivity to change. (Walker, 2012, p. 84)[425]

Regardless, the DOJ has recognized the difficulties associated with reforming police culture as part of Section 14141 reform efforts:

> when the Division finds a pattern or practice of police misconduct, it usually finds that pattern or practice is the product of many decades of dysfunction that has become engrained in police culture. Reversing that process requires enormous effort and commitment. (USDOJ, 2017b, p. 36)

And as recognized by Chanin (2014) in his evaluation of the implementation efforts in Philadelphia, Detroit, Washington D.C., Cincinnati and Prince George's County, "culture is a significant determinant of an agency's ability to implement policy reform" (Chanin, p. 40, citing Halpern & Clapp, 2007,[426] and Klein & Sorra, 1996[427]). Chanin went on to describe "the inhibiting effects of organization resistance to change" as having been "clearly documented by policing scholars. The default cultural orientation of police

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[425] Even so, I can't help but to be reminded of a comment made to me by a high-ranking Denver Police officer, while I was serving as the Independent Monitor for that Department, that with respect to police cadets – "they may come into the Academy White, Black, Brown or Red … but they all come out Blue."

[426] Halperin, M., & Clapp, P. (2007). *Bureaucratic politics and foreign policy* (2nd ed.). Washington, D.C.: Brookings Institution Press.

[427] Klein, K. J., & Sorra, J. S. (1996). The challenge of innovation implementation. (Special topic forum on the management of innovation). *Academy of Management Review*, *21*(4), 1055–1081.

departments tends to reflect an opposition to outside influence, skepticism of external accountability and a hesitancy to accept change" (pp. 40-41, citing Walker, 1997; Skolnick & Fyfe, 1993; see also, Rushin, 2017a, p. 108 [commenting that "[i]t can be particularly difficult to change the culture of a large, complex organization through forceful external mandates. To bring about sustainable change in a police department, you need both procedural changes enacted through external mandates and cultural change that results in organizational buy-in"]). And as succinctly noted by one police chief in May, 2015 at a PERF symposium on use-of-force training: "culture will trump policy every time" (PERF, 2015, p.22).

And perhaps most interestingly, the question of whether a consent decree has actually changed the culture of a police department for the better often appears to be an open question that can only be truly answered after a long-term evaluation of the impact of a consent decree. In the case of Seattle, for example, that question simply remains unanswered at this time.

6.3. Politics

Both local and federal politics have potential limiting effects on §14141 actions. As recognized by Walker (2017),

> [t]he DOJ experience with pattern and practice litigation over the past twenty years highlights the overriding importance of both national and local politics with respect to police reform … In the end, unpredictable changes in the political environment are overarching factor which have a major impact on police reform and are beyond the control of reformers themselves. (pp. 27, 28)

Los Angeles has been used as a barometer of the impact of local politics on policing and on the federal response to calls for policing reform. In pre-consent decree Los Angeles, the LAPD was seen as having been "rewarded" for adopting "an aggressive style of policing," which was supported by "the levers of political power in the city and county." In addition, the standing of Los Angeles' Chief of Police was strong with the Republican administrations of Presidents Ronald Reagan and George Bush (at least until the highly publicized beating of Rodney King), with the Chief having appeared on the campaign trail with then-candidate Bush (Hoffman, 1993, pp. 1486, 1470-1471 & n. 62).

With respect to the impact of local politics on federal practices, as described by Gilles (2000),

> the Justice Department is often caught between the proverbial rock and hard place: If it determines not to bring a 14141 suit against a police department alleged to have engaged in unconstitutional patterns and practices, civil rights and community leaders may charge that the government is pandering to police unions; if it does choose to bring a "pattern or practice" suit, local elected officials may charge that the Department is engaged in partisan politics. (n. 112)

As described in Chapter 3.1, Republican and Democratic presidential administrations have tended to wield §14141 in dramatically different ways, with the Clinton and Obama administrations administering the law in an aggressive fashion, the Bush administration adopting a "more conciliatory approach," and the Trump administration abandoning the statute altogether in favor of efforts to appear supportive of local police departments (see, Silveira, 2004, p. 613; Rushin, 2015; Rushin, 2017a; Chanin, 2017b; Walker, 2018).

The use of §14141 (now 34 USC 12601) was, at least temporarily, largely been brought to a halt by the Trump administration, which took office in January 2017.[428]

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[428] See as examples, police reform efforts in Chicago and San Francisco:

San Francisco: "In early 2018, [] the Attorney General of California agreed to serve as the Monitor of a settlement agreement involving the San Francisco Police Department. The settlement agreement was the result of a Justice Department Collaborative Reform investigation of the police department that could not be implemented when the Trump Administration cancelled the Collaborative Reform program. The San Francisco Police Department had previously been the subject of a highly critical Blue Ribbon Panel, organized by the San Francisco District Attorney. The Mayor of San Francisco and the Chief of Police were determined to pursue reform of the department and, consequently, requested that the State Attorney General serve as the Monitor of the implementation process" (Walker, 2018, p. 1789).

Chicago: In December 2015, the Obama DOJ opened an investigation into the Chicago Police Department (DOJ, 2017b, p. 48). A report finding the CPD subject to the provisions of Section 14141 was published on January 13, 2017 (Located at https://www.justice.gov/opa/file/925846/download), one week before the inauguration of the Trump administration. In August 2017, the Attorney General of Illinois, recognizing that the Trump administration did not intend to pursue an action under Section 14141, sued the Chicago police department to obtain federal court jurisdiction over the reforms identified in the USDOJ investigation report (Smith, M. (2017, August 29). Illinois Attorney General Sues Chicago over Police Practices. *New York Times*). A consent decree was negotiated and eventually approved by a U.S. District Court Judge on January 31, 2019. Consent Decree located at https://www.chicago.gov/content/dam/city/depts/cpb/supp_info/ConsentDecreeComplete.pdf. As noted by Walker (2018), "[i]n seeking its own consent decree with the Chicago Police Department, the Illinois Attorney General stepped into the void created by the termination of the pattern or practice program by the Trump Administration" (p. 1789).

Although implementation processes have continued under consent decrees and settlement agreements reached during the Obama Administration (and already under the jurisdiction of federal judges),[429] the Trump DOJ initiated only one new investigation and reached two settlement agreements, without the appointment of any third-parties to monitor or audit compliance with those agreements (*Washington Post*, 5/14/2019). In fact, shortly after taking office, in a memo dated March 31, 2017, Trump's first Attorney General, Jeff Sessions, ordered a review of the Consent Decree process, which ultimately resulted in a November 7, 2018 memo outlining "Principles and Procedures for Civil Consent Decrees and Settlement Agreements" to ensure that police-related Consent Decrees were only to be used in "limited circumstances" and instructing federal prosecutors to "exercise special caution" before entering into such agreements (Sessions, 11/7/2018).[430]

In 2019, the Trump administration took the extraordinary action of attempting to block a Consent Decree agreement between the City of Chicago and the Illinois Attorney General's Office (*Associated Press*, 10/10/2018; *New York Times*, 6/13/2020), which was based on findings made by the Civil Rights Division against the Chicago Police Department upon completion of a §14141 investigation on January 13, 2017, one week before Trump took office.[431]

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[429] Specifically, in Seattle (2012 Agreement), New Orleans (2013 Agreement), Puerto Rico (2013 Agreement) [although Puerto Rico court-appointed monitor resigned in 2019 citing misspending and a failure on the part of either the Trump DOJ or the court to act, *Washington Post*, 5/14/2019 ["Official Over Puerto Rico Police Reform Resigns in Protest"]], Portland, OR (2014 Agreement), LA County Sheriff (2015 Agreement), Albuquerque NM (2015 Agreement), Cleveland OH (2015 Agreement), Miami (2016 Agreement [although the court-appointed monitor resigned in 2019 after being elected as Mayor of Tampa, FL and was "replaced" by the Trump DOJ with a DOJ lawyer, *Miami New Times*, 9/6/2019], Ferguson MO (2016 Agreement), Newark, NJ (2016 Agreement), and Baltimore MD (2017 Agreement).

[430] Retrieved from https://www.justice.gov/opa/pr/justice-department-releases-memorandum-litigation-guidelines-civil-consent-decrees-and. Walker (2018) correctly interpreted the ultimate result of the Attorney General's review of DOJ consent decree enforcement activities when he observed that: "[v]irtually all observers understood the order to mean that the administration of President Donald J. Trump was terminating the Justice Department's program of pattern or practice investigations of constitutional violations by local and state law enforcement agencies. The announcement was no surprise. During the 2016 presidential election campaign, and in the presidential transition period following Trump's election in November 2016, both Trump and Sessions publicly expressed their opposition to Justice Department investigations of local and state police agencies, while also expressing strong support for the country's police officers" (p. 1779).

[431] See investigation report, at: https://www.justice.gov/opa/file/925846/download.

And, as previously discussed, local politics has, on numerous occasions, resulted in requests for DOJ intervention (for example Washington D.C., Cincinnati (see Chanin, 2012), New Orleans and Cleveland),[432] and, has at other times been brought to bear against the wishes of local politicians (for example, Pittsburgh, Seattle and Los Angeles), still resulting in the negotiation of settlement agreements, and occasionally, litigated by agencies refusing to accede to federal oversight (Maricopa County, AZ, and Alamance County, NC).[433] And, as recognized by Chanin (2012), local politics involves the "inter-workings" of the affected police departments as well:

> Relationships between police leadership and lower-level staff are inherently political. So too are organizational decisions regarding the allocation of personnel (e.g., whom to put in charge of the committee responsible for managing implementation or where to assign specific mission critical tasks) and resources, as well as the development of agency priorities. The politics between the police union and department management also have the ability to affect the implementation of pattern or practice reform. (p. 335)[434]

Rushin (2014) further identified what he referred to as "political spillover" as it related to potential barriers in initiating §14141 actions against municipalities that were politically connected to either local United States Attorney's Offices and whose resources might be needed with respect to local-federal law enforcement task forces. For example, interviews conducted by Rushin indicated that Special Litigation Section efforts to take action against the New York Police Department might have been affected by those types of political considerations (pp. 3235-3236).

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[432] Also consider the following observations made by the Police Executive Research Forum as a result of a 2012 symposium on civil rights investigations of local police: "Some Chiefs say that a DOJ investigation can help overcome political opposition to reforms: Some police chiefs have welcomed or requested DOJ investigations, because a federal investigation can force otherwise reluctant local officials to provide funding that is needed to implement reforms. In addition, requirements of a court-approved consent decree can overrule labor union opposition to certain changes in policies or practices" (PERF, 2013, p. 7).

[433] See, Rushin, 2016, for a comparison between Section 14141 actions in Los Angeles and Alamance County; See, Harmon 2012, for a discussion of DOJ's interactions with the Maricopa County Sheriff's Office; see also, Walker, 2018, n. 156.

[434] See also, Walker (2012), noting that "the most obvious example of the negative impact of this political influence on police reform would be unions helping to elect mayors who are sympathetic to their perspective and who may appoint a police chief who is not committed to high standards of accountability" (p. 72).

Regardless of the actual circumstances, some jurisdictions believe or claim that DOJ's enforcement of §14141 is purely political, "with decisions on which jurisdictions to investigate made for partisan rather than policy reasons" (Chanin, 2016, p. 70). Chanin (2017a) after recognized that

> [w]hatever the actual merits of these critical views, the notion that pattern or practice investigations lack legitimacy serves to undermine the very procedural justice that is sought through the DOJ's intervention and feeds a negative discourse that is counter to the evidence on positive dialog increasing legitimacy … An investigation seen as unsubstantiated, overly political or otherwise biased, may also further complicate a department's effort to galvanize support for the reform process among the rank and file. (p. 263, citing, Mazerolle et al, 2013, and Tyler, 2006)

In reality, Harmon's observation seems to be the one the rings most true: "Section 14141 enforcement is driven by a complicated mixture of politics, policy, and legal discretion run through the machinery of a large administrative agency" (Harmon, 2017, p. 622).

Finally, Chanin (2012), after evaluating four different jurisdictions where §14141 actions had been terminated, noted his concern "that issues of politics and concerns over federalism seem to have as much, if not more influence over how and when affected departments were released from DOJ oversight." Although he also suggested that "perhaps termination can be explained by the concept of diminishing returns" or could be based on a perceived need to avoid undermining the authority of department leadership and local political leaders (p. 337). Interestingly Chanin's concerns in this regard have been shared by both federal judges overseeing §14141 litigations in Los Angeles and in Seattle after the DOJ recommended termination of consent decrees that were rejected by the assigned judges in both cases (see, Section 3.3.1 (Los Angeles), *supra*).

6.4. DOJ Resources

Regardless of arguments in favor of §14141 enforcement actions, the limitations of these actions to systemically reform American police departments must be recognized. Even absent the different levels of support for these actions by Republican versus Democratic presidential administrations, "resource limitations have extended from one presidential administration to the next." In fact, it seems unlikely that the DOJ

will ever have the resources necessary “to fully and rigorously enforce Section 14141 against all agencies that appear to be engaged in a pattern or practice of misconduct.” The result is a “messy” process which “is also sometimes seemingly inconsistent and imprecise” (Rushin, 2017a, pp. 158-159). Given these circumstances, municipalities like Seattle will almost inevitably view the selection of their city for a federal lawsuit to be procedurally unjust.

Of all the researchers, Rushin appears to have most thoroughly evaluated the selection criteria used by the DOJ in §14141 enforcement cases. Rushin (2014) ultimately “conclude[d] that the DOJ has historically underenforced §14141, due in part to resource limitations that prevent the agency from aggressively pursuing all reported cases of systemic misconduct.” Rushin also found that “the DOJ has unevenly enforced §14141 over time” and “has only initiated Section 14141 investigations against a fraction of problematic departments” (pp. 3189, 3193 & 3240). As an example of the problem, Rushin (2014) detailed that,

> If patterns or practices of misconduct exist in only one out of every 100 law enforcement departments, then the DOJ only has the resources to investigate less than 2 percent of these departments each year. It is fair to assume that, even during times when the DOJ has aggressively pursued pattern or practice claims, enforcement has still been less than optimal. (p. 3230)

Rushin went on to explain that “a single, complex Section 14141 case alone can nearly exhaust all the manpower and resources of the Special Litigation Section for an entire year” (Rushin, 2014, p. 3230; see also, Kim, 2002; Armacost, 2004; Harmon, 2009; Walker & Macdonald, 2009; Gilles, 2000; McMickle, 2003; Simmons, 2008, pp. 518-519; Harmon, 2012; Rushin 2015 & Rushin, 2017a).

Due to its inherent resource limitations, the DOJ has always understood that its enforcement efforts would have to be limited. As such, the DOJ has approached the §14141 program with the expectation and intent that its limited actions could be used to influence the policing profession on a larger scale: according to one former DOJ litigator: §14141 actions “can be a beachhead for reform, moving the profession forward” (Jerome, 2004, p. 5). And, according to the then-Deputy Chief of the DOJ’s Special Litigation Section,

> [i]n deciding where to spend our scarce resources, we take other things into consideration as well, such as whether the department seems to have a handle on the problem we are seeing: when a bad thing happens in the police department, how does the department respond to it? Do they respond immediately, or do they fail to do anything until the news media approaches them? In other words, we look to see if the department is able to handle problems that come up on its own. (PERF, 2013, p. 36)

Walker summed up the DOJ position best, quoting a 2017 Civil Right Division report as noting that “the limited resources of the Special Litigation Section can be maximized by focusing on issues ‘common to many law enforcement agencies,’ along with ‘emerging or developing issues[s]’” (Walker, 2017, p. 16, citing, USDOJ, 2017b, p. 6).

Chapter 7.

Seattle Consent Decree Implementation

The implementation of the Consent Decree in Seattle has been a long and rocky road towards compliance. In this chapter, I discuss the history and context of police practices in Seattle, the USDOJ investigation and negotiation of the Consent Decree and the implementation of the agreement in general. I then discuss these experiences from the perspectives of various Seattle stakeholders.

7.1. The History and Context of Police Practices in Seattle

The decision to use a consent decree to reform the Seattle Police Department did not come from nowhere. In fact, the SPD had a long history of police brutality, racial discrimination and corruption before it was professionalized after criminal prosecutions of SPD command staff and officers in the 1970s. Subsequent to the professionalization of the department, the SPD showed an extraordinary resilience to change attempted from outside the department regardless of Mayoral administration. It was the Department's ability to resist reform efforts and maintain the status quo that ultimately led the DOJ to conclude that only a consent decree and a court-appointed monitor would ultimately result in ensuring constitutional policing practices by the SPD.

Table 7.1. History of Police Accountability in Seattle[435]

Date/Year	Police Accountability Occurrence	Reference
1955	Mayor Pomeroy formed the Advisory Committee on Police Practices ("the Leffler committee") which identified potential problems with respect to brutality, racial discrimination, and corruption and then disbanded.	Chair: Very Reverend John Leffler, dean of Saint Mark's Episcopal Cathedral; Bayley, 2015, pp. 35-36.

[435] For an even more extensive timeline relating to the history of police accountability in Seattle, see Appendix E, created and posted by the Seattle Municipal Arhives in March 2021, which is represented to be "a chronology of selected legislation and events regarding police accountability in Seattle through 2020." Retrieved from Timeline 1955-2020 - CityArchives | seattle.gov.

Date/Year	Police Accountability Occurrence	Reference
January 1967	*Seattle Times* runs seven articles over two weeks describing "a police payoff system" with respect to bars and taverns and a "parking ticket racket" where businesses paid police to ignore customers with parking violations. Mayor Braman appoints a citizen committee ("the Blue-Ribbon Committee") to look into allegations raised by *Seattle Times* articles.	Bayley, 2015, pp. 67-72; 72.74.
April 11, 1967	Report of the Blue-Ribbon Committee published.	Bayley, 2015, pp. 73-74.
October 6, 1969	"Palace Revolt" against Chief Frank Ramon led by his three Assistant Chiefs for covering up corruption, leading to his resignation.	Bayley, 2015, pp. 96-98; *Seattle Times*, 7/29/1986.[436]
July 1970	Acting Chief Charles Gain appoints SPD Task Force to investigate graft.	Bayley, 2015, pp. 143-144.
September 14, 1970	SPD Task Force issues public report.	Bayley, 2015, pp. 143-144.
July 27, 1971	Former SPD Chief Ramon, Assistant Police Chief & 13 police officers and Sheriff's Deputies (and others, including former District Attorney & longtime City Council member) indicted for payoff scheme involving illegal gambling. (Bayley, 2015, p. xv.)	District Attorney Christopher Bayley
August 7, 1971	SPD Chief Police Chief George Tielsch quoted in *Seattle Times* as saying that the country grand jury investigating allegations of a police bribery ring "functions 'like a Spanish Inquisition— all they need is a rack and thumbscrews.'"	*New York Times*, 8/7/1971.[437]
July 10, 1992	ACLU Report: "Recommendations for Changes in Seattle Police Operations to Improve Accountability and the Complaint Review Process."	ACLU of Washington.[438]
October 1996	Veteran SPD Homicide Detective steals $10,000 from home of deceased suspect who died in shootout with police.	Citizens Review Panel Final Report, p. 2.
March 1999	Homicide Detective Attempted Theft reported to County Prosecutor.	Citizens Review Panel Final Report, p. 2.

[436] Christensen, A. (1986, July 29). Frank Ramon, Controversial Chief of Police of 1960's, Dies. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[437] Turner, W. (1971, August 8). Police Bribe Ring Charges Studied by Jury in Seattle. *New York Times*. Retrieved from https://www.nytimes.com/1971/08/08/archives/police-bribe-ring-charges-studied-by-jury-in-seattle-officials-and.html.

[438] Retrieved from Seattle Municipal Archives - CityArchives | seattle.gov.

Date/Year	Police Accountability Occurrence	Reference
May 1999	Public reports that eight SPD officers (including an internal investigations Sergeant) failed to report allegations that a veteran Homicide Detective stole $10,000 from a crime scene 2 ½ years prior.	ACLU of Washington, 6/14/1999 Press Release.[439]
May 7, 1999	Mayor Schell appoints Citizen Review Panel	Citizens Review Panel Final Report, p. 2.
August 19, 1999	Citizens Review Panel Final Report recommending creation of an Office of Public Accountability	Johnson, C.; Durkan, J.; McKay, M.; Pasenelli, B (FBI).[440]
February 27, 2001	Mardi Gras Riots [resulting in one death and 70 injuries - partly blamed on police commanders who had initially kept officers from intervening, fearing for their safety].	*Seattle Times*, 9/3/2011.[441]
May 31, 2001	Shooting of Aaron Roberts [public controversy over shooting leads to claims of "de-policing"]	*Seattle Times*, 6/26/2001, 8/2/2001.[442]
March 26, 2002	SPOG "vote of no confidence" in Chief Kerlikowske. Reportedly resulting from discipline imposed on an officer in a racial profiling case, command staff actions in Mardi Gras Riot and "tepid support" from Chief for officers involved in shootings.	*Seattlepi.com*, 3/26/2002.[443]
June 2007	Mayor Nickels appoints 11-member panel to "perform a thorough and comprehensive review of Seattle's Police accountability system."	Police Accountability Review Panel Final Report, at i.
January 29, 2008	Final Report of Police Accountability Review Panel	Chair, Judge Terrence Carroll; Boruchowitz, B.; Durkan, J.; Gonzalez, M.L.; Jayapal, P.; Locke, G.; Krebs, J.; McKay, M.; Rice, N.; Shaw, J.[444]
June 11, 2009	Beating of Daniel Macio Saunders.	Referred to in Dec. 3, 2010 ACLU letter to DOJ.
October 31, 2009	Fatal Ambush Shooting of SPD Officer Timothy Brenton [resulting in "public sympathy" for the SPD].	*Seattle Times*, 9/3/2011.

[439] Retrieved from Seattle: ACLU-WA Calls for An Independent Office for Police Accountability | ACLU of Washington (aclu-wa.org).

[440] Retrieved from Seattle Municipal Archives - CityArchives | seattle.gov.

[441] Miletich, S. & Carter, M. (2011, September 3). Culture of Mistrust Behind SPD's woes. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[442] Tizon, A. & Ith, I. (2001, August 2). Stats contradict 'de-policing' claims. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[443] Kamb, L. (2002, March 26). Seattle Officers Vote No Confidence in Chief, *Seattlepi.com*. Retrieved from Seattle officers vote no confidence in police chief (seattlepi.com).

[444] Retrieved from Seattle Municipal Archives - CityArchives | seattle.gov.

Date/Year	Police Accountability Occurrence	Reference
April 17, 2010	Officer threatens to beat "the Mexican piss out of" Martin Monetti Jr.	*Seattle Times*, 6/7/2012[445] Referred to in Dec. 3, 2010 ACLU letter to DOJ.
April 24, 2010	Incident involving alleged choking in the back of a police car with in-car video not working.	Referred to in Dec. 3, 2010 ACLU letter to DOJ.
June 14, 2010	Video shows SPD officer punching teenage African American girl in the face during a jaywalking incident.	*Seattle Times*, 12/10/2010[446] Referred to in Dec. 3, 2010 ACLU letter to DOJ.
August 30, 2010	Shooting of John T. Williams	Referred to in Dec. 3, 2010 ACLU letter to DOJ.
October 18, 2010	Beating of unarmed cooperative African-American teenage in a convenience store, captured by surveillance video.	Referred to in Dec. 3, 2010 ACLU letter to DOJ.
December 3, 2010	ACLU Letter to DOJ requesting §14141 investigation.	ACLU of Washington.[447]

7.1.1. The Origins of Corruption in the Seattle Police Department

By the time of the initiation of the DOJ §14141 investigation in 2011, the Seattle Police Department had a reputation for being a relatively "clean" Police Department.[448] But that was not always the case and, in fact, the SPD's origins involved a cycle of corrupt activities that lasted from the time of its creation in the 1880s for almost one hundred years. As described by a former King County District Attorney, who was credited with finally cleaning up the SPD in the early 1970s through a series of high-profile prosecutions of public officials and police officers:

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[445] Carter, M. & Miletich, S. (2012, June 7). City hits back at DOJ report - 'Reliability, trustworthiness' challenged Court filing comes amid talks on plan to fix SPD, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[446] Miletich, S., (2010, December 10). SPD Officer Who Punched Teen in Jaywalking Incident Cleared of Using Excessive Force, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[447] Retrieved from https://www.aclu-wa.org/pages/re-request-investigate-pattern-or-practice-misconduct-seattle-police-department.

[448] As represented by Sgt. Richard O'Neill, the then-President of the Seattle Police Officers' Guild when the SPD came under scrutiny as a result of questionable uses of force in 2007 and 2008: "We have a squeaky-clean Police Department compared to other big cities" (*Seattle Times*, 9/3/11).

In 2015, former King County District Attorney Christopher Bayley (who served from 1971-1979), and was responsible for the 1971 indictments of public officials and police officers for graft wrote: "No one has accused Seattle's current police force of personal corruption or graft. The federal and county criminal trials of 1970 to 1974 put a stake through the heart of that vampire…" (Bayley, 2015, p. 203-204).

> At one point in the 1880s, 87 percent of the city's general fund came from brothels, gambling and liquor…Occasional early condemnations by preachers and Seattle's more moralistic founders had little initial impact. But by the 1880s and 1890s, the fight between vice and reform was a perennial election issue…But when reformers captured city hall, reform was partial and temporary. Usually it was not long before a different mayor appeared with a more open attitude or an external event [such as the Klondike Gold Rush in 1897] reversed any reform. (Bayley, 2015, p. 3).

As reflected in Table No. 6.2, a history of Seattle police chiefs and their corrupt activities was chronicled by Bayley (2015) in his book *Seattle Justice: The Rise and Fall of the Police Payoff System in Seattle*.

Table 7.2. History of Seattle Police Chiefs & SPD Corruption[449]

Chief of Police	Significant Events During Tenure
1901 – Chief William Meredith	Killed by a prominent theater operator after being accused of taking protection money and then harassing the theater operator. Meredith reportedly "hunted down" the theater operator, only to be killed in the ensuing fight (Bayley, 2015, pp. 6-7).
1910 – Chief Charles Wappenstein	Established open vice districts and extended them even further than discussed during the Mayoral election. Implicated in the protection racket allegations against Chief Meredith. Eventually convicted of bribery (Bayley, 2015, p. 7).
1924 – Chief William Severyns	Fired by the Acting Mayor after acknowledging there were at least 100 corrupt officers in the SPD and refusing to fire them. Reinstated by elected Mayor shortly thereafter (Bayley, 2015, p. 8).
July 1935 - Chief Walter B. Kirtley	Professed shock by City Council allegations about illegal gambling operations and subsequently took no enforcement actions against them (Bayley, 2015, p. 10).
1942 – Chief Herbert Kimsey	Used guaranteed five-year term to ignore Mayor's repeated requests to deal with complaints of criminal vice activities (Bayley, 2015, p. 12).
1946 – Chief George Eastman	Enacted "Tolerance policy" – vice laws to be "enforced as a reasonable man would want it enforced" (Bayley, 2015, pp 15-16).
1952 - Chief H.J. Lawrence	Described as "a man happy to tolerate a wide range of vice" (Bayley, 2015, p. 18).
1961-1969 - Chief Frank Ramon	On October 6, 1969 Chief Ramon faced a "palace revolt" by his Assistant Chiefs for covering up corruption, leading to his resignation. Indicted in 1971 for corruption. (Bayley, 2015, pp. 96-98; *Seattle Times*, 7/29/1986; *Seattle Times,* 8/13/1989[450]).
1971 – Chief George Tielsch	Reported as "not tolerating graft of any sort" (Bayley, 2015, p. 139).

[449] For list of Seattle Police Chiefs since 1869, go to: https://blog.seattlepi.com/seattle911/2009/02/10/a-look-back-at-seattle-police-chiefs/.

[450] Duncan, D. (1989, August 13). Challenge and Change – Whistle Blows on a Tolerance Policy. *Seattle Times*. Retrieved from https://www.seattletimes.com.

7.1.2. Committees Appointed to Review Police Accountability Issues

The advisory committee on police practices (1955).

The first report of a Seattle committee to address issues of police accountability was the "Advisory Committee on Police Practices," appointed in 1955 by then-Mayor Allan Pomeroy who served one term in office (1952-1956). Mayor Pomeroy appointed that committee based on allegations of SPD racism:

> The committee soon became intrigued by a report from the Federal Bureau of Narcotics stating that narcotics were not a significant problem in Seattle except among blacks but that investigation of the problem was hampered because bars in the predominantly African American Central District paid off the police. [The] committee asked the police to come to meetings and answer questions. The police refused with the exception of a Captain Cook, who denied everything. The committee issued a report noting their frustration and suggesting the police might have problems in areas like brutality, racial discrimination, and corruption. It then disbanded (Bayley, 2015, pp. 37-38).

The blue-ribbon committee (1967).

The next committee appointed to look into allegations of police corruption was created as the result of a series of articles run by the *Seattle Times* and was formed in January 1967. That committee, which had no ability to subpoena witnesses or put them under oath, reported back on April 11, 1967, based solely on voluntary testimony provided during confidential hearings. The committee concluded that:

> The information submitted to this committee falls short of establishing payoffs to police officers. While a number of statements by witnesses indicated the acceptance of payoffs by a few policemen in isolated cases, there was no substantiation or corroboration that would permit a finding by the committee as to the truth of the statements. Police officers appearing before the committee denied receiving any payoffs (Bayley, 2015, pp. 73-74).

The committee did, however, recommend that police no longer be permitted to "moonlight" at bars and that officers should be required to "rotate their beats no less than every two years" (Bayley, 2015, p. 74).

The SPD task force (1970).

After the resignation of Chief Frank Ramon in October 1969, a new Acting Police Chief, on leave for one month from the Oakland Police Department (July – August 1970), appointed Edward Toothman, a retired Oakland Police Chief to run an internal task force to investigate internal graft. The task force subsequently interviewed hundreds of police officers. In its public report, published on September 14, 1970, the task force minimized the extent and harm of the police corruption previously exposed by the *Seattle Times*:

> The question is asked, "How extensive was the involvement in terms of numbers of officers?" It has been stated earlier that only a few districts were involved. At a given period, there were about 35 to 40 men working in these districts. Of that number, not all were involved. There is only speculation as to how many there were. Of those who worked in the department during the last ten years, the Task Force identified about 70 to 80 as having been involved in payoffs. The majority of those persons had left the Police Department prior to the beginning of the investigation…
>
> It must be remembered, however, that there were many persons other than police officers that were involved in the payoff system. There were first, the Chiefs of Police who during their respective tenures failed to exercise adequate controls to prevent the criminal activities of the officers. Secondly, there were the gamblers and homosexuals who paid off the police to protect their own interests. Under the law, they are as guilty as the officers…Thirdly, the Mayors and Councilmen in the past who conceived and perpetuated what was known as the "tolerance policy" carried a major part of the responsibility for the shaping of the conditions that spawned crime and corruption in the Seattle Police Department…
>
> With the removal from the department of those officers known to have been involved, and the filing of criminal charges against several, the department through its own efforts has purged itself of most of the guilty officers. There are, of course, some officers who have not been exposed, so they will probably go unpunished, except by the knowledge of their guilt. Darkness, however, does not protect a man from his own conscience (Bayley, 2015, pp. 144-5).

The citizens review panel (1999).

The next committee to address issues and concerns regarding police accountability in Seattle, was not appointed until 1999, almost thirty years after the SPD task force report was published:

> The appointment of the panel followed the filing of first-degree theft charges against a police detective, accused of stealing $10,000 from the home of a

> Seattle resident who died after engaging in a shootout with Seattle Police in October, 1996. The charges state that while the money was returned to the home and subsequently placed in evidence, the alleged theft – which was known to a number of Seattle police officers and was reported to a sergeant in the Department's Internal Investigation's Section – was not investigated by the Department until March, 1999, when a homicide detective informed a King County Deputy Prosecutor of the incident (Citizens Review Panel Report, 1999, at 2).
>
> The panel was given specific charges by then-Mayor Schell to:
>
> - Examine the barriers that give rise to the failure of employees to report misconduct, and propose steps to ensure compliance with reporting requirements.[451]
> - Evaluate the Department's mechanisms to encourage and support citizens and employees who report or witness misconduct, and
> - Undertake a systemic review of Department policies, procedures and training programs – including Internal Investigations – that define employee responsibilities in disclosing and investigating allegations of misconduct (Citizens Review Panel Report, 1991, at 2).

The panel was chaired by Charles V. Johnson, a retired Judge of the King County Superior Court and included three other members: a former U.S. Attorney for the Western District of Washington, a retired Special Agent in Charge of the Seattle FBI office and, perhaps most importantly, a lawyer and former Executive Counsel to the Governor who would later become the U.S. Attorney who led the Department of Justice's reform effort in 2011, Jenny Durkan. Durkan would also make history as the first person to be a plaintiff in a federal pattern or practice lawsuit (as the local U.S. Attorney) and subsequently become a named defendant in the same lawsuit after having been elected Mayor of Seattle in 2017.

The panel reported that while it "found that a number of factors can deter or encourage the reporting of misconduct, the single most important factor is whether people have confidence that complaints will be handled thoroughly, fairly and

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[451] Interestingly, in its 2011 report announcing the conclusion of its pattern or practice investigation, the DOJ specifically noted concerns regarding then-existing barriers to internal reporting of misconduct: "during our investigation, we were told that referrals from supervisors about misconduct by their supervisees are admittedly "rare to non-existent" (DOJ Investigation Report, 2011, at 2).

expeditiously." The panel then concluded that "the present system has not uniformly engendered such confidence" (Citizens Review Panel Report, 1999, at 4). The panel went on to recommend the creation of an "Office of Police Accountability" which would "subsume both the present duties of the Internal Investigations Section [IIS] and the IIS Auditor." The OPA would be led by a civilian appointed by the Chief and confirmed by City Council and staffed by police officers. The panel recommended that the Chief would still, ultimately, be responsible for all disciplinary decisions, but noted that the OPA Director would "enforce the rights of officers and citizens with equal diligence." The panel further recommended what they referred to as additional "substantive changes… in the areas of leadership; policies and procedures, and training" (Citizens Review Panel Report, 1999, at 5).

Although the panel found "no widespread or systemic corruption," it did find that "some employees [were] reluctant to report [] misconduct." (Citizens Review Panel Report, 1999, at 6). And, although it did end up making a total of twenty-three recommendations for reform, the panel concluded by saying:

> If the panel were convinced, after four months of probing examination, that the Seattle Police Department was systemically flawed or poorly managed, it would not hesitate to say so. It is the conviction that an essentially good Department can be made better that has led to the panel's recommendations. (Citizens Review Panel Report, 1999, at 34)

The panel was particularly concerned about how collective bargaining agreements between the City and the police guild were negatively impacting the integrity of police internal investigations. It was acknowledged that "[t]he current polic[ies] afford[] Seattle Police Department employees more rights and protections than those granted to citizens. In essence, current policy obliges the Department to conduct most investigations of misconduct by correspondence" (Citizen Review Panel Report, at 18). The panel found "this set of circumstances to be quite incompatible with the best traditions of police management and with procedures followed in most other police departments in the United States" (Citizen Review Panel Report, at 19).[452]

[452] This was the first report that appears to have identified the role of collective bargaining as an impediment to SPD accountability; a now reoccurring issue that ultimately resulted in the assigned federal judge, twenty years later, finding the city out of compliance with the Consent Decree (U.S. v. Seattle, Document No. 562, "Order Finding City of Seattle Partially Out of Compliance with the Consent Decree," filed 5/21/2019).

Amongst the recommendations made by the panel included that:

- "the Chief should issue a 'bright line' rule stating that lying, cheating, or stealing will not be tolerated by the Department and will result in termination" (Recommendation Two);
- "the Chief have a more direct and authoritative role in the training and internal investigations process" (Recommendation Three);
- an SPD ethics officer be appointed (Recommendation Four); "Sergeants be provided with additional managerial training regarding…their responsibility concerning complaints of misconduct" (Recommendation Five);[453]
- the department determine whether budget cuts had reduced the ability of supervisors to perform their duties (Recommendation Six);
- the Department "institute a more comprehensive 'early warning system'" (Recommendation Seven);[454]
- supervisors needed to "be held accountable for a pattern of misconduct allegations in their squads" (Recommendation No. 8);
- officers "be transferred and supervisors rotated in their assignments with greater frequency" (Recommendation No. 9);
- "all commanders, supervisors, and officers regularly [] be reminded of their duty to receive complaints from citizens whenever and wherever they are made" (Recommendation No. 10);
- the department resume conducting performance evaluations (Recommendation No. 12);
- the department increase and improve ethics training (Recommendations 13-16); and,
- the department ensure appropriate training and resources for internal investigations investigators (Recommendations 17-18).

[453] The DOJ investigation report in 2011 would find that the finding of a pattern or practice of excessive force and issues related to biased policing was caused, in part, on lack of supervision on the part of SPD Sergeants and command staff (DOJ Investigation Report, 2011, pp. 4, 6, 8, 15 & 17).

[454] The DOJ investigation report in 2011 would find that the SPD's Early Intervention System was "broken." (DOJ Investigation Report, 2011, p. 22).

The Seattle police accountability review panel (2009).

Eight years after the Citizen Review Panel report of 1999 (on June 29, 2007), then-Mayor Nickels appointed an 11-person panel to review the police accountability system that was set up as a result of the 1999 Citizen Review Panel recommendations. The department had been under the leadership of Chief Gil Kerlikowske since 2000 and public allegations had been made that the Chief had improperly influenced an OPS investigation, was regularly undercutting disciplinary recommendations being made by the OPA Director and was taking "extraordinary measures to protect [his] officers" (*Seattle Times*, 6/19/2007).[455]

As reported by the *Seattle Times* on June 20, 2007:

> A Seattle Times statistical review in 2005 found that since January 2002, [Chief] Kerlikowske had reversed 27 out of 100 findings by investigators of misconduct by officers. In some of those cases, officers accused of multiple violations were disciplined for at least one offense. But in others, no discipline was imposed…
>
> The reversals caught the attention of the citizen-review board — the panel that last week concluded in a report that Kerlikowske intervened in the internal investigation into the actions of a pair of officers involved in a controversial drug arrest in January.[456] (*Seattle Times*, 6/20/2007)[457]

Shortly after a series of articles appeared in local papers repeatedly commenting on the discipline issue,[458] Mayor Nickels announced his plan to thoroughly review the

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[455] Chan, S & Carter, M. (2007, June 19). Scathing report says chief interfered with cop probe - Civilian review board Kerlikowske calls findings "absolutely false." *Seattle Times*. Retrieved from https://www.seattletimes.com.

[456] The citizen review report which criticized Chief Kerlikowske's actions was written by the then-Board President, attorney Pete Holmes, who would later be elected Seattle's City Attorney in 2009 and has served as the Seattle City Attorney through the entirety of the DOJ investigation and consent decree process. Holmes later supported a cooperative approach with the DOJ in the negotiation and implementation of the Seattle Consent Decree.

[457] Miletich, S. (2007, June 20). Once Tough on Cops Once tough on cops, is chief now too easy? - Kerlikowske has said no-confidence vote didn't alter his approach. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[458] Chan, S. & Carter, M. (2007, June 19). Scathing report says chief interfered with cop probe - Civilian review board Kerlikowske calls findings 'absolutely false.' *Seattle Times*; Miletich, S. (2007, June 20) Once tough on cops, is chief now too easy? *Seattle Times* ["Kerlikowske has said no-confidence vote didn't alter his approach"]; Sullivan, J. (2007, June 26). Rights group, union enter police chief fray. *Seattle Times* ["Two civil-rights groups have lined up on opposite sides of the controversy swirling around Seattle police Chief Gil Kerlikowske for intervening in the internal police investigation of two officers"]; Carter, M. & Clarridge, C. (2007, June 26). Police chief exonerated officers in violent arrest. *Seattle Times* ["Oversight leader had urged punishment

police accountability systems to ensure they were working effectively.[459] Referred to as "a big-name panel," the panel included a former Governor of Washington and a former Mayor.[460] Once again, however, probably the most significant member of the panel was, in fact, attorney Jenny Durkan, who served on the 1999 Citizens Review Panel and would find herself appointed as the United States Attorney for the Western District of Washington in October, 2009.[461]

In another prescient comment on the creation of the panel, the police guild president repeated a comment that was heard multiple times over the course of the implementation of the Consent Decree when he said: "I have no problem with a review of the accountability system… This panel has some distinguished professionals and they

- Police official defends decision by Kerlikowske - A federal civil-rights lawsuit over the violent arrest of a young African-American man is drawing new attention to Seattle Police Chief Gil Kerlikowske and his record on police discipline"]; Clarridge, C. & Carter, M. (2007, June 27). Police chief: No regrets, but I'm open to change. *Seattle Times* ["Gil Kerlikowske says that while he stands by the controversial decisions he's made on Seattle police discipline, he's not opposed to re-examining how the department polices itself"]; Young, B. & Chan, S., (2007, June 29). Stronger police oversight sought. *Seattle Times* ["Kerlikowske probe - Licata envisions group that would work with accountability experts - Seattle City Council President Nick Licata announced plans Thursday to convene an advisory group on how to strengthen citizen oversight of the police department"]. Retrieved from https://www.seattletimes.com.

[459] Sam Pailca, the first person to serve as an OPA Director, who had recently resigned to take a position at Microsoft Corp., commented on the creation of the panel: "The practice of civilian oversight has matured significantly even in the past few years, and Seattle can draw from that experience to make its system stronger, … But no structural changes will substitute for strong leadership and vocal and visible support from elected and appointed officials, … I hope this panel's charge includes taking a hard look at the role of the administration that empaneled it" (Miletich, S. & Chan, S. (2007, June 30). Mayor forms big-name panel to scrutinize police oversight. *Seattle Times*). Pailca's comments were consistent with police reform literature that emphasize the need of a committed police and city leadership to ensure accountability and sustainability of police reform efforts.

[460] Panel members included former Gov. Gary Locke; former Seattle Mayor Norm Rice, the first and only African-American Mayor of Seattle; attorneys Jenny Durkan and Mike McKay (both members of the 1999 blue-ribbon commission that recommended the creation of the OPA); Bob Boruchowitz, the former director of a King County public-defense agency; Hubert Locke, former dean of the public-affairs school at the University of Washington; Terrence Carroll, a former King County Superior Court judge and Seattle police auditor who also served on the 1999 commission; M. Lorena Gonzales, a civil rights attorney who would go on to be elected in 2005 as a member of Seattle's City Council and its President in January 2020; Pramila Jayapal, the Director of an immigrant rights group who was later elected to the Washington Senate in 2015 and the U.S. House of Representatives in 2017; Judith Krebs, the General Council for a union representing health care workers; and Jennifer Shaw, a representative of the ACLU of Washington. (Seattle Times, 6/30, 2007; Police Accountability Review Panel Report, 2008, pp. 15-18; https://www.pramilaforcongress.com/home; http://www.seattle.gov/council/gonzalez/).

[461] See, http://www.jennydurkan.com/.

will know that any significant changes to the discipline system will have to be bargained with the union." (*Seattle Times*, 6/30/2007).[462]

The Panel issued its report on January 29, 2008. The report presented "29 specific recommendations for enhancing and strengthening the police accountability system in [] four areas": Accountability & Public Confidence, Independence, Professional Conduct and Transparency. (Police Accountability Review Panel, 2008, at p. ii). Overall, the panel recommended that the City expand the role of the OPA auditor, increase the independence and the authority of the OPA Director, expand the OPA Review Board, require the disclosure of OPA records "to the maximum extent allowed by law," adopt a policy of presumptive termination for sustained complaints involving dishonesty, and enhance the level of cooperation and coordination between the three OPA mechanisms (OPA Director, OPA Auditor and OPA Review Board) (Police Accountability Review Panel, 2008, at p. ii-iii).

The Panel report noted that,

> [o]ver the past several decades, the Seattle Police Department has improved its image and reputation in communities of color in our city. Periodic assessments of community attitudes toward the Department indicate this general development. At the same time, other indicators point to how much remains to be accomplished if a genuine climate of trust and cooperation is to exist between police officers and communities of color in Seattle. (Police Accountability Review Panel, 2008, at 3)

Overall, the Panel found that: 1) the overall structure of the police accountability system did not need to be changed; 2) the intended working relationship between the OPA partner agencies needed to be better defined; 3) "the independent civilian review of the current system [needed to] be strengthened;" and, 4) all panel recommendations, not requiring collective bargaining, needed to be implemented "without delay." (Police Accountability Review Panel, 2008, at 4).[463]

The panel did not, however, recommend any restrictions on the police chief's decision-making in disciplinary cases other than the implementation of a policy of

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[462] Miletich, S. & Chan, S. (2007, June 30). Mayor forms big-name panel to scrutinize police oversight. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[463] Amongst its many recommendations, the Panel recommended the creation of an SPD ethics officer; a recommendation made previously by the 1999 panel, but never put in place. (Police Accountability Review Panel Report, Recommendation No. 21, at p. 11).

presumptive termination for false statements (Recommendation No. 20) and a requirement that if the Chief changed a finding of the OPA director, the Chief should be required to explain his/her decision in writing (Recommendation No. 25).

Table 7.3. Seattle Police Chief Tenures and Respective Accountability-Related Incidents (since 1979) [Not including Interim Chiefs]

Chief of Police (Term of Office)	Events During Term of Office	References
Chief Frank Fitzsimons (1979-1994) (former Assistant Chief, NYPD)	Longest serving Chief in Seattle history; initiated community policing; criticized by rank & file for some police officer terminations; criticized by City Council for "stonewalling calls for change"	(*Seattle Times*, 7/16/1993)[464]
Chief Norm Stamper (1994-2000) (former San Diego Chief)	Theft by homicide detective not reported and investigated. Citizens Review Panel appointed by Mayor Schell. Resigned after taking criticism for police response to WTO riots in 1999.	June 14, 1999: ACLU calls for "the creation of an independent office for police accountability." (ACLU press release, 6/14/1999). Citizens Review Panel (August 19, 1999).
Chief Gil Kerlikowske (2000-2009) (former Police Commissioner – Buffalo NY; former Chief of Fort Pierce PD (Fla.) and Port St. Lucie PD (Fla.)	In June 2007, Mayor Greg Nickels appointed a citizen panel to perform a thorough and comprehensive review of Seattle's police accountability system after the Chief was accused of taking extraordinary measures to protect officers.	Police Accountability Review Panel (2008).
Chief John Diaz (2009-2013)	DOJ investigation initiated after August 2010 shooting of Native Woodcarver John T. Williams	DOJ Investigation Report (2011) & Consent Decree (2012)
Chief Kathleen O'Toole (2014-2017) (Former Police Commissioner, Boston PD.)	Implementation of Consent Decree & Initial Compliance Recommendations from court-appointed Monitor; Passage of Police "Accountability Ordinance" on May 21, 2017.	Court finding of Initial Compliance on January 10, 2018.[465]

[464] Birkland, D. & Lilly, D. (1993, July 16). Police Chief says 15 years will be enough, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[465] U.S. v. Seattle, Document No. 439.

Chief of Police (Term of Office)	Events During Term of Office	References
Chief Carmen Best (2018-2020)	Court "out of compliance" finding due to arbitrator ruling and police union contract inconsistent with "Accountability Ordinance." Seattle Protest complaints	Joint motion (DOJ & Seattle) to terminate Consent Decree (May 7, 2020);[466] City Motion to withdraw termination request (June 4, 2020).[467]

7.1.3. The SPD's Road to Federal Intervention

According to the *Seattle Times* at the time of the release of the DOJ's Investigation Report into the Seattle Police Department,[468]

> The [DOJ] report echoed concerns that have been raised for years by Police Department auditors, a review board, blue-ribbon commissions and plaintiff's attorneys, among others, who have complained that officers escalate to the use of force too quickly, often relying on dangerous and damaging "impact weapons" such as batons and flashlights to subdue resistance. (*Seattle Times*, 12/16/11)[469]

Earlier, on September 3, 2011, the *Times* provided their own explanation for how the SPD found itself in the sights of the DOJ. The *Times* suggested that the "root of the problem" could be traced back to the 1999 "crime scene" scandal involving a homicide detective who stole money for the home of a deceased suspect without appropriate intervention by other officers or internal affairs. It was reported that the scandal "sparked efforts to bolster how the Police Department polices itself – efforts that have advanced in fits and starts." Chief Kerlikowske was seen to have "inherited the fallout from the scandal, forcing him to wrestle with disciplinary issues throughout his tenure." It was reported that the Office of Professional Accountability (OPA) had just been created when Kerlikowske was hired as chief in 2000 and he ended up being faced with a police-union-sponsored "no confidence" vote in 2002 after he publicly reprimanded an officer "for being rude to a group of young jaywalkers." An anonymous former city official told

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[466] U.S. v. Seattle, Document Nos. 612 & 615.

[467] U.S. v. Seattle, Document No. 621.

[468] Investigation of the Seattle Police Department (2011, December 16). U.S. Department of Justice. Retrieved from Investigation Documents (justice.gov).

[469] Carter, M. & Miletich, S. (December 16, 2011). Fed's report slams police, *Seattle Times*. Retrieved from https://www.seattletimes.com.

the *Times* that from that point on, Kerlikowske "got to the point where he would try and avoid conflict with the guild" and he reportedly "began reversing or softening the OPS's disciplinary recommendations at a noticeable rate." According to the *Times,* "for years, accusations of misconduct by Seattle police officers would be met with the same response, whether from then-Chief Gil Kerlikowske or the department's union leaders: Other cities have it worse." (*Seattle Times*, 9/3/2011).

The *Times* opined that "in retrospect, it was the Police Department's sense of self-satisfaction that blinded top commanders to festering issues." After interviewing "past and present officers and department officials, along with community and government leaders, some speaking on condition of anonymity," the *Times* presented what was referred to as "an inside view of how the failure of police officials to recognize problems effectively obscured breakdowns in training, supervision and community relations." In addition, the *Times* quoted Settle City Councilmember Tim Burgess, the then-chair of the council's public safety committee and a former SPD officer, as saying: "I think my general impression was that the department was resting on its laurels and had become disconnected, both from city elected leaders and … also from the community." Burgess also noted that SPD officers and command staff tended to have an "insular attitude of, 'We're the experts and we know everything we need to know.'" According to the *Times,* overall, Burgess believed that these attitudes had "played out, … in the department's lack of innovation and failure to keep up with crime-analysis technology, along with poor communication with the community and a 'circle-the-wagons mentality.'" (*Seattle Times*, 9/3/2011).

The *Times* also noted a recent opinion written by a Seattle federal judge who had "recently questioned the department's willingness to examine its training." U.S. District Judge Marsha Pechman wrote, after an off-duty officer was found by a jury to have violated the civil rights of the passenger of a vehicle that committed a traffic infraction, by holding him at gunpoint: "It is a sad day when the Seattle Police Department cannot stop to reflect upon the voices of citizen jurors who think that their conduct has overstepped the line, or contemplate a change when an officer's judgment is found wanting" (*Seattle Times*, 9/3/2011).

In addition, the *Times* reported on

> a corrosive distrust [that had] developed between rank-and-file officers and the command staff, marked by crippling battles over officer discipline. The result has been the emergence of an increasingly powerful police union that has aggressively defended its members and attacked its critics.

The result, according to an anonymous former department official was an "incredibility pervasive attitude of cynicism" throughout the SPD. It was noted that some officer had "rallied around two from their ranks charged with criminally assaulting citizens," while other officers mocked what they perceived to be unfair impositions of discipline. (*Seattle Times*, 9/3/2011).

Although it was reported that the police guild agreed to accept "virtually all" of the recommendations from the 2008 Police Accountability Review panel report in their upcoming 2008 contract with the City, it was only after the City offered "hefty pay raises." Even so, according to the *Times*, "the union has continued to be a dissonant voice, even after Kerlikowski left and Diaz became chief." Union President Rich O'Neill claimed that the DOJ complaint "grew out of complaints from a small number of groups. 'But that's the way it works, the squeaky wheel gets the grease.'" The union's newspaper, *The Guardian*, had reportedly "become a soapbox for officers to lash out at police and city leaders." And when articles published in the newsletter leaked out, the SPD as an organization tended to be perceived as a biased organization isolated from its own community.[470]

Chief Diaz, in an interview with the *Times*, however, refused to say that the DOJ investigation was warranted and blamed it on isolated incidents that "went viral." Still, he reported that significant changes were being made, to include, reverting to a previous system where officers would work on the same shifts as their Sergeants; "conducting neighborhood surveys, holding living-room conversations and using [the SPD] website to provide more information;" re-emphasizing the need for multiple officers to respond to urgent calls; continuing racial-sensitivity trainings; handing out "harsh discipline" and

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[470] Madrid, C. (2011, April 6). You Pay this Sergeant's Salary. *The Stranger*. ["The *Guardian* also regularly publishes inflammatory articles—joking about shooting African Americans and showing contempt for civilian oversight, for example—all written by Seattle officers … For example, last fall, Officer Steve Pomper wrote that city officials conducting racial and social justice training are 'the enemy' and 'the city is inflicting its socialist policies' on officers"]. Retrieved from https://www.thestranger.com/seattle/you-pay-this-sergeants-salary/Content?oid=7560566.

ordering criminal probes of officers, to include the forced resignation of the officer who shot and killed Native Woodcarver John T. Williams (*Seattle Times*, 9/3/2011).

The ACLU, however, in its call for a federal civil rights investigation of the SPD, laid out multiple cases of police abuse. Specifically, the ACLU noted the following incidents:

- June 11, 2009: "Daniel Macio Saunders, an African-American man, was released from jail due to a bureaucratic mistake. Mr. Saunders did not know that he should not have been released, and went to the Seattle Police evidence unit to pick up his belongings. A police video shows Mr. Saunders opening the door to the evidence room lobby to admit three uniformed Seattle police officers. Immediately upon entry, the officers tackled Mr. Saunders, kicked his face and, for several minutes, administered blows to various parts of his body with their batons. News articles describing the incident state that the officers inflicted blows to Saunders' body with their flashlights and fists and used a Taser in 'touch mode' several times on him…The Seattle Police Department's internal investigation found the officers to be exonerated and ruled their conduct was lawful." (ACLU Letter, 2010, at p. 1).
- April 17, 2010: "Seattle police officers stopped a Latino man they believed might be a suspect in a robbery south of Lake Union. They ordered the man to lie face down on the ground while they continued their investigation. The man complied. Video shows that while the man was lying prone on the sidewalk, an officer kicked him in the face and threatened to beat the 'Mexican piss' out of him. Another officer stomped on his legs as still more officers looked on. Shortly thereafter he was released from the scene" (ACLU Letter, 2010, at p. 2).
- April 24, 2010: "One of the same officers involved in the April 17, 2010 incident arrested a young man after a bar fight. The man was handcuffed and placed in the back of a patrol car where, he claims, the officer repeatedly choked him. Unfortunately, the in-car video that should have recorded the activity in the back of the car was not activated." (ACLU Letter, 2010, at 2).
- "June 14, 2010 and earlier jaywalking incidents. An SPD officer saw several young people jaywalking near Franklin High School. The officer confronted a 17-year-old African-American girl. Video of the incident shows that after she put her hands on him, the officer punched the girl in the face. Another incident in 2009

also started with a jaywalking stop and ended up with a lawsuit for excessive force after the teenager who was confronted by police suffered a broken nose and concussion. The incident was also captured on video" (ACLU Letter, 2010, at 2).[471]

- August 30, 2010: "A Seattle police officer shot and killed John T. Williams, a man who belonged to a First Nations Tribe. Williams was well known in the community as a wood carver. The in-car video camera from the officer's car shows Williams crossing the street in the crosswalk. He held a piece of wood and his 3-inch carving knife in his hand. The officer stopped his car, got out and yelled at Williams to drop the knife, but it is unclear if Williams heard the officer since he is partially deaf. So far, no evidence has come to light of any aggressive or threatening act by Williams toward the officer or anyone else, and there is physical evidence indicating Williams was not facing the officer when he was shot multiple times" (ACLU Letter, 2010, at 3).
- October 18, 2010: "A convenience store's surveillance camera shows an African-American teenager entering the store, putting his hands up and waiting…A non-uniformed Seattle police officer enters the store and kicks the youth hard in the groin area, causing him to fall to the ground. While the youth is on the ground, the plainclothes officer kicks him several more times more with blows apparently aimed at the youth's head. A uniformed officer enters, pushes the kicking officer to the side, and immediately handcuffs the unresisting youth" (ACLU Letter, 2010, at 3).

My research interviews disclosed a wide variety of perceptions regarding SPD patterns of misconduct. On one side of the spectrum was the typical SPD response: "No smoking gun turned up as a result of the DOJ investigation…like any other large department, we have a small fraction of employees who engage in misconduct."

On the other side, however, some research participants perceived SPD problems as systemic: one City official described the history of the SPD as "a cycle of crisis,

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[471] The ACLU also advised that "[f]our different police auditors for Seattle have noted that simple jaywalking stops too often result in physical confrontations between police and citizens, and they have called upon the SPD to take steps to reduce such incidents. Despite the auditor's calls since 2004 for improved training and supervision to de-escalate such situations, confrontations over jaywalking stops, particularly those involving persons of color, have not ceased" (ACLU Letter, 2010, at 2).

reform and then backsliding." According to one SPD command officer, the SPD's problem was not really one of individual officer misconduct, but rather was one of "hubris and a fundamental misunderstanding of search and seizure law … SPD officers treated suspects as having the burden of proving there was no probable cause to search – it was a fundamental breakdown in an understanding the law." Another high-ranking SPD officer argued that training issues were the crux of the problem and resulted in high profile mistakes, such as the shooting of John T. Williams.[472] Another SPD participant believed that the DOJ investigation should not have been unexpected: "it was the result of a series of events … Chief Kerlikowski was constantly reducing discipline and got out of town in the nick of time, leaving poor John Diaz with all the problems."

Other City leaders blamed an arbitration process which routinely overturned disciplinary decisions made by the Police Chief who was subsequently unable to impose serious discipline, to include termination, of an officer sustained for misconduct. And still others blamed SPD supervisors for failing to hold their officers to account.[473] All in all, however, the vast majority of participants, even if they disagreed with the DOJ's conclusion that 20% of all SPD uses-of-force involved Constitutional violations, did agree that problems in training, discipline and supervision were responsible for ongoing problems in how the SPD carried out its duties.

7.2. The DOJ Investigation & Negotiation of the Seattle Consent Decree

It took slightly less than nine months for the DOJ to first announce and complete a "full-scale" civil rights investigation of the Seattle Police Department. It subsequently took another eight months for the City and the DOJ to negotiate a satisfactory agreement. The investigation report's findings, and the DOJ's refusal to share its methodology, resulted in an emotional and negative response from the SPD and the

[472] There is continuing controversy within the SPD about the shooting of John T. Williams. Some SPD officers believe that the involved officer acted according to his training and that the shooting was "awful but lawful;" while others argued that the shooter should not only have been fired, but also criminally prosecuted.

[473] The issue of SPD appointing "Acting Sergeants" which was identified as problematic by the court-appointed Monitor in his first semi-annual report (at p. 16) was also an issue of concern identified by research participants: "Today the officer is a supervisor, tomorrow he or she is on the street, there was no incentive to hold their people accountable."

Mayor's Office and a rocky start to the implementation process overall. According to survey participants, it took a full two years before the implementation process could be called, in any way, successful.

7.2.1. The DOJ Investigation & Its Announcement

December 3, 2010	ACLU Letter requesting federal investigation[474]	Taylor, K. & 35 other signatories.
March 31, 2011	DOJ Announcement of "full-scale" civil-rights investigation of the SPD.[475]	USDOJ Civil Rights Division, USAO, Western District of Washington
November 23, 2011	DOJ Technical Assistance Letter regarding officer "Garrity" Protections[476]	J. Smith, Chief, Special Litigation Section DOJ, J. Durkan, U.S. Attorney, Western District WA
December 16, 2011	DOJ Report: "Investigation of the Seattle Police Department"[477]	USDOJ Civil Rights Division; USAO, Western District of Washington

On December 3, 2010, the American Civil Liberties Union (ACLU) of Washington, taking note of a progressive Democratic administration in Washington D.C., together with 34 other Seattle community organizations, made a formal request for the DOJ to conduct a "pattern or practice" investigation into the Seattle Police Department.[478] The

[474] Retrieved from https://www.aclu-wa.org/pages/re-request-investigate-pattern-or-practice-misconduct-seattle-police-department.

[475] Retrieved from https://www.justice.gov/opa/pr/justice-department-opens-investigation-seattle-police-department.

[476] Retrieved from https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/seattlepd_TA_11-23-11.pdf.

[477] Retrieved from https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf.

[478] The signatories represented the following Seattle-based civil rights organizations: ACLU of Washington, Asian Bar Association of Washington, A. Philip Randolf Institute, Central Area Motivation Program, Asian Counseling and Referral Service, Council on American-Islamic Relations of Washington State, Chinese Information and Service Center, El Centro de la Raza, Community Christian Leaders Association, Seattle Immigrant and Refugee Advisory Board, El Comité Pro Reforma Migratoria y Justia Social, King County Coalition Against Domestic Violence, International District Housing Alliance, "A Legacy of Leadership, Equality, and Organizing," Center for Law and Equality, Loren Miller Bar Association, Latina/o Bar Association of Washington, Middle Eastern Legal Association of Washington, Lutheran Public Policy Office, Mother's for Police Accountability, Minority Executive Directors Coalition, Pacific-American Women's Association - Seattle, NAACP of Seattle King County, Northwest Indian Bar Association, Northwest Immigrant Rights Project, "People advocating Involvement in Democracy," OneAmerica, Qne Law, Puget Sound Sage, Seattle Human Services Coalition,

letter complained about "a series of incidents involving Seattle police officers inflicting [unnecessary and excessive] physical violence on city residents," and provided specific details relating to six separate SPD use-of-force incidents "of concern" that took place between June 2009 and June 2010. In particular, however, the August 2010 shooting of Native woodcarver John T. Williams has been identified as having "galvanized the community request for [a DOJ investigation]" (*Seattle Times*, 6/30/2020).[479]

As of the time of the ACLU letter, Seattle civil rights organizations had reason to believe that the Special Litigation Section of the U.S. Department of Justice's Civil Rights Division was back in the business of pursuing police reform through the use of §14141. Prior to the election of President Barack Obama (who took office in January 2009), the last settlement agreement that had been reached pursuant to §14141 was a February 2004 Memorandum of Agreement with the City of Cleveland, which was terminated by the Bush administration by March 2005 (USDOJ, 2017b, p. 45).

However, as a result of the change in Presidential administrations and the appointment of Attorney General Eric Holder (sworn in on February 3, 2009),[480] the Civil Rights Division (CRD) received renewed attention with AG Holder referring to the CRD as "the crown jewel of the Justice Department," and announcing that the CRD was "on its way to regaining it's luster."[481]

By the time of that announcement, the Special Litigation Section (SLS), in charge of managing law enforcement "pattern or practice" litigation, was already engaging in activities unlike what had been seen in the prior Presidential administration. In March 2009, shortly after the swearing in of AG Holder, the Department of Justice had already entered into a consent decree with the Virgin Islands Police Department and announced an investigation into the Maricopa County Sheriff's Office (Arizona). In September 2009, the DOJ announced investigations into the East Haven Police Department (Connecticut)

"Real Change," South Asian Bar Association of Washington, Seattle/King County Coalition on Homelessness, United Indians of All Tribes, and Trusted Advocates Association.

[479] Diaz, M. (June 30, 2020). Op. Ed., Seattle police have made gains in recent years, but work remains. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[480] https://www.justice.gov/opa/speech/attorney-general-eric-h-holder-jr-upon-being-sworn-vice-president-joe-biden.

[481] https://www.justice.gov/opa/speech/attorney-general-eric-holder-washington-lawyers-committee-civil-rights-and-urban-affairs.

and the Suffolk County Police Department (New York). In May 2010, the DOJ announced an investigation into the New Orleans Police Department and in June 2010, the Alamance County Sheriff's Office (North Carolina). By August 2010, the USDOJ had entered into a formal Memorandum of Agreement resulting from a §14141 pattern or practice investigation relating to the Eaton Police Department (Pennsylvania), followed shortly thereafter by another Memorandum of Agreement with the Orange County Sheriff's Department (Florida) in September 2010 (DOJ, 2017b).

On March 31, 2011, the USDOJ, apparently acting on the ACLU letter, announced it would be conducting a formal investigation of the Seattle Police Department (SPD), "pursuant to the Violent Crime Control and Law Enforcement Act of 1994, the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964."[482] Upon announcing the DOJ investigation, then-U.S. Attorney Jenny Durkan was quoted as saying:

> Without trust, police officers can't do their jobs, … Officers rely on citizens to give them good information, to let them patrol their streets, … Trust goes to the heart of safety. They have to trust that they're welcome—that they can get out of their cars and be safe. It's the linchpin to good policing. (*The Stranger*, 4/6/2011)[483]

Assistant Attorney General Tom Perez identified the purpose behind the investigation: "Our goal with this investigation ... is simple: to ensure that the community has an effective, accountable police department that controls crimes, ensures respect for the Constitution and earns the trust of the public it is charged with protecting" (*Seattle Times*, 4/1/2011).[484]

According to research participants, the DOJ's announcement of a full investigation shocked Seattle City officials and the SPD command staff. Although the then-Chief of Police, John Diaz publicly stated that the SPD was expecting a DOJ investigation, and was widely quoted as welcoming the DOJ investigation as "a free

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[482] https://www.justice.gov/crt/investigation-documents.

[483] Madrid, C. (2011, April 6). Rich O'Neill Never Works a Policing Shift but Gets $109,703 a Year in Taxpayer Money to Run the Citizen-Antagonizing Police Union. *The Stranger*. Retrieved from https://www.thestranger.com/seattle/you-pay-this-sergeants-salary/Content?oid=7560566.

[484] Carter, M. (2011, April 1). Diaz: 'We have nothing to hide' Justice Dept. to probe use of force, look for police bias. *Seattle Times*. Retrieved from https://www.seattletimes.com.

audit" (*Seattle Times*, 9/3/2011),[485] privately, city officials were shocked and baffled by the DOJ's decision to target the City of Seattle. After all, it was widely believed within the Seattle city structure that with all of its faults, the SPD was basically a corruption free and progressive department.[486] In policing circles, the SPD was reportedly jokingly referred to as a "wimpy" organization, in large part due to its apparent commitment to community policing and its visible activist community who were believed to keep the police largely in check. In particular, Seattle was certainly not like New Orleans which was perceived to be ripe with corruption and with instances of police officers actually murdering civilians. Nor was Seattle anything like the Maricopa County Sheriff's Department which was widely revilled as racist. As such, the question was repeatedly raised: why wasn't the DOJ looking at the New York or Chicago Police Departments, both large controversial agencies with long histories of corruption and brutality, and instead setting their sights on a progressive and otherwise benign SPD?[487]

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[485] As reported by the *Seattle Times*: "Mayor Mike McGinn and Police Chief John Diaz welcomed the probe, but Diaz at first seemed not to grasp its significance: The day it was announced, he likened it to a 'free audit' — a comparison met with stony silence by the U.S. attorney in Seattle, Jenny Durkan" (9/3/2011).

[486] As indicated by SPD Sgt. Richard O'Neill, the then-President of the Seattle Police Officers' Guild when the SPD came under scrutiny as a result of questionable uses of force in 2007 and 2008: "We have a squeaky-clean Police Department compared to other big cities" (Seattle Times, 9/3/2011). At the time the DOJ investigation was announced, Sgt. O'Neill made a prediction he would later come to regret. According to the *Seattle Times*: "Sgt. Rich O'Neill, president of the Seattle Police Officers' Guild, said he's confident the investigation will not turn up any systemic problems with force or biased policing in the SPD. 'In a way, I'm looking forward to this,' O'Neill said. 'There's no doubt in my mind they will not uncover any systemic problems. They may come up with suggestions in ways we could do better in both areas. Great.'" (*Seattle Times*, 4/1/2011).

But then consider the statements of Seattle Councilmember Tim Burgess, a former SPD officer and the then-chair of the Council's Public Safety Commission to the *Seattle Times*: "I think my general impression was that the department was resting on its laurels and had become disconnected, both from city elected leaders and … also from the community." Burgess also comment about an "…insular [SPD] attitude of, 'We're the experts and we know everything we need to know' which has culminated in a 'circle-the-wagons mentality.'" These statements need to be compared to the statements of SPD Command staff: "[Chief John] Diaz and [SPD Deputy Chief] Kimerer, … disputed any notion that the department has been too complacent. "I can't remember a period of resting on laurels," Kimerer said. "It's [the SPD, has] been a very, very dynamic place" (*Seattle Times*, 9/3/2011).

[487] Similar questions were asked when the DOJ first began choosing departments for Section 14141 intervention. "As Gary Dufour, former City Manager of Steubenville, bluntly asked a reporter after the DOJ targeted his city with pattern or practice litigation, 'We're an awfully small community. You see all these problems that have come up at the police departments in Los Angeles and New York and New Orleans, and you've got to wonder, why us?'" (Rushin, 2015, p. 70). In Seattle, a member the McGinn administration had his/her own views on the question of "why Seattle?": "I believe Seattle was chosen by the DOJ due to political opportunism. The DOJ was looking for work; there were a few high-profile incidents that got the ball rolling and

Community organizations clearly disagreed with this perspective. They perceived the SPD as an organization impermeable to change with a continuing history of unnecessary force and tendencies towards racism. The shooting of John T. Williams galvanized the opinion that SPD officers were too quick to shoot and the "Mexican piss" comment made by an SPD officer, which other officers later defended in depositions as being an appropriate control technique,[488] further solidified community concerns regarding the Department. It was further noted that the SPD command staff was insular and although always claiming to be willing to talk, was fully entrenched in the status quo. This, even with a robust civilian oversight structure that had been created in order to satisfy prior concerns but which seemed to have no actual impact on the actions of street officers.[489]

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community advocates who knew what they were doing. You add onto that, a local U.S. Attorney who had her own political agenda, and you end up with a pretty good (if not perfect) storm. It didn't start with a dispassionate review of our uses of force to determine we had an outlier department – it just started with a viral video that fueled a narrative that the SPD was a bad police department."

In his dissertation evaluating the DOJ's use of Section 14141 over the years, Rushin reached the following conclusion: "For a police department to become subject to SRL under § 14141, numerous variables must opportunely align. The DOJ must have leadership that is supportive of federal intervention into local police departments, like that of the Clinton or Obama Administration. The misconduct of the targeted police department must stand out to the DOJ, above and beyond the nation's other 18,000 police departments. And the DOJ must have enough available resources to investigate the department" (Rushin, 2015, pp. 64-65). In the case of Seattle, the Obama administration was in office, a highly organized civil rights community got the attention of a local U.S. Attorney who had previously engaged in two formal attempts to reform the SPD and, according to study participants, the DOJ was looking to expand their use of Section 14141 into the Pacific Northwest. These factors, along with the DOJ's expectation that Seattle would be a "quick win," made the SPD a logical choice for intervention, even if that fact was not then-recognized by Seattle city or police officials. The decision to force a formal Consent Decree with a court-appointed monitor appears to have been driven by the local U.S. Attorney who had clearly been frustrated by the lack of perceived success in reforming the SPD based on two prior commission investigations.

Rushin has identified that process by which police departments are selected for 14141 intervention as a "sloppy and imprecise" "enforcement lottery" (Rushin, 2015, p. 64). As he previously and aptly noted, "From the perspective of local municipalities, getting selected for structural police reform today is akin to winning a terrible lottery" (Rushin, 2014, p. 3194; Rushin, 2017a).

[488] In April 2010, while conducting a robbery investigation, an SPD detective ordered a Hispanic detainee to remain still or he would "beat the (expletive) Mexican piss" out of him. The incident would ultimately result in a 30-day suspension issued against the officer and a promise from Chief Diaz that future violations of that sort would be cause for termination of employment (Carter, M. & Miletich, S. (2012, June 7), City hits back at DOJ report. *Seattle Times*. Retrieved from https://www.seattletimes.com).

[489] As stated by one community organizer: "We were not surprised DOJ took on Seattle. Because the U.S. Attorney, Jenny Durkan was on two blue ribbon panels and was a defense attorney

On the USDOJ side, the choice of Seattle made perfect sense. Part of the DOJ's tactics included trying to use their limited resources to influence police departments nationwide to change. And, in fact, the DOJ had never purported to enforce §14141 provisions against only the "worst departments;" even if that may have been perception that existed within the police community. With respect to the decision to investigate Seattle, the DOJ had not yet investigated a Pacific Northwest police department and Seattle was perceived to likely be a "quick win" and a City that "could do better."[490] With a progressive city government that was expected to cooperate with police reform efforts (even if they were externally mandated), an informed and active community and a relatively strong tax base, the DOJ fully expected they could successfully reform Seattle quickly and efficiently and even make the Seattle experience a crown jewel of the pattern or practice litigation model.

Prior to the completion of its investigation, on November 23, 2011, the DOJ issued a "technical assistance" letter after finding that the SPD was inappropriately applying the limited use immunity provisions of the seminal 1967 United States Supreme Court case, *Garrity v. New Jersey*, to all use of force and police shooting incidents.[491] The DOJ specifically found that

> SPD's inappropriate blanket invocation of Garrity may result in the exclusion of important evidence from an investigation. Moreover, SPD's failure to shield criminal investigators from Garrity materials could taint and render unusable other critical evidence. These practices compromise both SPD's ability to supervise officers' use of force, and its ability to fully and efficiently conduct criminal and administrative investigations. Put simply: This practice makes it too difficult to quickly exonerate officers who have followed policy and to properly discipline officers who have not. Further, these practices compromise the ability of prosecutors or other outside

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before, she felt personally offended that after all the work of the blue-ribbon panels stuff was still falling apart. She saw an opportunity to use her position to say: 'Come on in and we'll show you how this can be done.' She was tied into the legal and political community. She not only brought in DOJ but also knew how to work with community and the police."

Still, other community organizers were surprised when the DOJ investigation was announced: "In 2010, we did not know what to expect. We were concerned that other cities had more police killings; we were concerned they might not come up with supportive findings because our level of shootings did not come up to level of other cities."

[490] Seattle was also a good first target when compared to cities with entrenched issues of corruption (such as New York City and Chicago) or cities that had weak tax bases that might not be able to support expensive reform efforts (such as Cleveland and Baltimore).

[491] Retrieved from https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/seattlepd_TA_11-23-11.pdf

> agencies to adequately assess incidents and to hold officers accountable for their actions. The net effect of these consequences is diminished public trust in SPD. (DOJ Technical Assistance Letter, 11/23/2011)

On December 6, 2011, in response to the technical assistance letter, SPD Chief John Diaz announced

> a "complete revamp" of how the Police Department develop[ed] its 'professional standards and expectations' for officers: and announced the creation of a Force Investigation Team and a Force Review Board to supplement the work of a previously established Firearms Review Board. (*Seattle Times*, 12/7/2011)[492]

Shortly thereafter, on December 16, 2011, the *Seattle Times* reported on an upcoming announcement from the United States Department of Justice as to its findings after completing its investigation of the SPD. The page-one headline read: "Fed's report slams police – 'Astoundingly critical' of routine use of force, sources say." The sub-headline to the story read:

> A federal civil-rights investigation into the Seattle Police Department has found routine and widespread use of excessive force by officers, and city and police officials were told at a stormy Thursday night meeting that they must fix the problems or face a federal lawsuit, according to two sources. (*Seattle Times*, 12/16/2011)[493]

The *Seattle Times* article described a meeting, attended by Mayor Mike McGinn, Police Chief John Diaz and members of the SPD command staff as ending "in raised voices and bitter accusations by city and police officials, upset at the Justice Department's findings."[494] It was further reported that Assistant U.S. Attorney Thomas Perez, "who heads the Justice Department's Civil Rights Division, flew to Seattle from Phoenix on Thursday and will address a 9:30 a.m., Friday news conference alongside U.S Attorney Jenny Durkan."

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[492] Miletich, S. (2011, December 7). Chief orders sweeping changes – Amid federal probe, Mayor details overhaul of police policies, procedures. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[493] Carter, M. & Miletich, S. (2011, December 16). Feds' report slams police – 'Astoundingly critical' of routine use of force, sources say. *Seattle Times*.

[494] Participant interviews confirmed this description of the meeting between the DOJ and the City. In addition, participants described a follow-up meeting between U.S. Attorney Durkan and Mayor McGinn wherein Durkan reportedly threatened that any lack of cooperation on the part of the City would result in ongoing and embarrassing disclosures by the DOJ.

Subsequent to the above-mentioned meeting, the Department of Justice did, in fact, hold a press conference with extensive statements provided by Durkan and Perez.[495] When announcing the conclusion of the Seattle investigation, U.S. Attorney Durkan released the following statement:

> Today marks a critical milestone in our community and for the Seattle Police Department. Understanding how we got here is obviously very important, but how we move forward is even more important. The coming months could very well determine what the next generation of policing will look like in this city. We are at a rare juncture where the City can purposely determine the culture of the Seattle Police Department and its relationship with the community it serves. While there are some difficult and systemic issues to resolve, we are very optimistic for the future of SPD.
>
> Our optimism is based on three important factors.
>
> First, while our investigation has found serious constitutional deficiencies, … our investigation also confirmed that the great majority of SPD officers are honorable law enforcement professionals who risk their physical safety and well-being for the public good Day in and day out, the men and women of the Seattle Police Department put on the blue uniform and sacrifice much, to serve all of us. We understand that the dangers are real. Our region suffered through the horrible murders of five local police officers -- including the murder of an SPD officer -- and the attempted murder of his partner. Police must have the tools needed to protect the public and themselves. We are optimistic for the future of SPD because of the solid foundation its dedicated, honorable officers provide.
>
> Second, we also are optimistic because of the way the City and the Department have conducted themselves throughout this investigation. We were given access to every document and person requested, often on an expedited basis. We had frank and candid conversations throughout the investigation, and the Department at the highest levels showed a strong desire to address the deficiencies we uncovered. Indeed, as noted in our letter, the City has already taken steps to begin addressing some of the issues we have brought to their attention. We met with the Mayor, Chief Diaz and Department officials yesterday and today to brief them on our findings. They expressed their commitment to remedy the problems. We have every reason to believe we will move forward in a way that honors

[495] It should be noted that the announcement of results of the Seattle investigation were made only after the DOJ announced findings of pattern or practice violations by the New Orleans Police Department (March 17, 2011), the Puerto Rico Police Department (September 8, 2011) and only a day after findings were announced with respect to the Maricopa County Sheriff's Department (December 15, 2011). See, https://www.justice.gov/crt/special-litigation-section-case-summaries/download#nopd-summ. Study participants associated with Seattle City government and the SPD claimed shock that the SPD, which had been lauded nationally as a progressive police department, was being grouped together with police departments which had reputations for brutality, corruption and racist policing practices.

both to the men and women working in the Department and the residents of this great City they serve.

Finally, we are optimistic because it is clear that the people of Seattle want and will demand the highest standards for their police force. They also want safe neighborhoods, and want their police to succeed. I believe they will support the changes needed to fix the problems present in the Department. Through the course of our investigation we have heard from many people, coming from all walks of life in our city. They came forward because they care about this City, and because they care about the police department that serves them.

Before we launched our investigation at the end of March, we met with the Mayor and City leaders; Chief Diaz, command staff and SPD personnel; and dozens of community stakeholders. Despite the diversity of opinions we solicited, we heard broad agreement that SPD's success depends on providing officers strong and consistent leadership along the chain of command, effective training and policies, and vigilant oversight. Those early insights were borne out by our investigation.

For the past eight months, our attorneys, investigators and experts have conducted extensive interviews with command staff and rank-and-file officers. We have reviewed thousands of pages of documents – including written policies and procedures, training materials, internal reports, and investigative files – and analyzed hundreds of hours of video footage. We also met with and interviewed hundreds of community members and advocates.

We have concluded the following. We found reasonable cause to believe that SPD engages in a pattern or practice of using unnecessary or excessive force, in violation of the United States Constitution and federal laws. This finding includes violations committed by officers through their actions while policing and failures by supervisors responsible for reviewing their actions. There are significant deficiencies in oversight, policies and training with regard to when and how to (1) use force, (2) report uses of force, and (3) use many impact weapons. Based on a randomized, stratified, and statistically valid sample of SPD's use of force reports:

• We found that when officers used force, it was done in an unconstitutional manner nearly 20% of the time.

•We found that officers too quickly resort to impact weapons such as their batons and flashlights. When SPD officers use batons, 57% of the time it is either unnecessary or excessive.

• We also found that SPD officers often use unnecessary or excessive force when they apply force in tandem against a single person.

• We found that SPD officers often escalate minor situations and resort to using unnecessary or excessive force when making arrests for minor offense. This was particularly troubling in SPD's encounters with individuals

with mental illness or those under the influence of alcohol or drugs, which is a population, according to SPD's own estimates, that account for 70% of their use of force encounters.

When we looked at the critical issue of oversight, we found that supervisors regularly fail to hold officers accountable for excessive force. Equally troubling is that there is virtually no review of supervisory findings up the chain of command. Of the approximately 1,230 use of force reports we reviewed, only five were referred for "further review" at any level within SPD, and we did not find a single case in which a first-line supervisor was held accountable for the inadequate investigation or review of a use of force incident.

We also found that the system designed to respond to civilian complaints against SPD officers – the Office of Professional Accountability – is in need of repair, and the internal system designed to detect officer performance issues – the Early Intervention System – is broken. These systems fail to provide adequate oversight to prevent a pattern or practice of excessive force. To its credit, SPD has been open to our ongoing discussions about these topics and is in the process of revamping its review of officer uses of force and OPA's classification and findings systems.

In addition to these formal findings, our investigation uncovered other deficiencies of serious concern. In particular, our investigation revealed that some SPD policies and practices, particularly those related to pedestrian encounters, could result in unlawful discriminatory policing against racial and ethnic minorities. There is little doubt that some community members believe that SPD engages in discriminatory policing. And this perception is rooted in a number of factors, including negative street encounters, well-publicized videos of force being used against people of color, incidents of overt discrimination, and concerns that the pattern of excessive force disproportionately affects minorities.

We are particularly concerned that SPD officers lack a fundamental understanding of the differences between casual, social contact with members of the community and investigative detentions, known as "*Terry*" stops. SPD does not have sufficient policies in place that address pedestrian stops or possible bias policing. For example, there are no policies in place that track incidents in which young people of color are randomly stopped on the street and made to justify their presence in a given neighborhood. Nor are there any methods of tracking and disciplining officers who engage in discriminatory policing. These practices undermine SPD's ability to build trust in our community. The City and SPD need to thoroughly examine the issues raised, address the policies, procedures, and training that contribute to the problem, and conduct more sustained and effective community engagement.

…, let me close by saying that our investigation was not prompted by any one particular incident. It was not an attempt to focus on or resolved the facts of any high-profile event. Rather, our charge was to examine the

> structural and systemic deficiencies that have can result in widespread problems relating to uses of force and discriminatory policing.
>
> Throughout this investigation we have been mindful of the realities police officers face and the admirable service the great majority of them provide. We are very cognizant that it is tough job, and we are fortunate that we have so many officers who are doing it well. It is wrong to allow their work to be undermined. We owe it to both the community and the police that we make sure the deficiencies are corrected.
>
> We are also aware of – and sensitive to – the very real and raw feelings some residents of Seattle, particularly members of our diverse communities, have towards the Seattle Police Department. Whether these feelings are the result of are incidents that make the news or encounters that are part of your daily reality, we know that there is work to be done. I am hopeful this too can change.
>
> We appreciate the courage of those in our community who came forward to contribute to this investigation and the commitment we have received from our city's leadership and the SPD to create real and lasting change.[496]

The statement made by U.S. Attorney Durkan was particularly significant given her involvement in prior efforts to reform the accountability mechanisms in the SPD as a member of the two separate task forces which previously made recommendations for reform in 1999 and 2008.

U.S. Attorney Durkan's statement was followed by a statement made by Tom Perez, the Assistant Attorney General responsible for the Civil Rights Division of the US Department of Justice in Washington D.C. The USDOJ released the following statement from AAG Perez:

> When we began our investigation of the Seattle Police Department, we had a simple mission – to ensure that Seattle has a police force that reduces crime, respects the Constitution, and earns the confidence of the public it is charged with protecting. These three goals are the guidepost for all of our police reform efforts.
>
> As U.S. Attorney Durkan has noted, our investigation has been independent, exhaustive, and inclusive. Our attorneys, investigators and experts conducted extensive interviews with command staff and rank-and-file officers; participated in ride-alongs with officers; and reviewed

[496] Retrieved from http://www.seattle.gov/Documents/Departments/Council/Members/Harrell/DOJ/2012-01j_durkan_doj_newsconf.pdf.

thousands of pages of documents. We also met with and interviewed hundreds of community members and attended local advocacy meetings.

Today, we met with Mayor McGinn and Chief Diaz to brief them on the findings of our investigation. We had a very constructive and candid dialogue. From the beginning of our investigation, we have been grateful to have their full cooperation and support. Throughout the investigative process, we provided real time feedback to SPD. For instance, on November 23, we outlined our concerns regarding SPD's application of the *Garrity* rule and how it should be applied in a way that protects officers against self-incrimination while allowing full investigations of misconduct.

Reform takes time. It is not only about a change in policy, but a change in culture. New procedures must be put in place and sustained until they become part of the DNA of the department. Building community trust is a long term and ongoing process. It will require transparency and engagement in order to create a blueprint for sustainable reform.

As with all investigations conducted by the Civil Rights Division we not only determined wrongdoing, but diagnosed why. We looked for root causes of the violations of the constitution and federal law. We did this to fully understand where the solution lies because our goal is to fix the problem, not to affix the blame.

We peeled the onion to its core, and in doing so, we found concerns with policy, training, supervision, accountability and record keeping that contributed to our finding of a pattern or practice of excessive force and our areas of serious concern regarding biased policing.

In this investigation, two issues particularly jumped out at us:

First, we found that the systems of accountability are broken. Accountability is at the heart of constitutional policing. Systems of supervision and early problem identification permit the timely discovery of deficiencies in conduct, training, or policy. These systems allow a well-functioning department to continually learn, correct and improve. They can identify potential problems and fix them.

Those systems are broken in Seattle and need to be repaired. Front line supervisors need more hands-on contact with line offices - a problem we are grateful that the department is addressing. I often say that Sergeants are the most important people in a department after the chief.

However, there needs to be more data collected, issues with incomplete and deficient report writing need to be fixed and the time line for the OPA investigative process shortened. The complaint investigation process itself needs to be streamlined and simplified to provide more transparency to the public.

> We need to construct systems that will identify early the officers who need correction, assistance or training. It will also provide SPD management necessary tools to identify and fix broken policy or training.
>
> Second, the trust between the Seattle police department and the people of Seattle is broken and must be repaired. Public safety depends on the confidence of the people in the police department. Without this trust public safety is compromised. Constitutional and biased-free policing is a necessary part of any effort to restore that critical trust. Effective policing and constitutional policing go hand in hand.
>
> Now let me discuss where we go from here. We will take these findings, and we will continue our active engagement with Mayor McGinn, Chief Diaz and key stakeholders in the community, the police department, and others throughout Seattle in order to transform our findings into a comprehensive blueprint for sustainable reform. The reform must be part of a court order and must include the assistance of an independent monitor, and we will work with SPD to create these reforms. In the weeks ahead, we will continue to conduct extensive public outreach. We want to hear from the people of Seattle, answer questions, and get your recommendations and input on the path forward.
>
> The SPD has shown a deep commitment to the reform process. We will continue to give feedback to the department in real time.
>
> I would like to address two key sets of stakeholders who play a critical role in reforming this police department. To the men and women of SPD, we honor the difficult work that you do day in and day out and believe that addressing the core systemic problems of SPD will, in the end, make your job easier, safer, and more rewarding. To the people of Seattle, our goal is to help restore the Department into an organization in which the public has confidence and trusts. This is only possible with your continued engagement, and we look forward to continuing to hear your input. We remain optimistic about the changes that are to come. Failure is not an option, but sustainable reform is only possible with your continued engagement. Thank you and I look forward to working with the city of Seattle and the Police Department on making the necessary reforms in order to make the SPD a world class police department.[497]

Assistant Attorney General Perez made it clear in his statement that the only option for resolving the DOJ investigation that would be acceptable to the DOJ would be through the imposition of a consent decree and the appointment of an independent monitor and that other options were non-negotiable. This position was of continuing

[497] Retrieved from https://www.seattle.gov/Documents/Departments/Council/Members/Harrell/DOJ/2012-01t_perez_doj_newsconf.pdf.

concern to SPD command and city officials, however, as they could not understand why a less intrusive manner of reform would not be considered by the DOJ.[498]

7.2.2. The DOJ Investigation Report's findings

In its 41-page report, the DOJ made two specific findings:

First, the DOJ found that:

> SPD engages in a pattern or practice of using unnecessary or excessive force, in violation of the Fourth Amendment to the United States Constitution and Section 14141. Deficiencies in SPD's training, policies, and oversight with regard to the use of force contribute to the constitutional violations. Officers lack adequate training or policies on when and how to report force and when and how to use many impact weapons (such as batons and flashlights). We also find that, starting from the top, SPD supervisors often fail to meet their responsibility to provide oversight of the use of force by individual officers. Command staff does not always provide supervisors with clear direction or expectations of how to supervise the use of force. (DOJ Investigation Letter, 2011, p. 3)

Second, the DOJ concluded that, even though they "[did] not make a finding that the SPD had engaged in a pattern or practice of discriminatory policing, [] our investigation raises serious concerns on this issue…" The DOJ found that:

> Some SPD policies and practices, particularly those related to pedestrian encounters, could result in unlawful policing. Moreover, many community members believe that SPD engages in discriminatory policing. This perception is rooted in a number of factors, including negative street encounters, recent well-publicized videos of force being used against people of color, incidents of overt discrimination, and concerns that the pattern of excessive force disproportionately affects minorities. This perception can significantly undermine the trust necessary for SPD to conduct effective policing in minority communities. The City and SPD need to thoroughly examine the issues raised, address the policies, procedures, and training that contribute to the problem, and conduct more sustained

[498] Seattle officials did appear to misperceive how they were being treated, when compared to other cities, however, As noted by one study participant who was familiar with the history of DOJ pattern or practice litigation: "People think of consent decrees as a single unit, that's the hammer, but if you look at consent decrees, they are vastly different from one another – lumping them together is a non-nuanced way of looking at them. Seattle's Settlement Agreement is significantly narrower than other cities– [the DOJ] did not go whole hog on Seattle; New Orleans and Seattle were not alike and the Baltimore Consent Decree is 3 to 4 time longer and covers many different areas."

> and effective community engagement. (DOJ Investigation Letter, 2011, p. 3)

Perhaps most significantly, the DOJ report concluded that fully one of every five instances of force by Seattle officers violated the Constitution's protections against illegal search and seizure (DOJ Investigation Letter, 2011, pp. 4, 8). As previously noted, this 20% figure was highlighted over and over again by study participants associated with the City and SPD as an outrageous finding, unsupported by any accurate data and as being a significant impediment to the implementation of the Consent Decree at its initial stages.

In addition, as reported by the *Seattle Times*,

> the [DOJ] report echoed concerns that have been raised for years by Police Department auditors, a review board, blue-ribbon commissions and plaintiff's attorneys, among others, who have complained that officers escalate to the use of force too quickly, often relying on dangerous and damaging 'impact weapons' such as batons and flashlights to subdue resistance. The Justice Department report noted that many victims of these encounters are people with mental illness or under the influence of drugs and alcohol. (*Seattle Times*, 12/17/2011)[499]

The DOJ investigation report, described an extensive effort to collect data relating to its inquiry. Specifically, the report stated that DOJ investigators

> … requested, received, and reviewed from the City and SPD hundreds of thousands of pages of documents, including SPD's written policies and procedures; its training materials; its internal use of force reports; SPD and OPA's public reports; OPA's complaints and investigative files; and data generated from SPD and OPA databases. The data included several hundred hours of video footage and raw computerized data, both of which we were permitted to select and retrieve. We additionally obtained thousands of pages of documents from the public record and the community. We also conducted hundreds of interviews and meetings with SPD officers, supervisors, and command staff, as well as Seattle City officials, local community advocates and attorneys, and members of the Seattle community at large. Additionally, in May and September 2011, we and our police practices experts conducted two on-site tours of SPD, meeting with SPD command staff and a range of personnel over several days. We also conducted six full days of interviews with community

[499] Carter, M., Sullivan, J. & Miletich, S. (2011, December 17). Feds vs. SPD - City faces possibility of court intervention DOJ finds 'systemic use of force' by Seattle police Chief Diaz defiant: Show us the evidence*. Seattle Times*. Retrieved from https://www.seattletimes.com.

> members, and attended separate community meetings with local advocates and community members. (DOJ Investigation Letter, 2011, p. 8)

Additional and specific findings by the DOJ relating to excessive force included that SPD officers were "using excessive force in response to minor offenses" (DOJ Investigation Report, 2011, p. 9), SPD officers were using excessive force "when they apply force in tandem against a single individual" (DOJ Investigation Letter, 2011, p. 12), SPD officers were "too quickly and unreasonably resorting to the use of impact weapons," (DOJ Investigation Letter, p. 13), SPD officers were using "excessive force against individuals who [were] already under physical control," (DOJ Investigation Letter, 2011, at 13), and SPD officers used excessive force "against individuals who 'talk back,'" (DOJ Investigation Letter, 2011, p. 14).

The DOJ found the following "deficiencies that contributed to the pattern or practice of excessive force:" officers systemically failing to report force when used; the Department's "failure to develop adequate policies and training" relating to less-lethal weapons such as OC spray, batons and Electronic Control Weapons; and, inadequate supervision of uses of force. (DOJ Investigation Letter, 2011, pp. 15-17).

Inadequate supervision of use of force included an "inadequate first-line supervisory review of use of force incidents," "insufficient on-scene supervisory investigation[s]," the "insufficient analysis of use of force incidents," "inadequate training on how to investigate" uses of force, and "inadequate oversight and review of police uses of force" (DOJ investigation, 2011, pp. 17-19). In addition to the shortcomings in training relating to use of force weapons, use of force reporting, and sergeant training, the DOJ also found "deficiencies in training relating to verbal de-escalation techniques" (DOJ Investigation Letter, 2011, p. 23).

In addition, the DOJ found that the SPD's "Early Intervention System [EIS]…designed to identify employees who may be experiencing 'symptoms of job stress, training deficiencies and/or personal problems that may affect job performance' [was] broken." (DOJ Investigation Letter, 2011, p. 22) The DOJ elaborated on what was wrong with the EIS, suggesting that EIS thresholds were "far too high," and "interventions on officers' behaviour [were] far too late," and supervisor EIS reviews were "superficial at best." In addition, SPD was found to have failed to track officers over time to determine the success or failure of EIS interventions, officer participation in the EIS

process was not mandatory, and SPD performance evaluations consistently failed to reference EIS interventions (DOJ Investigation Letter, 2011, pp. 22-23).

The DOJ also concluded that the Department's Office of Professional Accountability was "not providing the necessary accountability." The DOJ specifically found that the "OPA [was] not provid[ing] the intended backstop for the failures of the direct supervisory review process." The DOJ expressed "concern" relating to the quality of precinct level investigations and the OPA's classification and findings systems (DOJ Investigation Letter, 2011, p. 24).

In addition, the DOJ investigation identified "serious concerns" about SPD practices vis-à-vis pedestrian stops:

> SPD's policy and practices blur the line between a social contact or casual encounter, and a temporary investigatory detention pursuant to *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Consequently, officers lack adequate guidance as to when someone must heed an "order" to stop or stay. (DOJ Investigation Letter, 2011, p. 26)

With respect to allegations of discriminatory policing, the DOJ noted numerous "reported incidents in which racial epithets were used or minorities were singled out for harsh treatment." The DOJ highlighted that in one high-profile incident, the actions of the SPD detective who threatened to "best the Mexican piss" out of a Hispanic detainee was not called out or reported by any of the other SPD officers who were present, including supervisors. The DOJ concluded that the SPD culture appeared to be tolerant of "this kind of abuse" (DOJ Investigation Letter, 2011, p. 27). The DOJ found that inadequate biased policing and pedestrian stop policies, inadequate data collection and inadequate supervision were all potentially contributing factors in the creation and continuation of a culture that tolerated unconstitutional policing practices (DOJ Investigation Letter, 2011, pp. 29-31). The DOJ also specifically identified that the SPD provided "insufficient training" with respect to unbiased policing, social contacts, *Terry* stops and communication skills. (DOJ Investigation Letter, 2011, p. 35).

Although not extensively reported in the media, the DOJ did acknowledge progress made by the SPD, purportedly as the result of technical assistance provided by the DOJ over the course of the investigation:

The report acknowledged the following progress having been made. These actions by SPD included:

- SPD had "recently created a Force Review Committee to give the commander greater assistance in reviewing use of force reports, and identifying problematic use of force patterns and training deficiencies;"
- SPD had "recently developed a Professional Standards section, which will be responsible for conducting research on standards and best practices, internal audits and inspections, and managing strategic initiatives;"
- SPD had "directed additional resources to" Crisis Intervention Training;
- SPD had "recently implemented a 48-hour training on the use of force, and SPD policy and expectations;"
- SPD had "begun to clarify expectations and improve training for sergeants, including rolling out a new sergeant's training that all SPD sergeants and the top 20 officers on the Sergeants Promotion list will attend in 2011;"
- SPD had "committed to develop the LEED (Listen and Explain with Equity and Dignity) training, which will focus on respect, listening skills, and the use of verbal tactics as an alternative to the use of force;"
- SPD had "instituted a zero-tolerance policy for racially inflammatory language;"
- "A Working Group comprised of the OPA Director, OPA Auditor, and representatives of the OPA-[Review Board] has convened to simplify the classification and findings systems, to provide a clearer delineation of the new classification and findings categories, and to improve turnaround time to its target time of 120 days;"
- "OPA recently [had] suspended referring complaints for investigation to the chain of command until sergeants receive additional training on how to conduct such investigations;" and,
- SPD had "made renewed efforts in community outreach" (DOJ Investigation Letter, 2011, pp. 35-36).

"Additional remedies" that were needed were also identified, to include twelve recommendations made relating to the DOJ's finding of excessive force,[500] eleven

[500] The following recommendations were made relating to the finding of excessive force:

SPD should revise its Use of Force policy to clarify that officers must report any use of force above un-resisted handcuffing, including the active pointing of firearms. Even in cases of un-resisted handcuffing, force should be reported if the subject complains of injury or excessive force.

SPD should develop and implement a use of force policy that includes a specific force policy for each and every weapon available to SPD officers, including the following: OC spray, flashlights, ECW, batons, and the active pointing of a firearm. These policies should clearly define and describe when, how, and how much force is appropriate, and when such force will be considered deadly force. SPD should also consider providing intermediate weapons to more of its officers, but only following the development of policies and training.

SPD should develop and implement protocols with the CIT unit on how to handle interactions with individuals with mental health issues and individuals who appear to be under the influence of drugs and or alcohol. The protocols should include when CIT should be consulted, and how situations involving impaired subjects should be addressed when CIT cannot respond.

SPD should ensure that supervisors perform the following actions in response to any use of force incident: (a) ensure that a medical unit report to the scene of every use of force resulting in injury, actual or complained; (b) conduct a thorough analysis of the incident based on all obtainable physical evidence, adequately descriptive use of force reports, witness statements, and independent investigation; (c) resolve any discrepancies in use of force reports or witness accounts and explain and document all injuries; and (d) complete a summary analysis regarding the reasonableness, proportionality, and legality of the force used. If the supervisor cannot resolve any factual discrepancies, determine the source of any injury, or determine the lawfulness of a use of force, the supervisor should refer the matter immediately and directly to his/her supervisor and to OPA. Every level of supervision thereafter should be held accountable for the quality of the first-line supervisor's force investigation.

SPD should use multidisciplinary roll-out teams, including OPA, the Training Unit, and a prosecutor to investigate incidents involving serious uses of force. Serious uses of force can be defined either by the injury sustained by a subject, or as any use of deadly force or unjustified force, regardless of the severity of the injury. Trained investigators should roll-out to officer involved shootings and other serious incidents to make the determination about whether to consult a prosecutor.

Following SPD Use of Force Policy 6.240.XII.A.7, SPD should require officers to submit use of force statements before they go off-duty, including following officer-involved shootings. Exceptions may be made if an officer is physically or mentally incapacitated.

Supervisors should review and take appropriate disciplinary or non-disciplinary corrective action, when warranted, in situations in which he or she becomes aware of potential misconduct or criminal behavior by an officer.

Supervisors should conduct focused reviews of any officers involved in a disproportionately high number of use of force incidents for any training or discipline issues. When the supervisor becomes aware of potential misconduct or criminal behavior by an officer, the supervisor should take appropriate disciplinary or non-disciplinary corrective action

SPD should track the prosecutorial disposition of all arrests as one tool to identify possible trends in abuse of law enforcement discretion.

EIS reviews should be conducted by a higher-level supervisor, such as a captain. The supervisor should conduct a timely EIS review that identifies patterns in officer behavior and specific training deficiencies. Officers in the EIS program should have a monitoring supervisor designated to ensure that all training and other Department-initiated remedial steps are taken and documented, and that the officer's performance is closely monitored and evaluated. At the end of the monitoring period, the precinct captain should either certify that the officer has successfully completed the EIS program or initiate another plan for improvement.

EIS should be expanded to track supervisor and precinct activity. Participation in EIS must be mandatory.

The following changes to EIS thresholds should be made: (a) adjust EIS thresholds to identify at least 3-5% of the line officer population; (b) revise the aggregate indicator to include uses of force

(DP&P 3.070.II.I); (c) create single-event thresholds for events so critical that they require immediate department intervention; (d) implement rolling thresholds, such that after an officer who has received an intervention for use of force should not, for example, be permitted to engage in seven additional uses of force before again triggering EIS; and (e) include a threshold specifically related to biased policing complaints.

(DOJ Investigation Report, 2011, pp. 37-38).

recommendations made relating to the Office of Professional Accountability,[501] and eight recommendations relating to discriminatory policing.[502]

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[501] The following recommendations were made relating to the Office of Professional Accountability:

An independent expert should conduct a bi-yearly randomized, stratified audit of OPA intake.

Intake sergeants and lieutenants should receive formal orientation, training, and written protocols that conform to best national practices regarding (a) intake, (b) complaint classifications, (c) when an investigation is necessary, and (d) how to avoid conflicts of interest in investigations.

OPA should develop protocols with its officers, precincts, and any other outside agency that receive complaints, so that all police misconduct complaints are timely received by OPA for its review and investigation.

OPA or the City should conduct anonymous Integrity Checks. That is, OPA (or third-party auditor) should retain a qualified individual to file dummy complaints with OPA (and with the precinct or City) and report on how the complaint is directed and handled.

OPA should provide final approval of any action or inaction taken in Preliminary Investigative Review and Supervisory Referral matters, and the outcome should be reported back to the precinct.

SPD should expand upon existing investigation techniques and continue to train all of its investigators on: what factors to consider when evaluating complainant and witness credibility; examination and interrogation of accused officers and other witnesses; identifying misconduct, even if it is not specifically named in the complaint; and using the preponderance of the evidence standard as the appropriate burden of proof. An SPD officer's statement should not be given any preference over a civilian's statement, nor should SPD completely disregard a witness's statement merely because the witness has some connection to the complainant. OPA investigators should make efforts to resolve material inconsistencies between witness statements.

Supervisory Interventions should only be allowed once SPD has issued a definitive and true finding.

OPA should simplify its classifications, and have two findings, for purposes of reporting to the complainant ("Sustained" or "Not Sustained"), for each allegation against each officer. OPA may explain to the Complainant, named officer, and public what remedial steps will be taken in Sustained complaints (i.e., "Formal Discipline" or "Training") or why a complaint was Not Sustained, whether because the conduct was "Exonerated/Lawful," "Unfounded/Officer Not Involved," "Inconclusive," or "Administrative/Procedural" reasons.

SPD, in consultation with OPA and appropriate experts, should consider issuing a discipline matrix that guides the Director and the COP when making disciplinary decisions.

Each precinct should have an Integrity Control Officer ("ICO"). The ICO, who would report directly to the OPA Director, would review the quality of Line Investigation investigations and the disposition of PIRs and SRs (or its equivalents). The ICO would also review the completeness of use of force files.

SPD and OPA should ensure that all in car video recordings are made available to supervisors for review. (DOJ Investigation Report, 2011, pp. 38-39).

[502] The following recommendations were made relating to allegations of discriminatory policing:

Each precinct should regularly collect the demographic data for their area, including districts.

The Training Unit and Special Operations Bureau should update SPD databases and training materials to ensure that all officers report pedestrian stop-related activity to the proper database.

7.2.3. Seattle Research Participant Reactions to the DOJ's findings

Research participants affiliated with the City and the SPD complained of the DOJ investigation as "a political process." Most aggrieving, however, was the finding, as announced by U.S. Attorney Durkan, that 20% of the SPD's uses-of-force were unconstitutional in their application. As commented on by one city official: the 20% finding "was completely spurious and without evidence to support it – it was the conclusion of a retired, small city police chief – it was outrageous."[503] Another research participant, with extensive knowledge of the facts underlying the DOJ investigation, suggested that "the DOJ pulled their findings out of their ass."[504]

Even participants who were not affiliated with the City and who otherwise supported the DOJ investigation and the need for a consent decree believed the 20% finding to be "an exaggeration." As explained by one well-placed research participant:

SPD should conduct regular audits of SPD databases, including the CAD and Street Check Databases, to ensure compliance with the reporting requirements of each database.

SPD command staff, precinct commanders, and supervisors should conduct regular analysis of officer activity data produced by the Street Check and CAD databases.

SPD should revise the Social Contact, Terry Stop, & Arrest Policy to ensure that definitions of social contacts and Terry stops are in accordance with individuals' constitutional rights.

SPD should revise the Unbiased Policing Policy to outline what behavior(s) are impermissible and to identify supervisory responsibility in investigations of biased policing incidents.

SPD should increase training and understanding regarding (a) investigatory encounters and temporary investigatory detentions pursuant to Terry v. Ohio, 392 U.S. 1, 30 (1968), (b) pretextual encounters, (c) discriminatory policing investigations, and (d) communication skills and cultural competency.

Supervisors should, in conjunction with the SPD Training Unit and OPA, develop a roll call training curriculum that reviews issues related to discriminatory policing, including activity identified within the Department.

(DOJ Investigation Report, 2011, p. 40).

[503] Even so, as was common in this research study, there were dissenting opinions – even within the SPD. One SPD participant recalled that an internal SPD review did, in fact, find that 20% of the use of force cases that were reviewed "were fundamentally problematic."

[504] Numerous research participants referred to a confidential memorandum that had been prepared by one city lawyer (that I was unable to obtain), that specifically evaluated each case referenced in the DOJ investigation. The memo concluded that, in virtually every case, facts were either misstated or taken out of context and factors that explained or mitigated officer conduct were simply ignored. The memo was, apparently, widely distributed throughout the City and later provided to the DOJ, and was consistent with findings later reported by a Seattle University Professor (Hickman, M. & Atherley, L. (Dec. 2012). Police Use of Force in Seattle, January 2009 – March 2011. On file with author.

> I don't know how the DOJ got that number or how much analysis was given – I suspect it was taken at face value – throwing that number at the SPD without proving it really set them off – it set Seattle on edge and made them think they were getting a bum deal and that the fix was in…

Within the SPD, and even in the face of supportive and positive comments made by the DOJ and the U.S. Attorney, officers perceived the Seattle consent decree as "unnecessary" and "a slam on themselves and fellow officers." They believed the DOJ action to be the result of a weak police chief and a politically weak Mayor. SPD officers seemed particularly miffed at what they perceived to be "underhanded" DOJ litigation tactics in refusing to disclose their methodology and the bases for their conclusions outside of the published report, which SPD officers believed raised more questions than it answered.[505]

"I had an overwhelming feeling that life as we knew it had changed."
An SPD officer's emotional response while watching the DOJ press conference announcing the results of its pattern or practice investigation of the SPD.

From the DOJ perspective, the investigation was "extraordinarily efficient, with a quick turnaround period and an increased level of transparency by making an early announcement of the findings of the investigation." Further, although the 20% reference was "heavily debated" amongst and between the DOJ team, in the end, they expressed confidence that the number could be defended and believed that there was a simple misunderstanding on the part of the City as to how the use of force numbers were

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[505] Seattle's complaints over what was perceived as a lack of "procedural due process" from the DOJ were not new. In the early days of the implementation of Section 14141 the DOJ had an "early reputation for heavy-handedness and an unnecessarily adversarial approach to the investigation process." (Chanin, 2017a, p. 260, quoting former SPL Chief Shanetta Cutlar (2008), as acknowledging "We had an approach where we basically came to your department with, you know, the biggest truck we could find, asked for all of your documents, rolled away, went back to Washington, and came back maybe two or three years later with an agreement and said, 'Sign here, or we will sue you.'" Interestingly, Seattle's initial reaction to the DOJ findings was similar to that expressed by Pittsburgh officials when they were singled out for the first Section 14141 enforcement action in 1997: ""PBP officials, angry over being singled out as the first subject of Section 14141 enforcement and skeptical of the DOJ's ability to demonstrate a pattern or practice of PBP misconduct, initially considered fighting the allegations. After some reflection, however, the city decided against litigation and agreed to settlement terms ([Former Pittsburgh Police Chief] Robert McNeilly, Remarks given at the 2008 PERF Annual Meeting, Miami, FL, 2008)" (Chanin, 2012, p. 40).

stratified. In addition, the Seattle investigation and consent decree was one of the first to have the involved a local U.S. Attorney's Office. There was a strong belief amongst some participants that local U.S. Attorney involvement was extremely effective at informing the DOJ team not only about community issues and concerns, but also in preparing them for the opportunities and challenges ahead.

Perhaps the most challenging aspect to the response to the DOJ investigation was the "schism" that developed between the Mayor's Office and the SPD command staff on one side, and the City Attorney and the City Council on the other side. Seattle was, by all appearances, a "house divided." This schism was both a boom and a bust for the DOJ. On the one hand, the DOJ had insiders in the City who were willing to advocate in support of its position to create a wide ranging and comprehensive consent decree; on the other hand, the DOJ was faced with a City leadership that was dysfunctional and viturally impossible to manage.

The first indication of the true magnitude of the schism was in the City's initial response to the DOJ investigation. There was a cadre with SPD and the City Attorney's Office who were eager to make the DOJ prove their case with the expectation that the City could win in court. There were others within the City Attorney's Office, however, who, even though they did not have faith in the DOJ's methodology, believed that the SPD was in a weak position to defend itself, particularly given the SPD's ongoing lack of documentation and analysis of its officers' uses of force. Those City staffers believed that the resources that would be required to fight the DOJ (whose "brand" was positively recognized throughout the Seattle community) would be better spent on improving the deficiencies that everyone agreed existed within the SPD. Within the City leadership and SPD, there were "true believers" who considered the SPD to be one of the foremost police organizations in the country and who felt the DOJ investigation was nothing more than a political tool being used by the Obama Department of Justice and a politically motivated local U.S. Attorney to make themselves look good. This cadre believed that all that was needed was technical assistance and an opportunity to improve. And then there were the opposing agendas, common in Seattle, amongst and between Seattle politicians actually (or being perceived to be) jockeying for power and those having opposing or different political ideologies and personal experiences.

Mayor McGinn, having begun his term of Mayor January 1, 2010, was walking a political tight-rope. He had been elected, not based on any alliances with the traditional democratic party operatives, but instead as more of a community-based grass roots campaign effort. His campaign was directed towards transit issues, not policing, only to be (at least from his administration's perspective), thrust into an ongoing scandal about policing. He had decided to keep Chief Diaz (who was originally appointed as interim Chief by McGinn's predecessor) as Chief as he believed Diaz would work to incrementally reform the department from within. Only months before the ACLU letter (in August 2010) he had appointed Chief Diaz as the permanent Chief; so, by the time the DOJ investigation was completed, he trusted and felt a certain degree of loyalty to Diaz and wanted him to succeed. When faced by a Chief and an SPD command staff who chaffed at the DOJ's findings, McGinn was in the unenviable position of having to try to walk a fine line between the strongly held beliefs of 1) the community who elected him, 2) the Chief who he selected, 3) a command staff and police rank and file who could cause him immeasurable grief if he failed to defend them, and 4) a new City Attorney who was aligned with a majority of the City Council who were supportive of the DOJ. His primary strategy appeared to be to try to protect the Department and the City from being "steamrolled" by what he perceived to be an overly aggressive DOJ while, at the same time trying to avoid being perceived as an opponent of police reform.

Mayor McGinn ended up choosing to aggressively negotiate a settlement agreement with the DOJ on behalf of the City, only to be painted, in the end, as being generally opposed to the reform effort. This, in turn, resulted in his projecting a position which ultimately provoked resistance to the reform effort from many SPD command staff and rank and file officers.

Amongst the City Council, although there was substantial debate and discussion in private, when it came down to actual voting, "no one wanted to be seen as not recognizing there was a problem."
Seattle City Official

Interviews with then-City officials and SPD command staff, made it clear that they were surprised by the position of the DOJ that a consent decree would be required; in fact, they had expected that, in a worst-case scenario, they would only be required to

made changes as per one or more technical assistance letters.[506] When they were only given one evening's notice before the public was advised of the DOJ's findings and demands, they felt "steamrolled" by the DOJ and were completely unprepared to accept the DOJ's position as reasonable or appropriate. This element of surprise and the DOJ's reported refusal to share their data or methodology with the City absent formal litigation, initiated a poor start to the reform process that many members of the City were unable to get over for years to come.[507]

As such, even though many of the words uttered by U.S. Attorney Durkan and Assistant AG Perez praised SPD initiatives and invited collaboration between the DOJ and the SPD, those words fell on deaf ears when conjoined with the non-negotiable demand for a formal consent decree and an independent monitor – which the City rightfully anticipated would cost millions of dollars in monitoring fees over the course of consent decree implementation.[508]

7.2.4. The City's Public Reaction to the DOJ Investigation

A front-page story in the *Seattle Times* on December 17, 2011 highlighted the conflicts between the DOJ and the SPD at the time of the release of the DOJ report, with the latter part of the headline reading: "Seattle Police Chief defiant: Show us the

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[506] As noted by one SPD participant: "The DOJ investigation results were surprising - we were a progressive agency with training that was recognized nationwide. SPD was one of the first with a Domestic Violence unit; we had community advisory councils with LGBT, Asian and Pacific islanders – anything a police department was supposed to be doing, we were doing it with respect to maintaining relationships with diverse communities. SPD had a series of progressive chiefs: Stamper and Kerlikowske were both progressive. Kerlikowske was the head of the Major City Chiefs and worked closely with the USDOJ Community Oriented Policing Office – he was really well connected and progressive and held people accountable. In fact, SPD could be positively compared to the King County Sheriff – when DOJ investigators came out, they named several incidents that were in fact King County uses of force – but they had been reported as Seattle uses of force."

[507] Even at the time of the interviews conducted as part of this research (in the first Quarter of 2020), emotions still ran high amongst City and police participants.

[508] A survey of 13 police departments involved in consent decrees identified costs expected to surpass $600 million. According to LAPD budget records, the Consent Decree there "cost about $115 million in spending," although the City's Chief Legislative Analyst estimated actual costs at $300 million. "In many cases, the salaries and expenses of the federal monitors and their staffs, who fly in and out of the cities, are among the largest costs… In Puerto Rico, for example, its 2013 reform agreement costs about $1.5 million annually to monitor…Implementing the changes that the Justice Department wants is expected to take 10 years and cost $200 million" (*Frontline*, 11/13/2015).

evidence" (*Seattle Times*, 12/16/2011). According to the *Times* article: Diaz was quoted "hours after the findings were unveiled" as saying: "'I want to make this clear. The department is not broken." This was said in the face of Assistant Attorney General Perez' position that the department's practices to assure accountability and public trust were, in fact, "broken" and that the only way to ensure systemic change was through a consent decree and the appointment of an outside, independent monitor. In addition, Diaz sent an email to officers just before the report was made public wherein, he told his officers: "[w]e have many reasons to question the validity and soundness of the DOJ's conclusions. At this time, the city's simple request is to examine the data, methods and analyses used in support of these allegations and to reach these conclusions" (*Seattle Times*, 12/17/2011).

Mayor McGinn was quoted as saying that the DOJ investigation report raised "serious allegations," but according to the *Times* "stopped short of embracing its conclusions or Perez's solutions, but [] promised that the city would continue to cooperate with the Justice Department in coming months" (*Seattle Times*, 12/16/2011). Showing political conflicts to come, Seattle City Councilmember Tim Burgess, the chairman of the Council's Public Safety and Education Committee,[509] released a statement more supportive of the DOJ findings and critical of the SPD; he noted that the DOJ findings,

> confirm what many, including myself, have believed for some time — our Police Department can do better…Chief Diaz, the police command staff, every officer and civilian employee of the Seattle Police Department and the elected leaders of our city should embrace this informed, constructive criticism and work quickly to implement fundamental and sustainable reforms… Rebuilding the public's trust and confidence in the Police Department is an essential and urgent obligation. (*Seattle Times*, 12/17/2011)

The Seattle Police Officer's Guild (SPOG), the union representing SPD officers and Sergeants, joined Chief Diaz in challenging the DOJ's findings in a statement released by its then-President, Richard O'Neill:

[509] Councilmember Burgess would eventually serve as interim Mayor after the untimely resignation of Mayor Ed Murray in September 2017 (Jaywork, C. (2017, September 19). Tim Burgess Appointed 55th Mayor of Seattle. *Seattle Weekly*. Retrieved from Tim Burgess Appointed 55th Mayor of Seattle | Seattle Weekly).

> It is my hope that the DOJ will be as cooperative as we have been and allow the police department to examine and study the data that helped them come to their conclusions. Officers are often put in very difficult and dangerous situations and all they want are clear and specific ground rules to guide them when making use of force decisions… (*Seattle Times*, 12/17/2011)

Noting that officers were then working without a contract, the O'Neill was further quoted (making a prescient statement): "if the city intends to adopt any changes that affect the working conditions of the officers, then we look forward to discussing those at the bargaining table."[510]

Although participant interviews showed that members of the community were dismayed by the DOJ's failure to find that the SPD had engaged in a pattern or practice of biased-policing (in addition to the finding of a pattern or practice of excessive force), they did not publicly express those concerns at the time of the release of the DOJ report. Instead, as expressed by the executive director of El Centro de la Raza, Estela Ortega, the findings were a

> victory for all the people who have been victimized and violated over the years. They have been vindicated… This is what people have been saying all along, that police use excessive force, especially against people of color… [t]his gives our communities a lot of hope… (*Seattle Times*, 12/17/2011)

[510] In fact, 5 ½ years later, the City would be found "partially out-of-compliance" with the Consent Decree, largely as a result of a newly negotiated contract with the police union that failed to fully implement a Police Accountability Ordinance passed by the City Council on May 22, 2017 (See U.S. v. Seattle, Docket 562, pp. 5-6).

7.2.5. The Negotiation of the Settlement Agreement & the Memorandum of Understanding

July 27, 2012	Settlement Agreement & Memorandum of Understanding between City of Seattle and USDOJ[511]	Signed by Thomas Perez, Assistant AG, Civil Rights Division; Jenny Durkan, US Attorney, Western District of Washington; Mayor Michael McGinn & City Attorney Peter Holmes

The Settlement Agreement, commonly referred to in Seattle as "the Consent Decree" was not signed until more than seven months after the DOJ investigation was publicly released. The Settlement Agreement and an accompanying "Memorandum of Understanding" (MOU) was the subject of intense and arduous negotiations between the DOJ and the City which required the hiring of a professional mediator after the two sides reached impasses in several areas.[512]

At first, as reported in the *Seattle Times* on December 22, 2011 (only six days after the release of the DOJ investigation report), it appeared that City leadership would be on board with the DOJ's demands, although Mayor McGinn continued to question what actual reform would look like. In an interview with the *Seattle Times*, Mayor McGinn was quoted as saying:

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[511] U.S. v. Seattle, Document No. 3-1, filed July 27, 2012 (Settlement Agreement); Memorandum of Understanding retrieved from Microsoft Word - FINAL MOU - 7 27 12.doc (seattle.gov).

[512] City affiliated study participants often commented on the dangers and pitfalls inherent in negotiating with the DOJ; particularly noting the political dangers of appearing to be "against" police reform or police accountability in a city with an electorate as liberal as Seattle. In addition, the elected Seattle City Attorney was very publicly supportive of the DOJ position, thereby providing the DOJ with additional political cover in taking an aggressive position on the need for and content of the Consent Decree.

In addition, as noted by Miller, shortly after the first use of Section 14141 against the Pittsburgh and Steubenville Police Departments, "[i]n pursuing a strategy of negotiating consent decrees, the Department of Justice operates from a position of strength. No municipality could relish the prospect of a § 14141 trial. The publicity surrounding a trial pitting the municipality against the federal government over incidents of police misconduct would be enormous and largely injurious. The monetary costs of litigating a protracted § 14141 trial would be exorbitant. A judgment that the municipality violated § 14141 would not only subject the local police department to a structural injunction designed by a federal judge, but also could provide existing police misconduct suits with additional evidence and spark new individuals to sue for damages. As a result, municipalities will likely respond favorably to Justice Department overtures regarding the possibilities of settlement" (Miller, 1998, p. 187).

> We're committed to making reforms here, but we need to work through with DOJ (Department of Justice) about what those reforms look like…There's not a recommendation that we say, 'we can't do that,' or 'you're wrong there.' There are some we've done already; there's some we started; and there are some we're working toward. (*Seattle Times*, 12/22/2011)[513]

Mayor McGinn's support for the reform effort was reportedly in response to a letter from the ACLU "and 34 community groups, many representing minorities" which had pressed on him "to embrace the Justice Department's findings and include members of the community in working toward solutions" (*Seattle Times*, 12/22/2011). In a response letter to the ACLU, Mayor McGinn wrote: "We have heard from the public and now the federal government that more must be done…We agree. Let us be very clear: we are committed to reform" (*Seattle Times*, 12/22/2011). Although the Mayor still professed to want to see the methodology used by the DOJ to reach its conclusions, he said that the City was going to focus, instead, on the actual reforms needed to achieve an objective of "a highly professional police force that treats everyone with dignity and respect" (*Seattle Times*, 12/22/2011).

Community pressure on Mayor McGinn, who was reportedly elected "with minority group support," was intense. Community leaders expressed that they were "deeply troubled" by the Mayor and Chief's initial defensive reactions to the DOJ report. As expressed by the executive director of "OneAmerica:" "This is not the time for deliberative thinking. It's time for a clear statement that he [the Mayor] wants the force to be the best it can be to serve and protect the community" (*Seattle Times*, 12/22/2011).

By February 3, 2012, the DOJ's work in coming up with a first draft of a consent decree was reported as having included consultations with the Mayor, the City Attorney, City Council members and "dozens of citizens groups and community members…with an eye toward completing interviews and most information-gathering by the middle of February." Some members of community groups were already complaining about being left out of the negotiation process and expressed concerns that they were being "rushed

[513] Miletich, S., Martin, J. & Thompson, L. (2011, December 22). Mayor tells police chief: Do what the feds say. *Seattle Times*. Retrieved from https://www.seattletimes.com.

by the process." It was, however, still anticipated that a first draft of the settlement agreement would be completed by the end of February (*Seattle Times*, 2/3/2012).[514]

By the end of March, it was reported that a collaborative attempt to address the Consent Decree, between the Mayor, the City Council and the City Attorney had "unraveled." By this point, the *Seattle Times* was reporting that although Mayor McGinn supported police reform efforts, he and the SPD did not believe that court oversight was necessarily required to achieve those goals. That position, reportedly, set the Mayor and the police apart from the City Attorney and members of City Council, who were strongly and publicly advocating for collaboration and cooperation with the DOJ (*Seattle Times*, 3/29/2012).[515] According to research participant statements, within the Mayor's Office and the SPD, there was strong suspicion about the motives of those public officials advocating cooperation with the DOJ; they believed the publicly stated positions were politically motivated and had the potential of usurping local control of the police in a manner that was contrary to public policy, safety and the city's precarious financial status.

Within one day of members of the President of the City Council sending Mayor McGinn a letter expressing concern about the Mayor's apparent unwillingness to collaborate with City Council members on how to best work with the DOJ to achieve reform, Mayor McGinn announced what he referred to as the "20-20 plan" for police reform. The plan proposed a 20-step, 20-month plan that was described in the *Seattle Times* as "a sweeping package of 20 initiatives, aimed at addressing issues from officer hiring to training to biased policing, which they promised to implement over the next 20 months" (*Seattle Times*, 3/30/2012).[516] Although the Mayor was quoted as saying that the plan went "far beyond a response" to the DOJ investigation, the proposal eventually became lost amongst the Consent Decree negotiations and study participants noted, was never implemented. Instead, the *20-20 plan* was perceived as a last-ditch attempt to convince the DOJ to scale back its plan for externally forced reform through a Consent

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[514] Carter, M. (2012, February 3). Consent order for police reforms being rushed, groups complain. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[515] Carter, M. (2012, March 29). Seattle panel to fix police sharply split, sources say. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[516] Carter, M. (2012, March 30). Plan for a better police force, City's response to Feds' stinging report. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Decree and a court-appointed Monitor. In fact, shortly after the *20-20 plan* was announced and it was discussed with the DOJ, U.S. Attorney Durkan continued to make it clear that court ordered reform was non-negotiable (*Seattle Times*, 3/31/2012).[517]

On March 30, 2012, the DOJ provided the City with a confidential draft of a proposed consent decree. By May 10, 2012, however, the City and the DOJ had still not agreed on a final version and the DOJ had reportedly threatened to file a lawsuit in early June if an agreement was not reached. Even though almost five months had passed since the announcement of the DOJ's investigative findings, Mayor McGinn was still unwilling to signal to the public whether he would accept a court-appointed monitor, telling the *Seattle Times* "he would have to consider the 'effectiveness' of proposed changes, the cost to the city at a time of other pressing needs and the 'capacity' of the Police Department to absorb the changes while dealing with crime problems." Mayor McGinn also advised that some aspects of the reforms would have to be negotiated with the police unions (*Seattle Times*, 5/10/2012).

On May 16, 2012, an SPD internal response to the DOJ's proposed Consent Decree was reported as "deriding" the DOJ proposal as "unrealistic:"

> Plainly stated, the overwhelming majority of programs proposed by DOJ cannot be implemented in less than one to three years, if at all…These timelines can only be described as impossible and prompt serious questions about the analytical thoroughness and organizational experience of those who proposed them. (*Seattle Times*, 5/16/2012)[518]

Also, on May 16, 2012, the city wrote a response to the DOJ as part of the ongoing negotiations, disagreeing with the DOJ's excessive-force finding and asserting that "[t]he fact that DOJ has limited its analysis to a small subset of cases where force was used should prompt caution in drawing broad conclusions from the evidence." The City further argued that there was no evidence that the alleged instances of excessive force were "rooted in any municipal policy" or reflected a "deliberate indifference" to

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[517] Carter, M. (2012, March 31). Feds stick to hard line on SPD - They say court must oversee any plan to address police bias, use of force. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[518] Seattle Times staff (2012, May 16). Justice Dept. police plan derided as unrealistic. *Seattle Times*. Retrieved from https://www.seattletimes.com.

citizen rights (*Seattle Times*, 6/26/2012b).[519] Even so, the City represented that it was willing to enter into an agreement to avoid the costs and delay of protracted litigation and to ensure the SPD was operating at a high level. As per reports from the *Seattle Times*, the City's "31-page plan offered more modest changes than those proposed by the Justice Department, focusing on policies and procedures relating to use of force but conspicuously omitting measures to deal with biased policing…" In a separate cover letter, and hinting a spit on the City's side of the negotiations, the City Attorney, Pete Holmes indicated that "the City is not limiting its reforms to the elements of this counterproposal. The City will continue to explore and implement measures to ensure effective and constitutional policing" (*Seattle Times* (7/8/2012).[520]

The head of the Special Litigation Section of the DOJ responded that same day suggesting that there was "a very dramatic gap" between the parties. The DOJ expressed particular surprise that the City did not include in its proposal "any measures to respond to the issues of discriminatory policing, community engagement, or the City's accountability system." It was also noted that the city had made "this process unnecessarily contentious and personal," and was, thereby, increasing the risk of "unnecessary litigation" (*Seattle Times*, 7/8/2012).

On May 18, 2012, the City reportedly filed a motion opposing the introduction of the DOJ report in the high-profile civil case involving the "Mexican-piss" comment by an SPD detective.[521] In that filing, the City argued that the DOJ report was not reliable or trustworthy and was based on a "subjective review solely of use-of-force reports…" The City argued that the report failed to include "sample sizes" or "margins of error" and further noted that the DOJ had refused to provide underlying data or its analysis for review and that the City would be able to show "significant quantitative and methodological errors in the report even without the underlying data." While the filing was an attempt by the City to merely stop a civil plaintiff from using the DOJ investigation report against them, its content clearly highlighted the animosity against the

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[519] Miletich, S. (2012, June 26). Records show deep split over SPD fixes. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[520] Miletich, S. (2012, July 8). McGinn's legal adviser shows blunt voice in talks with DOJ - Letter reveals significant role Attorneys for mayor, city, must perform delicate balancing act. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[521] The plaintiff was the Latino suspect in the robbery investigation where an SPD officer threatened to "beat the (expletive) Mexican piss" out of him (*Seattle Times*, 6/7/2012).

DOJ report that continued to permeate through the City and the SPD and was consistent with the perceptions of this study's research participants who were affiliated with the City and the SPD.

On May 20, 2012, a Seattle University Professor wrote an op-ed piece which previewed his analysis of SPD uses of force used by the DOJ to make their findings. He found that the DOJ's analysis was faulty and urged the City to "move ahead" with its *20-20 plan* and "brush aside" the DOJ's threat of a lawsuit. In his opening paragraph he questioned:

> How can a city negotiate with opponents whose modus operandi consists of making dramatic allegations in the public arena, refusing to explain how they arrived at their conclusions, and then threatening to sue if the city fails to immediately roll over on its back and accept a consent decree and court-appointed monitor? (*Crosscut.com*, 5/20/2012)[522]

As a result of his review, Professor Hickman concluded that the DOJ had "deliberately chosen extreme cases and selectively summarized these cases in the least favorable light possible, omitting many details that may lead a reasonable person to a different conclusion." He further criticized the DOJ report for reflecting an "alternative reality" wherein it represented the SPD as a brutal department that often engaged in excessive force when, in fact, in "the vast majority of cases, [SPD officers] use the minimal amount of force necessary to control the suspect while preserving their own safety and that of the public" (*Crosscut.com*, 5/20/2012).

In a May 23, 2012, letter to the Seattle City Attorney, the Chief Attorney of the Special Litigation Section in Washington "accused the city of going 'backwards' on its agreement to accept a consent decree and a monitor," instead proposing that all issues identified in the DOJ investigation be covered in a more informal "memorandum of understanding" that would not include the appointment of an independent monitor. The

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[522] Hickman, M. (2012, May 20). City of Seattle should brush aside fed's police lawsuit threat. *Crosscut.com*. Retrieved from https://crosscut.com/2012/05/city-seattle-police-justice-lawsuit-force. Hickman's findings were also referred to by Chanin (2012): "Mathew Hickman, an academic and former statistician in the DOJ's COPS office, examined the raw data compiled during the DOJ's investigation of allegations that the Seattle Police Department had engaged in a pattern or practice of excessive force. In concluding that the DOJ's case was based on skewed data and bad science, Hickman (2012, para. 2) uncovered what he termed 'factual errors as well as errors of omission, gross misrepresentations, apparent statistical errors, and other substantive flaws'" (Chanin, 2017a, p. 262).

May 23 letter also suggested that the City needed to stop engaging in "piece meal bargaining" and instead work to "accomplish essential reforms" in "a comprehensive" manner (*Seattle Times*, 6/26/2012b).

By May 25, 2012, it was reported that the head of the Special Litigation Section of the DOJ in Washington had sent two "scathing" letters to the Seattle City Attorney (one on May 16 and the second on May 23),[523] accusing the City of providing an inadequate response to the DOJ's proposed consent decree and criticizing the City for leaking a draft consent decree which contained proposed changes sought by the DOJ. The second letter was quoted as instructing the City that they needed to "get serious" about the negotiation process.

In a May 31 letter to the DOJ, Mayor McGinn's legal counsel asserted that the City was, in fact, "open to discussing different forms of agreement, including a court-enforceable reform plan for use of force provisions and a memorandum of agreement for other provisions." As such, the City was proposing a consent decree for the excessive force finding, but a "memorandum of understanding" for the biased policing and community engagement recommendations. At the same time, the Mayor's legal counsel argued that the DOJ's proposed consent decree included "measures that appear impractical, ineffective and unaffordable…" (*Seattle Times*, 6/26/2012b) and criticized the DOJ for a reform proposal that addressed "many areas that were not subject to any rigorous analysis or findings" and included measures that were "cost-prohibitive, operationally impossible, untested, inconsistent with best practices, and harmful to police responsiveness and effectiveness." He further criticized DOJ lawyers for dismissing the city's budget concerns and for not making it clear why the city's 20-20 plan was not "measurable and enforceable." Ultimately, however, he also suggested mediation as an option to resolve the ongoing differences between the parties (*Seattle Times*, 7/8/2012).

Interestingly, while the City was on a strong legal footing for insisting that the Consent Decree not include provisions regarding biased policing practices for which there was no pattern or practice finding, that position proved to be politically risky for the

[523] In a July 8, 2012 article discussing the roles of the City Attorney versus the Mayor's legal counsel, the *Seattle Times* disclosed the dates of the two letters (*Seattle Times*, 7/8/2012). Retrieved from https://www.seattletimes.com.

McGinn administration in the face of strongly and widely held concerns in the Seattle community about biased policing practices.[524]

By June 12, 2012, the negotiation progress had broken down to the point that Mayor McGinn reportedly went to Washington D.C. to make his case against the Obama-led DOJ taking what was perceived as an aggressive approach against a progressive, democratic mayoral administration.[525] As reported by the *Seattle Times*:

> McGinn's meeting comes amid delicate talks between the city and Justice Department, which grew increasingly tense when Jonathan Smith, chief of the Special Litigation Section of the Justice Department's Civil Rights Division, wrote two sternly worded letters to the city in May questioning the city's willingness to negotiate in good faith. (*Seattle Times*, 6/22/2012)[526]

As of June 22, 2012, the *Seattle Times* was reporting that community groups were "denounce[ing] the pace of negotiations" and "demand[ing] a place at the negotiation table." Specifically, the "Minority Executive Directors Coalition" and its "Multi-Racial Task Force on Police Accountability" advised the Mayor that it would not support any effort by the SPD to implement its *20-20 plan* until there was "some mechanism to enforce changes, preferably a court-enforceable consent decree." On that same date, Mayor McGinn announced that the City and the DOJ had agreed to hire a mediator to attempt to resolve their differences (*Seattle Times*, 6/22/2012).[527]

Even as Mayor McGinn was, according to study participants, personally engaging in the mediation effort between the City and the DOJ (negotiations which were actually kept confidential in a city which "leaked information like a sieve") a very public confrontation between Mayor McGinn and City Attorney Holmes broke out when a "confidential" 6-page letter from the City Attorney to the Mayor was leaked to the media.

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[524] In fact, a 2013 public survey found that 53% of Seattleites believed that the SPD engaged in racial profiling "very or somewhat often" (See, 3rd Systemic Report, 2016, at Appendix C, p. 6).

[525] The date of the meeting between Assistant Attorney General Perez and Mayor McGinn was disclosed in an article subsequently published by the *Seattle Times*, 7/8/2012. Retrieved from https://www.seattletimes.com.

[526] Carter, M. & Miletich, S. (2012, June 22). Police talks go to mediation. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[527] According to one study participant with inside knowledge of the negotiations, one of the reasons for the agreement to mediate was that the City was being pressured to release information through Washington State "open records" requests; however, once the parties entered into mediation, state law supported protecting the confidentiality of the negotiation discussions.

Described in the media as “sharply worded,” the letter warned that the Mayor’s negotiating strategy was putting the city on the verge of a civil rights law suit that could have resulted in “dire consequences” (*Seattle Times*, 7/17/2012).

In the letter, Holmes asserted that “[a] troubling victim narrative has emerged at SPD, in which DOJ is cast as a 'bully' seeking to impose a 'shadow chief' at an unverified, speculative cost.” Holmes was critical of what he believed to be attempts to rebut the DOJ using “a narrow legal theory,” missing opportunities to shape an agreement, and the rejection of two proposed monitors to oversee court-ordered reform. He criticized the Department’s *20-20* reform plan saying the plan “lack[ed] both substance and accountability.” Holmes noted that if the mediation effort were not successful, the city would “face costly, burdensome, and risky litigation with the federal government.” Holmes suggested that members of City Council should rejoin the city’s efforts to reach an agreement – according to sources not identified by the *Seattle Times*, it was McGinn’s earlier refusal to comply with that request that led Holmes to decide to write the letter. Holmes further advised McGinn that the city had an “unprecedented opportunity” to work collaboratively with the DOJ to reform the SPD, “greatly benefiting the City for generations to come…But the clock is running out on this reform opportunity.” Holmes urged that the City make the selection of a monitor a top priority and that any rejection of a proposed Monitor[528] was “premature and a mistake.” He also commented on the withdrawal of another Monitor candidate, which he believed was the result of the City’s strategy of delay. Finally, Holmes opined that litigation would be “costly in dollars, morale, public safety and public relations.” Holmes also suggested that the City needed to include “measures designed to curb discriminatory policing and improve SPD’s accountability mechanism…in the Monitored consent decree.” Holmes pushed the Mayor to act as "Commander in Chief," adding, "Civilian control of SPD is the Seattle way. And times like these require strong leadership and control of SPD” (*Seattle Times*, 7/17/2012).

The letter was an example of the continuing political strife that existed within the City over the period of the negotiations and the challenges faced by a city with an

[528] And, in fact, the Monitor was ultimately chosen by City Council over Mayor McGinn’s objection (see, Chapter 2.2, Section III, infra).

elected City Attorney who saw his role as being more than just a mouthpiece for the Mayor's office.

By July 27, 2012, the DOJ and the City finally reached an agreement that they agreed would include both a Consent Decree and a Memorandum of Understanding. The damage had already been done, however. As a result of the fractions between the Mayor and the Police Department on one side and the City Council and the City Attorney on the other, many in SPD felt bulldozed by the DOJ and sandbagged by the City Council and the City Attorney. Mayor McGinn was irreparably harmed politically; although he received a certain amount of credit within the SPD for his initial response, he was widely criticized for giving into the DOJ at the end; and although he was credited by the community for advocating on behalf of the creation of a "Community Police Commission" and appointing powerful advocates to that body, he was widely perceived by voters as having been anti-reform when his administration stood up to the DOJ and refused to simply cooperate with their initial demands. Mayor McGinn was elected as an outsider, without support from the Democratic establishment in Seattle on a transit platform – in the end, however, the policing issues dominated his administration and he was ultimately defeated in November 2013 by a candidate who professed a position of collaboration and cooperation with the DOJ (*Seattle Times*, 10/13/2013).[529]

7.2.6. The Content of the Consent Decree and the Memorandum of Understanding

As described above, the Seattle consent decree ended up being the product of intense and aggressive negotiations between the DOJ and the City. According to city participants, it was only after Mayor McGinn went to Washington D.C., in an attempt to gain leverage over the DOJ's negotiating position, that the DOJ appeared willing to give enough ground for a mediator to be used to negotiate the final agreements.[530]

A unique result of these marathon negotiations was the creation of two separate documents: the "Settlement Agreement," often referred to as "the Consent Decree"

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[529] Seattle Times Editorial Board (2013, October 13). Ed Murray for Seattle Mayor. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[530] More than one survey participant decried the final product, believing it to be significantly watered down from the first version suggested by the DOJ.

which fell within the direct jurisdiction of a court-appointed monitor and a "Memorandum of Understanding" which fell outside the four corners of the court and monitor enforceable consent decree.[531] Interestingly, the Memorandum of Understanding (MOU) ended up creating one of the most visible, sometimes distracting, sometimes controversial and often-times effective community panels ever created as a result of a DOJ intervention: the Seattle Community Police Commission (CPC).[532] The MOU specifically noted the following areas for CPC review: 1) Community Engagement,[533] 2) Accountability,[534] 3) Investigatory Stops and Data Collection,[535] 4) Officer Assistance and

[531] The difference between a "Settlement Agreement" or a "Consent Decree" and a "Memorandum of Understanding" was described by in DOJ (2017b), a publication describing the DOJ's work Section 14141 activities from 1994 through 2017: "Where the Division has found evidence of a pattern or practice of police misconduct, resolution generally will take the form of an order enforced by a federal court. These orders are usually called "consent decrees," reflecting that the terms of the order were negotiated and agreed to by the United States and the law enforcement agency that was investigated…The Division may, in relatively rare cases, resolve a pattern-or-practice finding by a "memorandum of agreement" enforceable in federal court as a contract between the United States and the local jurisdiction, rather than as a consent decree actively overseen by a federal court. Such an outcome generally only occurs when the issues to be addressed are relatively narrow and there is significant evidence that the jurisdiction has the capacity to accomplish and sustain reform in a timely manner without ongoing court oversight. The Division has also on occasion entered into memoranda of agreement on specific issues when its findings do not rise to the level of a pattern or practice in violation of federal law, but there are problems that the federal government and local jurisdiction can work together to resolve" (pp. 20-21).

[532] Initially a creature of the MOU, the CPC eventually pursued the passage of an "Accountability Ordinance" (AO) which both expanded its membership and made it a permanent entity. In addition, the CPC attempted to join the litigation between the United States DOJ and the City of Seattle as a party. Although that attempt was ultimately rejected by the assigned Judge, the CPC was granted "amicus status," which allowed the panel to make formal arguments relating to issues of concern and which, more than once, appeared to either sway the Judge or support the Judge's ultimate conclusions (see, U.S. v. Seattle, Document #106, filed 11/26/2013).

[533] The CPC was expected to "engage in an assessment of the Department's community activities," and issue one or more reports regarding strategies for the SPD to employ "to increase community engagement and community confidence in SPD" (MOU, 2017, para. 12-14).

[534] The CPC was assigned to review Seattle's oversight structure and make recommendations (MOU, 2017, para. 15), assess ways to improve timeliness in the handling of complaints and investigations (MOU, 2017, para. 16), assist in the development of public outreach regarding complaint handling (MOU, 2017, para. 17), and advise the SPD on metrics to use to measure community satisfaction with the Office of Professional Accountability (MOU, 2017, para. 18).

[535] The CPC was required to give recommendations to the SPD on necessary changes to policy and training with respect to SPD data collection (MOU, 2017, para. 19).

Support,[536] and 5) Transparency and Public Reporting.[537] In addition, the MOU called for the formalization and expansion of a "Crisis Intervention Committee" (CIC).[538]

Ultimately, the MOU was enforceable against the City by the DOJ if the DOJ were to conclude that the City had failed to comply with any provision of the MOU. However, the DOJ agreed "to consult with the City before commencing enforcement proceedings, and to provide opportunity to cure consistent with the informal dispute resolution procedure[s]…" (MOU, 2017, para 27).[539]

The "Settlement Agreement," however, was enforceable as a court order and was binding on the City. (U.S. v. Seattle, Document 3-1, paras. 219, 223, 225). Within the Settlement Agreement, the DOJ and the City made commitments in six specific

[536] The CPC was expected to work with the SPD on the development of officer mentoring programs (MOU, 2017, para 20).

[537] The CPC was expected to consider SPD "policies and practices regarding disclosure of documents, videos, and other materials (MOU, 2017, para. 21).

[538] The CIC was expected to include representation from "SPD command leadership, SPD's Training and current CI Team units…the civilian leadership of the City government; Public Health-Seattle & King County; King County's Sheriff's Office; King County Prosecutor's Office; City of Seattle Municipal Court; the City Attorney's Office; Washington State Department of Social and Health Services' Division of Behavioral Health and Recovery; the Washington affiliate of the National Alliance on Mental Illness; the Downtown Emergency Services Center; professionals from the emergency health care receiving facilities; the King County Jail; and mental health and homeless services professionals and advocates or others" (MOU, 2017, para. 23). The CIC was intended to "serve as a problem-solving forum for interagency issues and may review any relevant data that may be collected by each agency (MOU, 2017, para 24).

[539] The significance of the creation of the CPC is hard to overstate. As discussed by Walker: "It is important to note that the requirement that the City of Seattle create a Community Police Commission was a bold and unprecedented effort on the part of the Justice Department with respect to restructuring the governance of local police departments. The President's Task Force on 21st Century Policing made several recommendations regarding citizen input into police policymaking but none went so far as to involve a formal restructuring of police governance. In the first generation of [settlement agreements], community groups had been largely excluded from the reform implementation process. Some experts argued that this exclusion undermined the legitimacy of settlements among a crucial local constituency" (Walker, 2018, p. 1814).

areas 1) use-of-force,[540] 2) Crisis Intervention,[541] 3) Stops and Detentions,[542] 4) Bias-free policing,[543] 5) Supervision,[544] and 6) the Office of Professional Accountability.[545] In addition, the Settlement Agreement included provisions relating to the appointment of a "jointly selected" "Monitor."

Importantly, the Settlement Agreement defined what it would take for the City to satisfy its requirements. Paragraph 184 defined "full and effective compliance" as existing where:

> the City and SPD have: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) ensured that the requirement is being carried out in practice. … Noncompliance with mere technicalities, or temporary or isolated failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain full and effective compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute full and effective compliance.

7.2.7. The Negotiation Process Described

The negotiation process certainly took its toll with varying concerns expressed by research participants. One participant noted that:

> The negotiations over the Consent Decree were intense. The initial draft was far better than the one they ended up with. The DOJ did itself a disfavor by overstating their case at the onset and overstepping their bounds. It

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[540] Including Use of Force Principles, Weapon Specific Policies (Firearms, Conductive Energy Devices (CED's), Oleoresin Capsicum Spray ("OC Spray") and Impact Weapons), Use of Force Reporting and Investigations, and Use of Force Training (Settlement Agreement, Section A (1-4)).

[541] Including Crisis Intervention Training for officers and dispatchers (Settlement Agreement, 2017, at paras. 130-135), tracking of officer interactions with persons in crisis (Settlement Agreement, 2018, at para. 136) and review and analysis of data collected (Settlement Agreement, para. 137).

[542] Relating to policies, training and supervision of SPD officers (Settlement Agreement, paras. 138-144).

[543] Relating to policies, training and supervision of SPD officers (Settlement Agreement, paras. 145-152).

[544] Relating to supervision generally and improvements to the SPD's Early Intervention System (EIS) (Settlement Agreement, paras. 153-163).

[545] Relating to revising SPD policies on internal reporting of misconduct, prohibiting relation against "any person who reports misconduct," updating a policy manual to "formalize OPA's procedures, best practices, and training requirements," and the creation of "OPA Liaison Officers" at each SPD precinct (Settlement Agreement, paras. 165-168).

> would have been better to convince the city that they needed to do the reforms; the original decree that was proposed was far better than the Consent Decree the DOJ wound up with. If the DOJ had been more transparent and reasonable, they could have brought city along.[546]

From the City perspective, participants noted that Mayor McGinn had taken the position that given that the DOJ had only made findings on excessive force, the negotiated agreement should have only applied to issues relating to force.[547] The DOJ, however, took the position that a broad agreement was necessary that would include not just issues of excessive force, but also biased policing and community-based policing. According to one City participant:

> We were pushing back on [the idea of a broad agreement] … the white hat of DOJ claimed that was there was a crisis of confidence and we needed to restore confidence in the SPD … it seemed disingenuous given that they told public that use-of-force was wildly out of control but did not make any findings on biased policing….and [yet] they wanted to include it in the decree.

Another participant advised that the Mayor's Office and the DOJ simply did not understand how the DOJ could insist that issues relating to bias should be included in a Settlement Agreement in the absence of a finding of a pattern or practice of biased policing. It was noted that the City's first counter-offer, which did not include any provisions relating to bias was leaked and that Mayor McGinn's constituencies were "appalled" that he was fighting the DOJ on bias. Interestingly, while the Mayor and SPD

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[546] Interestingly, see Rushin's discussion of the legitimacy of negotiations as they related to the creation of city-specific consent decrees through compromise: "Ultimately though, correcting unconstitutional practices through compromise seems counterintuitive. Why, after all, should there be any negotiating about the correction of unconstitutional practices? The answer is at the heart of the complex [structural reform litigation] process. There is no perfect formula that a police department can implement to prevent unconstitutional misconduct amongst its ranks. Instead, there are best practices that leading experts in the field believe encourage lawful behavior. The negotiation process, thus, invites compromise between the targeted police agency and the DOJ—with the DOJ demanding extensive, costly reforms and the police agency attempting to limit the scope of the federal oversight" (Rushin, 2015, p. 93).

Further, see Hardaway who argues that individualized reform serves the best interest of each individual community: "There appears to be an effort on the part of the government to tailor each agreement to the needs of the locality in question. This narrowly-tailored approach presumably serves to meet the needs of each individual jurisdiction while ensuring that an overly centralized myopic approach to policing is not forced on cities with unique community and policing needs" (Hardaway, 2019, p. 165).

[547] See, *Seattle Times* headline on page A-1: "City's reply to DOJ omits issue of bias in policing - Response concentrates on excessive force. Some community groups upset; others back strategy" (Miletich, S. & Carter, M., (2012, May 18). *Seattle Times*. Retrieved from https://www.seattletimes.com.

were critical of the DOJ's litigation strategy of refusing to share discovery in the absence of actual litigation, they themselves chose a litigation strategy of trying to avoid including biased policing in the Settlement Agreement, even though it was acknowledged that "bias was the underlying problem and likely what caused issues of excessive force."

Another City participant noted that the DOJ was initially pushing for an early appointment of a Monitor. The Mayor's Office, however, wanted to avoid a Monitor who would be akin to "a shadow [police] chief." Specifically, there was a strong desire to have "the proposals for reform to be generated within the City." "We didn't want the Monitor writing SPD policy; we needed police and community buy-in for this to work across the Board."

Overall, City negotiators complained that they were "struggling to find a voice" in the negotiation process and were worried about a lack of procedural justice given the DOJ's refusal to share any of the data underlying their use-of-force findings.

The question as to who first proffered the idea of a Community Police Commission is an area of some debate. Participants who worked with Mayor McGinn's administration insisted that the CPC was an idea conceptualized by the city and acceded to by the DOJ. In fact, during his re-election campaign, Mayor McGinn was quoted as having said that he had to "fight" for the creation of the CPC over the course of the City's negotiations with the DOJ. The DOJ took the unusual course of contradicting that claim in a letter signed by U.S. Attorney Durkan and Civil Rights Division Chief Smith, directed to the CPC and dated October 21, 2013. That letter represented that "an oversight board was a concept the DOJ actively supported…" The letter further stated that "the City's initial response to the DOJ in May 2012 'was so limited in scope it nearly derailed the settlement process and prolonged negotiation.'" The letter concluded that while "City leaders should properly be credited with their role in crafting the final provision and supporting [the] work [of the CPC, … the DOJ never resisted or delayed an agreement because it contemplated community involvement" (*Seattle Times*, 10/23/2012).

Ultimately, the City and the DOJ entered into day-long confidential negotiation sessions that allowed them to reach a collaborative decision; even if some of the signatories may have felt pressured to accept some DOJ provisions based on politics and the power and influence of the DOJ brand. The very first step would be the selection

of the Monitor and the creation of a Monitoring plan. Only then would the City and the DOJ be able to embark on their journey of externally mandated reform.

7.3. The Implementation of Reform in Seattle

> *"If you ask 'do consent decrees work?' – What's the lens? What are your metrics? What's your frame of reference? From whose perspective? This explains why there is such a divergent set of views on success or failure of consent decrees: no one is wrong; they are just walking in different shoes."*
> **Community Member Research Participant**

As will be addressed later in detail, the implementation of reform is Seattle was not a seamless effort. There were many "bumps in the road" from the time that the Settlement Agreement was filed on July 27, 2012[548] to the finding of "initial compliance" made by Judge Robart on January 10, 2018,[549] and finally, to the order finding the city partially out-of-compliance on May 21, 2019.[550] (See Appendix F for "Seattle Police Reform Timeline)." This section will first discuss academic articles as they relate to the Seattle implementation efforts and then provide a chronological history of the implementation efforts, as summarized by the reports filed by Seattle's court-appointed monitor.

7.3.1. Comparing the Academic Literature to Seattle Consent Decree Implementation Experiences

The academic literature on consent decrees has discussed issues regarding implementation, in a general context, and has covered, to a limited degree, some of the specific challenges identified by this research with respect to implementation efforts in Seattle.

[548] U.S. v. Seattle, Document No. 3-1, filed July 27, 2012.

[549] U.S. v. Seattle, Document No 439, filed January 10, 2018.

[550] U.S. v. Seattle, Document No. 562, filed May 21, 2019.

The Independent Monitor was appointed on October 30, 2012[551] and submitted his first-year monitoring plan on March 5, 2013.[552] As recommended by Walker & Macdonald:

> A [] factor related to successful implementation [] involves the existence of a meaningful implementation plan. Consent decrees and MOAs all involve a large number of significant reforms that must be implemented simultaneously, many of which are major challenges in and of themselves. Police experts are generally agreed that implementing any single major reform poses a significant management challenge. This has proven to be the case with EIS, use of force policies, and corruption control programs. (Walker & Macdonald, 2009, p. 528)

As also noted by Walker (2012), any effort to institutionalize police accountability reforms in a sustainable way requires "far more than simply adding discrete elements to the management of a police department (e.g. the use of force policy)." Indeed, the development of "state-of-the-art" policies requires the development of "a systemic policy development process within a department," "effective training of officers in a department where in-service training has been haphazard, inadequate or even possibly non-existent, and meaningful supervision of officers." (p. 75). And, in fact, that was exactly what Seattle needed in order to implement the reforms necessary to achieve compliance with its Settlement Agreement.

In one area identified as problematic by Walker, Seattle struggled. Walker (2012) specifically observed that "[i]n the various Justice Department consent decrees and MOAs, there is no evidence that departments were required to undertake, or undertook on their own initiative, department-wide training about the nature and goals of the required reforms" (p. 81). And, in fact, many research participants identified an overall failure to adequately engage SPD rank & file officers as a weakness in the Seattle implementation effort.

Even so, according to the academic literature, and as anticipated by the DOJ at the outset, Seattle had all the important components to be a success story, particularly once there was the change of leadership within the Chief's Office. Chanin (2014) suggested that

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[551] U.S. v. Seattle, Document No. 35, filed October 30, 2012.

[552] U.S. v. Seattle, Document No. 59, filed March 5, 2013.

> results further indicate that implementation is the product of the interaction of several theoretically interesting variables, including strong police leadership, external oversight, adequate resources and support for the process among a jurisdiction's community members, civil society groups, and political leaders. (p. 38)

And, in fact, with the introduction of an outside Chief, Kathleen O'Toole, Seattle appeared to have support in each of these areas, to include a robust civilian oversight system, a strong property tax base and a coordinated and sophisticated civil rights community who requested DOJ intervention in the first place.

Where Seattle appeared to have gone wrong, at least initially, was with respect to public statements made by Department command staff resistant to the Consent Decree which subsequently filtered down to SPD's mid-level supervisors. As also mentioned by Chanin (2012),

> [w]hile strategic focus is set in the chief's office, evidence suggests that day-to-day implementation is in many ways a function of an agencies mid-level supervisors … those managers act[] as a conduit between agency leadership and patrol officers and, as such, occupy[] a key position of accountability within [the] organization. (p. 46)

And, according to SPD research participants, mid-level supervisors struggled mightily with the mixed messaging coming from city and SPD leadership, at least until the time that Chief Diaz stepped down from his position and was replaced by a Chief more open to the external reform process.

As identified later in this Chapter, the SPD reform process was described by SPD and City participants as being particularly "traumatic." And the implementation efforts in Seattle appear to have been described by Chuck Wexler (the Executive Director of the Police Executive Research Forum, based in Washington D.C) to a tee:

> Some police departments under consent decrees go through a progression something like the stages of grief. The first stage is, in some departments, you just get resistance: People can say they won't do this, … In the second stage, you get acceptance, but now the hard work begins. In the third stage, you start to get momentum … It's probably like root canal surgery, … While you're undergoing it, it's not so great. But when it's done, you're happy you had it done. (*Politico.com*, 6/29/2020)

And, in fact, in the first stage of Seattle's implementation of the Consent Decree, it was widely agreed that there was resistance. With the appointment of Chief O'Toole, there

was acceptance and then there was momentum, at least until issues relating to police accountability measures, not included in the Settlement Agreement, appeared to derail the City's progress towards compliance.[553]

In a 2013 evaluation of civil rights investigations of local police, based in large part on a symposium of "leaders in policing," the Seattle experience was extensively discussed and experiences with the Consent Decree process were shared by Carl Marquart, then-Council to Mayor McGinn. Marquart was quoted in the report discussing challenges faced in negotiating the Settlement Agreement as it related to setting the ratio of officers to supervisors, crisis intervention response, DOJ aggressiveness in negotiations and the ultimate cost of consent decree implementation:

- *Setting the Number of Officers Per Supervisor Can Be a Difficult Issue.* "Frontline supervision was certainly an issue we recognized and accepted. Our current ratio is about eight officers to one supervisor, and it varies across different functions. The Department of Justice wanted a six-to-one ratio within one year, but that was simply not achievable under our existing service rules. It's also not desirable, because in order to increase our number of supervisors that much and so quickly, we would have to lower our promotional standards" (PERF, 2013, p. 19);

- *There Are Alternative Strategies for Responding to Mental Health Crises.* "Seattle Police Chief John Diaz has made Crisis Intervention training a high priority. Our goal is to give all of our front-line officers 40 hours of CI training, so that every responding officer has the tools to deal with crisis situations. DOJ advocated moving to the Memphis Model, in which crisis intervention teams are deployed to a CI event and there are specialists within the department who have that function. We went back and forth as to whether that was really a better model, and ended up with an agreement to continue to look at that and other ways of providing these services" (PERF, 2013, p. 26);

- *Negotiations Should Be More Collaborative.* "I think it was important to be able to negotiate certain issues, such as staffing ratios and training related to encounters with the mentally ill. When DOJ comes and announces that a police department has a problem, it can create a very difficult environment in which to negotiate, because the involvement of DOJ and the investigation itself creates a great deal of political and media pressure. In Seattle, DOJ's initial approach to negotiations was very inflexible; it was difficult to get them to acknowledge our local concerns about costs, potential impacts on police responsiveness, and the need for community input. While we eventually reached a workable resolution, the process could be much more collaborative in jurisdictions where there is no internal resistance to adopting best practices" (PERF, 2013, p. 28);

[553] U.S. v. Seattle, Document No. 562, filed May 21, 2019.

- *Seattle Consent Decree Could Cost $40 Million*. "In Seattle, we calculated an overall cost of $40 million dollars for implementation of DOJ's original proposal, and estimated between $6 million and $7 million to comply with DOJ's proposed sergeant-to officer ratio" (PERF, 2013, p. 34).

7.3.2. Seattle Consent Decree Implementation

August 30, 2012	Court Order Provisionally Approving Consent Decree[554]	Judge James Robart
September 21, 2012	Stipulation and Joint Findings of Fact and Conclusions of Law[555]	Judge James Robart
October 30, 2012	Independent Monitor appointed by the Court[556]	Monitor: Merrick Bobb, Police Assessment Resource Center
December 2012	Analysis of DOJ investigation: "Police Use of Force in Seattle, January 2009-March 2011"	Professor Matthew Hickman (Seattle University) & Loren Atherley (Northwest Justice Solutions)
2013		
March 5, 2013	Monitoring Plan for the First Year[557]	Seattle Monitoring Team

Research participant comments on initial challenges in the implementation of the Consent Decree.

Observers outside of the Mayor's Office and the SPD placed the blame for initial consent decree implementation delays at the feet of Mayor McGinn, who it was claimed, refused to collaborate with the DOJ and the new Monitor which subsequently required the DOJ and the Monitor to take a more aggressive approach at the beginning of the implementation process.

In retrospect, probably one of the most problematic aspects that negatively impacted early efforts at implementation was the very public debate over the choice of the court-appointed Monitor. After his appointment was forced on the Mayor and the SPD by the City Attorney and the City Council, the Monitor had to try to overcome suspicion from SPD and the Mayor's Office and faced active and public resistance from

[554] U.S. v. Seattle, Document No. 8, filed August 30, 2012.

[555] U.S. v. Seattle, Document No. 14, filed September 21, 2012.

[556] U.S. v. Seattle, Document No. 35, filed October 30, 2012.

[557] U.S. v. Seattle, Document No. 59, filed March 5, 2013.

Chief Diaz about the content of his monitoring plan (*Seattle Times*, 3/9/2013).[558] By but by February 2013, the Monitor was reportedly pushing back after being accused by the City of improper billings in support of his decision to lease an apartment for members of the Monitoring team, instead of paying ongoing hotel expenses (*MyNorthwet.com*, 2/21/2013).

An additional challenge faced by the DOJ, acting as an "outsider" attempting to force change, was Seattle personalities and Seattle politics. Participants described a veritable "snake pit" when trying to navigate amongst and between the various personalities and agendas in the City. Although, on its face, one would think that in a City where the Mayor and all but one City Council member were Democrats (with the sole additional Councilmember identifying as a Socialist),[559] police reform would be an issue upon which all could agree. In fact, however, nothing could have been farther from the case. The Mayor and the City Attorney publicly sparred about each other's roles in the reform process – to the point that on March 7, 2013, the *Seattle Times* in an unsigned op-ed article noted that the two had "sunk into a needless feud at the very moment they should be focused on police reform" (*Seattle Times*, 3/7/2013a).[560]

The Monitor's reports.

April 8, 2013	Jim Pugel named as Interim Chief of SPD.[561]	Appointed by Mayor Mike McGinn
April 26, 2013	First semi-annual report[562]	Seattle Police Monitor

Between April 2013 and September 2016, Merrick Bobb, the court-appointed monitor for the Seattle Consent Decree, filed a total of seven semi-annual reports which provided substantive information on the progress of consent decree implementation over the course of the first four years. In addition, between September 2015 and June 2017,

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[558] Miletich, S. (2013, March 9). McGinn back pedals, accepts Monitor's police-reform plan. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[559] See, https://ballotpedia.org/Municipal_elections_in_Seattle,_Washington_(2017) [Democratic dominance over city council].

[560] Seattle Times (2013, March 7). McGinn-Holmes Spat hurts police-reform effort. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[561] Green, S. (2013, April 11). The man who will soon lead SPD. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[562] U.S. v. Seattle, Document No. 71, filed April 26, 2013.

the Monitoring Team also filed ten “Systemic Assessment” reports to evaluate to what extent SPD policies and processes were in compliance with specific requirements of the Consent Decree. In February 2019, the Monitoring Team filed its final public report entitled: “Sustainment Plan Update Report.” A review of these reports provides an excellent history of the progress of implementation from the Monitor’s point-of-view:

First semi-annual report.

In the Seattle monitor’s first semi-annual report, filed with the Court on April 26, 2013, the Monitor appeared to attempt to portray an even-handed approach by “commending” the SPD for the “considerable progress” that had been made, and positively commenting on “good relationships” that had been established with all of the City and police stakeholders (1st semi-annual report, 2013, p. 1). The Monitor reported, however, “that SPD record keeping, data storage, and data retrieval are in need of profound overhaul and rethinking,” and commented that the police unions “thus far have failed to play a constructive role in word and deed” and invited the unions to join in the reform effort. The Monitor noted the “ultimate goal” of Consent Decree implementation:

> top to bottom reform of the Seattle Police Department into an organization that effectively fights crime and enforces the laws by listening to and working in constant consultation with Seattle’s diverse communities; actively and persistently dealing with the risk of unconstitutional conduct by sworn personnel, including excessive use of force and discriminatory policing; and demonstrating at all times its abhorrence of excessive force and race-based policing and its unwillingness to tolerate those who engage in it. (1st semi-annual report, p. 5)

The report specifically identified the challenges then faced, noting that the SPD “still does not speak with one voice. In-fighting up and down the command staff level has been a concern. The SPD does not appear settled on a unified vision of what it is to become.” In addition, the Monitor noted that “[a] part of the SPD, mostly but not exclusively within the union- organized ranks, remains ‘dug in’ and continues to resist the force and implications of the Settlement Agreement.” The Monitor suggested that “part of the cause of this resistance” could be attributed to a failure to adequately explain the Consent Decree to command and rank and file officers (1st semi-annual report, p. 5). In support of this conclusion, the Monitor observed that: “[s]tories and myths have been fed to rank-and-file officers without their having received counterbalancing messages from the command staff to understand reform as being in the long-term best interests of

all officers and the Department." As such, the Monitor made it clear that he expected SPD command staff to send a clear message to officers "that the Settlement Agreement is here to stay and is not going to be fed to the shredder" (1st semi-annual report, p. 6).

While the report noted that the SPD was making good efforts to better monitor officer use-of-force, including the formation of a Use of Force Review Board, it was observed that in the first quarter of 2013, although the Board reviewed and evaluated 78 individual uses of force, "not a single instance" was found to be in violation of SPD use-of-force policy. The report also included specific criticism of the SPD's "Firearms Review Board," opining that "[t]hey fail to reach the higher standards of the Use of Force Review Board," and recognizing "some activity that, at minimum, raises the potential or appearance of skewing testimony by those seeking to protect an officer" (1st semi-annual report, p. 11).

In response to the report, then-U.S. Attorney Jenny Durkan told the *Seattle Times* that the Monitor's report was "a 'frank assessment' of progress — and the lack of progress — to date." She further stated that "[w]e are at a new juncture — where all eyes and efforts must be on the road ahead, … Getting reform right, in a way that increases public safety and public confidence, has to be a priority for everyone in the department" (*Seattle Times*, 4/27/2013).[563]

August 20, 2013	CPC Letter requesting extension of time for Monitor to approve SPD use-of-force policy.[564]	Betsy Graef, Acting Director
November 26, 2013	Court denies CPC motion to intervene – CPC granted amicus curiae status[565]	Judge James Robart
December 13, 2013	Second semi-annual report[566]	Seattle Police Monitor

Second semi-annual report.

The Monitor's second semi-annual report, filed with the Court on December 13, 2013, was preceded by a draft report, dated November 15, 2013, which was described by the *Seattle Times* as "a blistering report card." The draft report cited "resistance in the

[563] Carter, M. (2013, April 27). First SPD Report: Progress, 'dug in' hostility. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[564] U.S. v. Seattle, Document No. 82, filed August 20, 2013.

[565] U.S. v. Seattle, Document No. 106, filed November 26, 2013.

[566] U.S. v. Seattle, Document No. 114, filed December 13, 2013.

top ranks of the department, error-ridden data collections and failures to 'fully and fairly' analyze shootings by officers" (*Seattle Times*, 11/16/2013). The *Times* later reported that two Assistant Chiefs were demoted in the wake of the receipt of the draft report (*Seattle Times*, 11/26/2013 & 11/28/2013).[567]

Although the final second semi-annual report praised the then-Interim Chief, Jim Pugel, for pushing reforms forward and commended the department's Use of Force Review Board for better preparation and more participation by assistant chiefs, the report highlighted the Monitor's "significant disappointment and frustration across several areas." The Monitor identified "intransigence and an aversion to innovation in some quarters," criticized the SPD's Information Technology ("IT") leadership for giving "incorrect or incomplete information to the Monitor and the Monitoring Team" and commented on its inability "to tackle the management of projects of import or complexity relating to use of force and other areas encompassed by the Settlement Agreement" (2nd semi-annual report, p. 1). The report further stated that "[t]he data produced by the IT Department has been error-ridden and inadequate" and that the SPD did not

> have the data required to implement the Consent Decree, to manage the risk of unconstitutional conduct, to respond to the Monitoring Team's requests for data in order to measure progress, to enable the Court to assess the speed and good faith of implementation, or to respond to routine inquiries by City Council for data needed for legislative purposes. (Second semi-annual report, p. 1)

Further, the Monitor mentioned that "[t]he failure of the SPD to fully and fairly analyze officer-involved shootings is equally disappointing" (2nd semi-annual report, p. 1). In addition, the Monitor reported on rumors of de-policing in the downtown core that he described as "troubling" and noted that the Monitoring team had observed an

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[567] Miletich, S. (2013, November 26). SPD shake-up: Assistant Chief takes demotion after report. *Seattle Times*; Miletich, S. & Sullivan, J. (2013, November 28). New SPD jolt hits another. *Seattle Times*. Retrieved from https://www.seattletimes.com. It should be noted that other cities also experienced resistance at the beginning of the implementation process. For example, in Los Angeles, in that City's 3rd monitoring report, the monitor reported that "the LAPD is non-compliant with a number of provisions of the Consent Decree. Of equal or greater seriousness is the presence of a vocal minority inside the LAPD that continue to fight to preserve the insular culture that led to the adoption of the Decree" (Kupferberg, 2008, p. 148). "In Cincinnati, the police department actively resisted cooperating with the monitoring team, and the district court in that case found it in 'material breach' of the MOA, which it then converted into an Order of the Court. The conflicts were eventually resolved, implementation proceeded, and federal oversight finally terminated in December 2008 (Walker & Macdonald, 2009, pp. 512-513).

"unacceptable" number of use-of-force cases where recording equipment malfunctioned or officers failed to properly activate recording equipment (2nd semi-annual report, p. 26).

As reported by the *Seattle Times*, however, the Monitor "leveled his harshest criticism at the department's Firearms Review Board (FRB)," which was reported to have moved to keep the Monitor "at bay" and had barred the director of the Office of Professional Accountability, which investigates allegations of officer misconduct, from its proceedings: "The FRB procedures 'do not guarantee anything close to a thorough, fair and impartial investigation,' the draft report says. 'Instead, they continue to permit the possibility of collusive, biased, or inaccurate testimony'" (*Seattle Times*, 11/16/2013; 2nd semi-annual Report, pp. 31-32).

Although the Monitor found that "SPD's resistance to the settlement agreement has started to diminish," he reported that it "is not abating with adequate speed" (2nd semi-annual report, pp. 2, 5). The Monitor observed that a year had passed since his appointment (and nearly 18 months had passed since the Settlement Agreement had been signed). As such, he concluded that it was "unfortunate that there is still resistance to the notion that police officers and their supervisors must be accountable for misuse of force and discrimination and must challenge themselves to embrace new approaches" (2nd semi-annual report, pp. 5-6).

December 17, 2013	Court approves SPD Use of Force policies[568]	Judge James Robart
January 1, 2014	Term of Mayor Ed Murray begins[569]	
January 8, 2014	Harry Bailey appointed as Interim Chief[570]	
January 17, 2014	Court approves SPD policies on "Terry Stops" and Bias Free Policing[571]	Judge James Robart
February 10, 2014	Court approves SPD Crisis Intervention Policy[572]	Judge James Robart
March 24, 2014	Court approves Second Year Monitoring Plan[573]	Seattle Police Monitor; Judge James Robart

[568] U.S. v. Seattle, Document No. 115, filed December 17, 2013.

[569] http://www.seattle.gov/cityarchives/seattle-facts/city-officials/mayors.

[570] Miletich, S. (2014, January 8) Mayor shakes up police brass. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[571] U.S. v. Seattle, Document No. 118, filed January 17, 2014.

[572] U.S. v. Seattle, Document No. 121, filed February 10, 2014.

[573] U.S. v. Seattle, Document No. 129, filed March 24, 2014.

May 28, 2014	Filing of Civil Rights Complaint by 126 Seattle Police Officers regarding proposed Seattle PD UOF policy (*Seattle Times*, 5/28/2014)[574]	126 Seattle Police Officers – Pro Se
June 10, 2014	Court approves Crisis Intervention Training;[575] & Instructional System Design Model for Use of Force Training[576]	Judge James Robart
June 13, 2014	Court approves Force Investigation Team Training Curriculum,[577]	Judge James Robart
June 16, 2014	Third semi-annual report[578]	Seattle Police Monitor

Third semi-annual report.

The Monitor's third semi-annual report, was filed with the Court on June 16, 2014. This report noted that the SPD had "made significant strides" in adopting policies relating to use-of-force, biased policing, stop and frisk policies and contacts with people in mental health crisis. However, the Monitor reported that putting those policies into practice would require "a broader acceptance of change throughout the department," more Sergeants on the streets and a new computer system to fully track the progress of reforms (*Seattle Times*, 6/17/2014, summarizing 3rd semi-annual report).[579]

As an indication of continued resistance to reform, the Monitor cited a recent federal lawsuit, filed by more than 100 officers, detectives and sergeants, only 19 days before the filing of the Monitor's report, seeking to block the new use-of-force policies (3rd semi-annual report, at n. 1) and commented that "[m]uch work remains to ensure that the objectives and goals of the Consent Decree have been understood and internalized by all officers — whether command staff or rank and file" (3rd semi-annual report, p. 4).

The Monitor suggested that the election of a new Mayor, who took office in January, 2014, would assist in achieving compliance, noting that Mayor Ed Murray "has

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[574] Miletich, S., Sullivan, Carter, M. (2014, May 28). Seattle Cops Sue over DOJ reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[575] U.S. v. Seattle, Document No. 152, filed June 10, 2014

[576] U.S. v. Seattle, Document No. 153, filed June 10, 2014.

[577] U.S. v. Seattle, Document No. 151, filed June 13, 2014.

[578] U.S. v. Seattle, Document No. 154, filed June 16 2014.

[579] Miletich, S. (2014, June 17). Monitor on SPD: progress, dissent. *Seattle Times*. Retrieved from https://www.seattletimes.com.

taken on hard issues… [and] has maintained a sustained and thoughtful involvement with Consent Decree issues" (3rd semi-annual report, p. 2). The Monitor stated that "[p]erhaps the most hopeful turn of events in the last six months has been the active involvement of the Mayor's Office in its oversight of the SPD;" the Monitor further commented that "the Mayor appears to recognize that the SPD needs a deep and thorough cultural change to earn the respect, trust and cooperation of all of Seattle's diverse communities…" (3rd semi-annual report, p. 2).

The report was released one week before the confirmation of a known reform-minded Chief, Kathleen O'Toole, who had previously worked as the first female Commissioner for the Boston Police Department, the first Chief Inspector of the Gardia Síochána Inspectorate (which provided oversight for the Irish national police service) and the court-appointed monitor for the East Haven Police Department (Connecticut).

The report singled out the SPD's Use of Force Review Board as a "central driver of the Department's critical self-analysis." The Monitor observed that, for the first time, the Board had found certain uses of force out-of-policy and made referrals to the Office of Professional Accountability (3rd semi-annual report, p. 3). The Monitor also positively reported that the SPD had developed a mentoring program for officers as part of an early intervention program and had embraced new approaches for designing and conducting training programs to address use of force. It was also acknowledged that trainers were currently developing promising programs on bias-free policing and routine stops and detentions. The Monitor also praised the department's new Force Investigative Team (FIT) and positively commented on the SPD's decision to merge the responsibilities of the Firearms Review Board (which had been previously the subject of significant criticism) into the Use of Force Review Board. Finally, the report praised the department for its work in developing a Crisis Intervention program (3rd semi-annual report, pp. 14-15 (Crisis Intervention), 18-26 (Training), 55-57 (Firearms Review Board), 57-60 (Force Investigation Team), and 76-89 (Mentoring Program)).

The report was not completely positive, however; the Monitor observed that SPD data systems remained weak; in fact, the report negatively compared the department's use of analytic data to the Oakland Athletics baseball team's use of data as documented in the book and movie "Moneyball," concluded that the "SPD is a long way from playing Moneyball…Compared to many other law-enforcement agencies, SPD is flying blind" (3rd

semi-annual report, pp. 35-37). Although the Monitor was critical of "bungled efforts" to produce a stopgap computer program and "foot-dragging" on developing a new business intelligence system, the Monitor reported that he was encouraged at the prospect that the mayor's office, the new police chief and experts within and outside the department would fix the problem (*Seattle Times*, 6/17/2014).

Further, the Monitor reported that the Monitoring team and parties "have not yet been able to agree to a satisfactory plan for ensuring that SPD deploys an adequate number of sergeants to effectuate law enforcement objectives and the objectives of the Consent Decree" (3rd semi-annual report, p. 5).

As it related to accountability, the Monitor was critical of the disciplinary process which he referred to as a "byzantine and arcane." process that allowed Interim Police Chief Harry Bailey to reverse misconduct findings against several officers who had appealed their cases (3rd semi-annual report, pp. 6, 71). The report was specifically critical of the authority given to the police chief to ignore disciplinary recommendations: "If all of the investigation and analysis conducted by the OPA can be negated with the stroke of the Chief's pen, and without regard to the opinion of the OPA, the fairness, thoroughness, and rigor of investigations below are rendered meaningless" (3rd semi-annual report, p. 73).

Finally, although the Monitor was critical of the disciplinary process, he did note substantive improvements in the complaint investigation program: the Office of Police Accountability (OPA): "Whereas OPA was considered by some for the last few years to be a cat's paw of SPD executives, this perception has seemed to change markedly under the leadership of OPA's current Director" (3rd semi-annual report, p. 72).

June 23, 2014	Kathleen O'Toole confirmed as Chief of Police[580]	Appointed by Mayor Ed Murray
July 10, 2014	Court approves Office of Professional Accountability Internal Operations & Training Manual,[581]	OPA; Judge James Robart

[580] Miletich, S. (2014, June 24). O'Toole, confirmed as police chief, promises a force 'second to none.' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[581] U.S. v. Seattle, Document No. 161, filed July 10, 2014.

August 14, 2014	Court approves Use-of-Force Training Curriculum[582]	Judge James Robart
September 22, 2014	Court approves Instructional System Design Model for Search & Seizure and Bias-Free policing training;[583] Court approves Advanced Crisis Intervention Training Curriculum & Strategy.[584]	Judge James Robart
December 15, 2014	Fourth semi-annual report[585]	Seattle Police Monitor

Fourth semi-annual report.

The Monitor's fourth semi-annual report, was filed with the Court on December 15, 2014. That report provided the first truly optimistic assessment of the department's achievements since the reporting period began (*Seattle Times*, 12/16/2014).[586] The report painted a picture of a department heading towards compliance, even though the Monitor reported that he could not "make any promises or representations about how long it will take to reach full and effective compliance":

> What the Monitor can say, … is that, thanks to the current leadership, SPD is making sustained positive, progress … If it continues on the path that it is now, the Monitor can say — for the first time — that SPD is likely to get the job done. (4th semi-annual report, p. 12)

The report still identified continued challenges that laid ahead, to include "the need to widen the scope of reform throughout the department and hold officers accountable for failures to de-escalate confrontations" (*Seattle Times*, 12/16/2014). However, the Monitor reported that the SPD was "approaching mid-passage in its voyage to fully and effectively comply with many provisions of the Consent Decree" (4th semi-annual report, p. 1).

The report specifically acknowledged the leadership of Chief O'Toole, Mayor Murray, Seattle City Attorney Pete Holmes and the Community Police Commission as "sharing the accolades for the solid progress made to date." (Fourth semi-annual report, p. 1). In particular, however, the Monitor singled out Chief O'Toole for repeated praise,

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[582] U.S. v. Seattle, Document No. 168, filed August 14, 2014.

[583] U.S. v. Seattle, Document No. 179, filed September 22, 2014.

[584] U.S. v. Seattle, Document No. 180, filed September 22, 2014.

[585] U.S. v. Seattle, Document No. 187, filed September 22, 2014.

[586] Miletich, S. (2014, December 16). Federal monitor seeing SPD progress. *Seattle Times*. Retrieved from https://www.seattletimes.com.

reporting that she had made compliance with the Consent Decree her "highest priority" and promoted some of the department's "best and brightest" who "are fully in support of the Consent Decree and understand the necessity of reform" (4th semi-annual report, pp. 1-2, 5, 62, 65-67, 81, 86). The Monitor took specific note that Chief O'Toole personally appeared in federal court, ("which her two immediate predecessors had pointedly not done") and offered her personal assurance that "under her direction, things would move quickly toward compliance" (4th semi-annual report, p. 4).

The Monitor further reported that "training on new policies dealing with use of force, bias-free policing, stops and crisis intervention had been carried out at a remarkable pace" *Seattle Times*, 12/16/2014, citing 4th semi-annual report). The report observed that

> [w]hatever the issues might have been in the past with the quality of SPD training and the resources devoted to it, the Education and Training Section under its new leadership — which has only been on the job for eight months — has become one of the Department's most promising drivers of systemic change. (4th semi-annual report, pp. 2-3)

In a written statement responding to the report, Mayor Murray was quoted as saying the report "reflects the significant progress that the Seattle Police Department has made in the last year toward reform and compliance… We are making good headway and I am committed to keeping police reform moving forward" (*Seattle Times*, 12/16/2014).

Despite the progress reported, including the acceleration of the SPD's timeline to develop a business-intelligence system (a project that had "been previously hampered by delay, drawing a rebuke from [Judge] Robart"), the report was quoted as identifying substantive challenges ahead, to include:

- Delays in completing some use-of-force investigations;
- Failures to spread the good work of SPD's use-of-force review board throughout the department;
- Lapses by the review board in not holding officers accountable for unreasonable failures to de-escalate confrontations, a key element of the reform plan;
- Demonstrating that officers are being held accountable for failing to activate their in-car video systems;

- Developing better self-analysis procedures to manage the risk of unconstitutional policing;
- Fully implementing an early-intervention system to identify potential problem officers and employ non-disciplinary measures;
- Providing enough sergeants to carry out crucial, front-line supervision;
- Closing the "significant distance" in re-establishing trust with the community;
- Weaving a new culture of accountability into the fabric of the organization that will remain intact no matter who is chief (*Seattle Times*, 12/16/2014).

Depolicing Issue.

The fourth semi-annual report referred to "recent media reports" that suggested there was "a purported lack of proactivity and reactivity among the SPD precincts" (4th semi-annual report, p. 4). In his second semi-annual report, the Monitor had reported becoming "aware of some contentions by SPD officers that force [was] being underutilized at the risk of officer safety, because of the Settlement Agreement and DOJ" and a motivation on the part of SPD officers to "de-police" (2nd semi-annual report, p. 24). The Monitor went on to address the de-policing issue in his ninth systemic assessment, relating to SPD use-of-force, released in April 2017.

February 10, 2015	Court approves SPD 2015 Training Program[587]	SPD; Judge James Robart
March 19, 2015	Court approves Third Year Monitoring Plan[588]	Seattle Police Monitor; Judge James Robart
April 15, 2015	Court approves SPD 2015 Tactical De-escalation & Individual Firearms Training[589]	SPD; Judge James Robart
May 11, 2015	Court approves SPD revised Early Intervention System Policy[590]	SPD; Judge James Robart
June 15, 2015	Fifth semi-annual report[591]	Seattle Police Monitor

[587] U.S. v. Seattle, Document No. 192, filed February 10, 2015.

[588] U.S. v. Seattle, Document No. 196, filed March 19, 2015.

[589] U.S. v. Seattle, Document No. 199, filed April 15, 2015.

[590] U.S. v. Seattle, Document No. 203, filed May 11, 2015.

[591] U.S. v. Seattle, Document No. 212, filed June 15, 2015.

Fifth semi-annual report.

The Monitor's fifth semi-annual report, was filed with the Court on June 15, 2015. Media coverage of the report, highlighted the Monitor's strongly held belief that "the time for permanent use of on-officer cameras by all SPD officers is now" and his conclusion that such camera systems were "a key tool for 'accountability and transparency.'" (*Seattle Times*, 6/16/2015;[592] 5th semi-annual report, p. 21). The *Seattle Times* reported that the Monitor's report came "at a time that the department confirms that it plans to shift from a small pilot program to departmentwide use of the cameras by some 640 patrol officers" *(Seattle Times*, 6/16/2015).[593]

The Monitor continued his positive reporting of the progress made by the SPD by "commending" Chief O'Toole, her command staff and the DOJ "for their 'unflagging commitment to police reform" (*Seattle Times*, 6/16/2015; 5th semi-annual report, p. 10).

The Monitor did report that "significant work…remains," highlighting the need to improve the investigation and review of police uses of force; however, it also praised the Department's efforts to track contacts with people in "behavioral crisis" and collaborative efforts on the part of the SPD to revise use-of-force policy to de-escalate confrontations and ensure the proportional and reasonable uses of force. New training efforts were also identified, along with a comment that SPD training practices were now "attracting national attention" *(Seattle Times*, 6/16/2015; 5th semi-annual report, pp. 2, 15).

The Monitor also opined that based on initiatives taken by the SPD during the reporting period, the Monitoring team saw "encouraging signs that the Department was … not attempting to address unconstitutional policing issues by unacceptably reducing policing." The Monitoring team "likewise found it encouraging that crime was reportedly down across the city by 12% over the first part of 2015" (5th semi-annual report, p. 5).

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[592] Miletich, S. (2015, June 16). SPD Monitor: Time 'is now' for on-officer body cameras. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[593] It was not until July 17, 2017 that the Mayor signed an executive order that instructed the SPD to follow a specific timeline for the deployment of Body Worn Cameras to SPD officers: cameras were ordered to be deployed to: West Precinct bike patrol officers by July 22; West Precinct officers by September 30; and then on a monthly basis out to each SPD precinct. Retrieved from EO-2017-03-body-worn-cameras.pdf (seattle.gov).

However, the report also contained critical comments regarding the work of the department's Force Investigation Team (FIT), identifying a practice of asking "inappropriately leading and suggestive questions" (5th semi-annual report, p. 22), a developing backlog of cases being considered by the SPD's Force Review Board (FRB) (5th semi-annual report, p.27), and challenges faced by the FRB which was showing a tendency to engage in "convoluted interpretations of policy, extended philosophical conversations about the importance and meaning of concepts like 'intent' and the meaning of 'may,' or unrealistic and implausible interpretations of facts" (5th semi-annual report, p. 25). The report also criticized the "ungainly, 14-month process" to reform the Department's Early Intervention System (EIS) (5th semi-annual report, p. 8).

In a response to the report, Mayor Ed Murray stated "I think the collaborative process is paying off" (*Seattle Times*, 6/16/2015).

June 4, 2015	Court approves revised Crisis Intervention Policy[594]	SPD; Judge James Robart
June 11, 2015	Court approves revised Bias-Free policing policy & Voluntary Contacts Terry Stops and Detention policy[595]	SPD; Judge James Robart
July 27, 2015	Court Order approving updated SPD Use-of-Force policies[596]	SPD; Judge James Robart
August 27, 2015	*Scheduled Date for SPD to establish "Full & Effective Compliance"*	*Per SPD Monitor Timeline (as of 11/30/2012)*[597]

Between the time of the fifth and sixth semi-annual reports, the Monitoring Team completed its first two "Systemic Assessments," relating to the SPD's Force Investigation and Reporting practices and the practices of its new Force Review Board:

September 24, 2015	First Systemic Assessment: Force Investigation & Reporting[598]	Seattle Police Monitor

[594] U.S. v. Seattle, Document No. 210, filed June 4, 2015.

[595] U.S. v. Seattle, Document No. 211, filed June 11, 2015.

[596] U.S. v. Seattle, Document No. 225, filed July 27, 2015.

[597] Per Seattle City Attorney memo, dated December 18, 2012. On file with author.

[598] U.S v. Seattle, Document No. 231, filed September 24, 2015.

First systemic assessment: force investigation & reporting.

The Monitor's first systemic analysis, relating to "Force Investigation & Reporting" was filed with the court on September 24, 2015. The ultimate finding was that,

> in a short amount of time – just six months from the Court-approved, force-related policies taking effect on January 1, 2014 – rank and file officers have responded to clear rules of the road for systematically documenting force whenever it is used, sergeants have responded to the scene in way that permits a thorough investigation, and FIT investigations are consistently excellent. (1st Systemic Assessment, p. 1)

As such, the Monitor found that "the reporting of and response to force is in initial compliance with paragraphs 100, 101, 102, and 103 of the Consent Decree."[599] The Monitor also concluded that "the quality and integrity of FIT investigations are consistent with the requirements of paragraphs 112, 113, 114, 117, and 118 of the

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[599] Paragraphs 100 to 103 of the Settlement Agreement read as follows:

Para. 100. "Officers will document a Type I use of force in a searchable and retrievable format that contains the following information: 1) an account of the officer's actions in using force; 2) the suspect's actions that led to the application of force; 3) the identity of the officer who used force; 4) the names of other officers or identified witnesses present; and 5) the name of the supervisor screening the incident. The officer's immediate supervisor will review the documentation as soon as practicable and direct the officer to supply more information, if needed."

Para. 101. "A Type I use of force report must be provided orally and screened in person by a supervisor, unless impractical under the circumstances, prior to the subject being booked, released, or the contact concluded. If the subject is free to leave, the detention will not be extended to facilitate the screening process; however, the subject may choose to remain at the scene to speak with a supervisor. If there is any uncertainty or concern about the reason or nature of the force used, or the existence of any injury, the supervisor will immediately roll out to the scene, unless impractical in the circumstances."

Para. 102. "The supervisor will determine if the use of force is appropriately classified as a Type I incident. If the supervisor is unable to make that determination, the supervisor will consult with FIT or his/her direct supervisor to assist in the determination. The supervisor will also evaluate the incident for any other concerns (tactical, threat assessment, etc.). The supervisor will address any concerns with the officer involved. If it appears that misconduct may have been involved in the use of force, the supervisor will ensure that OPA is contacted and consult the FIT team regarding reclassification of the incident as Type II or III."

Para 103. "For Type II and Type III uses of force, all involved officers will complete an officer statement using descriptive language. The statement will include: 1) the reason for the initial police presence; 2) a detailed description of the incident circumstances, including the words, actions, and/or threat posed by the suspect warranting the need for force; 3) a detailed description of the force used by the officer giving the statement; 4) a detailed description of the force used by other officers if clearly observed; 5) a detailed description of any apparent injury to the suspect, any complaint of injury, or the lack of injury, including information regarding any medical aid or medical evaluation provided" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

Consent Decree[600] and demonstrate initial compliance with those provisions." Although the Monitor found that "Sergeant investigations of Type II force[601] are not yet where they

[600] Paragraphs 112-114, 117 & 118 of the Settlement Agreement read as follows:

Para. 112. "FIT will conduct investigations of (1) all Type III uses of force except for firearms discharges (which will continue to be investigated by the Homicide Unit and reviewed by the FRB); (2) any use of force that result in broken bones, loss of consciousness, or an admission to the hospital for treatment; the application of a neck hold (LVNR or Lateral Vascular Neck Restraint); hard strike to the head or neck with an impact weapon (flashlight,,baton, or other object); (3) uses of force that potentially involve criminal conduct or misconduct on the part of the officer; and (4) uses of force referred to FIT by any SPD supervisor (and approved by the FIT commander), the Chief, his/her designee, or OPA. Response by FIT to a scene does not assume a criminal or administrative violation has occurred."

Para. 113. "Type III uses of force will be investigated and documented by FIT, with assistance from the on-scene sergeant. The FIT response will be tailored to the circumstances but will normally include one to three FIT detectives, the FIT sergeant, a Homicide Unit command level officer, and a Training Section representative. The Training representative will not have investigative roles at the scene of a use of force, but will attempt to identify any policy or training issues. At least one member of FIT or a homicide supervisor will be available at all times to evaluate potential referrals from SPD supervisors."

Para. 114. "If a FIT investigation, at any point, reveals officer misconduct, a FIT supervisor will contact OPA."

Para. 117. "The supervisor will have the following responsibilities in responding to a Type III use of force:

a) A sworn supervisor will respond to the scene, and will ensure that appropriate medical aid is summoned for any injured party, either subject or officer. If the subject is transported to a hospital, the supervisor will arrange for a hospital guard for the subject, if appropriate.

b) The supervisor will obtain sufficient basic information to determine whether a FIT response is appropriate and contact the FIT sergeant to screen a response.

c) Whenever there is an indication of possible criminal conduct involving an officer, the officer will not be compelled to provide a statement.

d) The supervisor will ensure the scene is contained and will turn the scene over to the arriving FIT personnel. The scene will be left intact and will be processed by FIT personnel.

e) The supervisor will make reasonable attempts to locate civilian witnesses to the event, and identify and request that the witnesses standby for the FIT personnel's arrival."

Para 118. "FIT will have the following responsibilities in responding to a Type III use of force:

a) FIT personnel will take control of the use of force investigation upon their arrival.

b) Where possible, FIT detectives will ensure that all interviews with civilian witnesses are recorded.

c) FIT personnel will arrange for a canvass for any privately-owned video that may have captured the contact, and attempt to obtain copies voluntarily. If the owner refuses, they will document the location and/or owner of the video. If no privately-owned video is discovered, they will document that none was found.

d) The FIT supervisor will arrange for photographing and processing of the scene.

e) FIT detectives will respond to the subject's location, and request a medical release if relevant, as well as an audio-recorded interview. They will also photograph areas of injury or complaint of injury.

f) The FIT supervisor or commander will respond to the FIT office and arrange for ICV downloads as well as witness statements from all witness officers prior to the end of their shift(s) unless impracticable.

g) When available, the FIT detectives will conduct in-person interviews of the involved officers.

h) The FIT supervisor or commander will arrange for the involved officers to submit a use of force written statement as soon as practicable.

i) The FIT sergeant or commander will be responsible for ensuring notification of a FIT investigated use of force, which will be forwarded to the involved officer's chain of command up to the Chief, as well as the Investigation Bureau Commander, no later than 12 hours after learning of the use of force, unless impractical. This notification will contain basic information about the incident.

j) Within 30 days or as soon as possible thereafter, the FIT commander will present the completed investigation to the commander of the Investigation Bureau for review as to completeness of investigation. This review will normally be completed within three business days. The investigation will then be forwarded to the involved officer's chain of command. After this review has been completed, the FIT commander will be responsible for presenting the investigation to the Use of Force Committee (UFC). Consistent with current officer-involved shooting protocols, any presentations to the command staff will also be the responsibility of the FIT commander.

k) If at any time during the investigation, information is obtained that suggests either criminal liability on the part of any officer, or misconduct (as defined previously) on the part of any officer, the FIT commander will be responsible for notifying the command staff, and taking one of the two following actions:

(1) Criminal Liability – If at any time information is obtained that suggests that an officer may have committed a crime during the use of force incident, the investigation will immediately be referred to the OPA. If OPA agrees that a criminal investigation is appropriate, they will refer the investigation back to the Homicide Unit commander or another investigative body per current practice, for assignment to an uninvolved Homicide sergeant for bifurcated criminal and administrative investigations using a "Clean Team" and "Exposed Team" approach. All information gathered during the administrative investigation to date will be screened through a Case Master, who will ensure no information that would compromise the criminal investigation is passed on to the Homicide sergeant doing the criminal case. Additionally, any compelled interview of the subject officer(s) will be delayed until the end of the investigation. A representative of the King County Prosecutor's Office or the City Attorney's Office will be consulted when necessary during the course of the criminal investigation. While the administrative investigation will continue, the criminal investigation will have priority over witnesses and evidence.

(2) Misconduct (as defined in Section II) – If at any time information is obtained that an officer may have committed misconduct during the use of force incident, the OPA Director will be advised and the misconduct investigation referred to their office. The assigned FIT investigator will continue to complete the use of force investigation."

[601] Paragraph 65 of the Settlement Agreement defined a Type II use of force as: "a use of force which causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Type III use of force. Examples of this type of force include: a "hard" strike, take-down, or kick; CED deployment of any type against a subject; use of an impact weapon (including batons and flashlights) to strike a subject; deployment of canine that results in an injury or complaint of injury; deployment of Oleoresin Capsicum Spray (OC Spray) at a subject; and placing a subject in a full restraint position" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

need to be," noting that only 45% of use of force investigative files included all material evidence, and "Lieutenants and Captains are likewise not yet identifying and addressing deficiencies in sergeant investigations of Type II force," the Monitor found that "SPD's review of Type 1 force[602] [was] in initial compliance with paragraph 102 of the Consent Decree."[603] The Monitor concluded that: "Still, much work remains. With respect to this assessment, the quality and integrity of Type II force investigations must improve substantially" (First Systemic Assessment, at Executive Summary, pp. 1-4).

The day after the filing of the first systemic assessment, the U.S. Attorney General, Lorette Lynch visited Seattle as part of a six-city tour to promote Community Oriented Policing. Attorney General Lynch addressed a forum at the Northwest African American Museum and was quoted in the *Seattle Times* as saying:

> From Ferguson to Baltimore and from Cleveland to New York City, we have witnessed the pain and the unrest that can ensue when trust between law-enforcement officers and the communities they serve is damaged, broken, or lost…In many cases, these tensions have their roots in a long and difficult history of inequality, oppression and violence, and they speak to issues that have tested our country's unity since its inception…They will not be overcome with easy solutions or simple strategies. ... But as Seattle's recent experience can attest, real progress is possible. (*Seattle Times*, 9/25/2015)[604]

Further, the *Seattle Times* reported that

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[602] Paragraph 64 of the Settlement Agreement defined a "Type I" use of force as: "the use of low-level physical force that is greater than De Minimis Force, is not reasonably expected to cause injury and does not result in an actual injury or complaint of an injury, but causes transient pain and/or disorientation during its application as a means of gaining compliance. Examples of this type of force include disorientation techniques (e.g., open or empty hand strike), weaponless pain compliance techniques while using sufficient force to cause pain (e.g., wrist lock), and 'soft' take-downs (e.g., controlled placement of a subject, including on the ground or floor) not included in a Type II use of force. Pointing a firearm at a person is reportable as a Type I use of force" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

[603] Paragraph 102 of the Settlement Agreement reads as follows: "The supervisor will determine if the use of force is appropriately classified as a Type I incident. If the supervisor is unable to make that determination, the supervisor will consult with FIT or his/her direct supervisor to assist in the determination. The supervisor will also evaluate the incident for any other concerns (tactical, threat assessment, etc.). The supervisor will address any concerns with the officer involved. If it appears that misconduct may have been involved in the use of force, the supervisor will ensure that OPA is contacted and consult the FIT team regarding reclassification of the incident as Type II or III" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

[604] Carter, M. & Miletich, S. (2015, September 25). U.S. AG lauds police-reform steps. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Lynch was joined by Mayor Ed Murray and Police Chief Kathleen O'Toole. Lynch said Seattle is at the forefront of police reform and is becoming a model for law-enforcement agencies around the country in light of deadly police encounters in Ferguson, Mo., and Baltimore, Md. (*Seattle Times*, 9/25/2015)

October 1, 2015	Court approves Updates to Third Year Monitoring Plan[605]	Seattle Police Monitor; Judge James Robart
November 24, 2015	Second Systemic Assessment: Force Review Board[606]	Seattle Police Monitor

Second systemic assessment: force review board.

The Monitor's second systemic analysis, relating to the SPD's "Force Review Board" was filed with the court on November 24, 2015. The ultimate finding was that the FRB's performance was "in initial compliance with paragraphs 119 to 125 of the Consent Decree."[607] Specifically, the Monitor found that the

[605] U.S. v. Seattle, Document No. 236, filed October 1, 2015.

[606] U.S. v. Seattle, Document No. 247, filed November 24, 2015.

[607] Paragraphs 119 to 125 of the Settlement Agreement read as follows:

Para 119. "SPD has established a use of force committee. For purposes of this Agreement, this committee is referred to as the Use of Force Committee ("UFC"). SPD may rename the committee. This committee will conduct timely, comprehensive, and reliable reviews of all Type II and Type III uses of force."

Para. 120. "Committee Membership: The UFC will consist of: an Assistant Chief or his designee (who will chair the Committee); supervisors from the Training Section; one representative from each involved precinct, selected by each precinct captain; and a representative from the PSS. The Chair may include any subject matter experts the Chair feels would be helpful in reviewing particular incidents."

Para. 121. Training: "Each member will receive a minimum of eight hours of training on an annual basis, including legal updates regarding use of force and curriculum utilized by the Training Section regarding use of force."

Para. 122. "The UFC may consult with other advisors as necessary."

Para 123. Review: "The UFC will review each use of force packet to determine whether the findings from the chain of command regarding whether the force used is consistent with law and policy and supported by a preponderance of the evidence, whether the investigation is thorough and complete, and whether there are tactical, equipment, or policy considerations that need to be addressed."

Para. 124. Review of FIT Investigations: "The review of FIT investigations is the same as for Type II investigations, except the FIT investigation review will be chaired by a Deputy Chief. The Monitor and SPD will explore ways to include others in the review of FIT investigations, including civilian observers. Consistent with current practice and the provisions above, the UFC will document its findings and recommendations for FIT investigations. Unless an extension is granted by the Chair, the review should be conducted within seven days of the FIT presentation to the UFC."

> SPD's FRB [is] functioning well and, in a great majority of instances, as the Department's hub of internal accountability, analysis, and continual improvement with respect to force. The Board appears to be understanding, and embracing, its role as the key forum for "internal innovation and critical analysis" of force. It is regularly exploring important issues that go well beyond whether an involved officer's use of force was consistent or inconsistent with SPD policy and instead consider "what [the] force incidents can teach the Department and its officers about training, tactics, procedure, and policy." (2nd Systemic Assessment, at 1)

December 15, 2015	Sixth semi-annual report[608]	Seattle Police Monitor

Sixth semi-annual report.

The Monitor's sixth semi-annual report, was filed with the Court on December 15, 2015. The Monitor reported that "[o]ver the last six months, the SPD has moved forward and continues to be on track." The Monitor gave a preview of the results of SPD Community Confidence surveys, which he reported "showed improvement[s]' in positive attitudes towards the SPD." The Monitor also reported that the SPD was "moving forward with implementation of body-worn cameras in conjunction with the Mayor's Office" (6th semi-annual report, p. 7).

The Monitor also observed that "[a]s of June 19, 2015, a dramatically-overhauled early intervention system has been up and running across SPD," although it was too early to determine how the system was functioning. The report positively commented on the SPD's ongoing progress on a data analytic platform and noted the court's approval of "surgical revisions" to core policies involving use-of-force, bias-free policing, crisis intervention and early intervention (6th semi-annual report, p. 10).

Finally, the Monitor commented positively on the status of officer training programs:

Para. 125. Corrective Action: "The UFC will not make recommendations concerning discipline; however, the Chair of the UFC is obligated to ensure a referral to OPA is made if potential misconduct is discovered in the review process. Should policy, equipment, or training deficiencies be noted in the review process, the UFC Chair will ensure that they are brought to the attention of the relevant commanding officer for appropriate action. The Bureau Commander of the officer involved with the use of force will have the final responsibility regarding retraining or recommending discipline to the Chief" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

[608] U.S. v. Seattle, Document No. 251, filed December 15, 2015.

> SPD officers and command staff continue to receive significant training on topics and issues related to the Consent Decree. This second year of training is a significant part and evidence of SPD's commitment to the reform process. It is a testament to the City as a whole that it is willing to expend the hours and cost to ensure that SPD officers are among the best-trained in the nation. (Sixth semi-annual report, at 11)

Between the time of the sixth and seventh (and final) semi-annual reports, the Monitoring Team completed another three "Systemic Assessments," relating to the SPD's Office of Professional Accountability, the results of Community Confidence Surveys, and the SPD's Crisis Intervention program:

January 20, 2016	Court Order Seeking Input into proposed revisions to OPS Policy Manual[609]	Judge James Robart
January 27, 2016	Third Systemic Assessment: Community Confidence[610]	Seattle Police Monitor

Third systemic assessment: community confidence.

The Monitor's third systemic analysis, relating to the results of City Community Confidence surveys was filed with the court on January 27, 2016.

As reported by the *Seattle Times:* "Led by Police Chief Kathleen O'Toole, the Seattle Police Department has woven community-oriented policing into its daily interactions and boosted public confidence in the department, the federal monitor overseeing court-ordered reforms concludes in a new report" (*Seattle Times*, 1/28/2016).[611] The Monitor specifically noted that,

> [r]ather than believing that isolated initiatives or scattered community meetings are sufficient engagement with the community, the Chief is driving – in words and action – the SPD to conduct policing in dynamic partnership with the community in all of its forms. These efforts are deservedly receiving national attention and praise. (3rd Systemic Assessment, p. 2)

The Monitor still found, however, that "the SPD has work to do to learn how to listen to and engage isolated communities – and to demonstrate that the input of those

[609] U.S. v. Seattle, Document No. 258, filed January 20, 2016.

[610] U.S. v. Seattle, Document No. 263, filed January 27, 2016.

[611] Miletich, S. (2016, January 28). Federal monitor finds gain in community confidence in SPD. *Seattle Times*. Retrieved from https://www.seattletimes.com.

communities is understood and incorporated into policing reforms" (3rd Systemic Assessment, p. 34).

The Monitor specifically reported on the findings from recent interviews conducted by the Monitoring Team with community members and police personnel over a period of several months in 2015. In addition, a baseline community survey was conducted by a Monitor-hired research firm (ALZ Research) in 2013, with a follow-up survey having been conducted in 2015 (Third Systemic Assessment, Appendix A [Methodological Framework & Approach for Qualitative Assessment of Public Confidence], pp. 36-55). [612]

The community survey's key findings were explained by ALZ research in a report, dated September 10, 2015, which was appended to the Third Systemic Assessment as Appendix "C." The research firm reported that "the Seattle Police Department's overall ratings improved, with disapproval of the department down sharply." These findings were considered significant particularly in light of the fact that approval ratings for the Washington State Patrol, the Seattle Fire Department and Seattle Schools had not changed significantly: "it is [therefore] likely that this change is about SPD more than a general positivity towards local and state institutions."

Even so, the survey report noted that: "Latinos' and African Americans' experiences still back up the public's perception that SPD treats them worse than others." According to the report, even though:

> African Americans' and Latinos' experiences have gotten better in the last two years, [] they are still not the same as whites or Asian Americans. They are more likely than whites to disapprove of how police treat them, they are more likely than whites to say police used force in an interaction, and they are less likely than whites to say police engaged in a wide range of positive behaviors such as treated them respectfully and listened to them. And they are more likely than whites to report being stopped in the first place by SPD. Most Seattleites also think that SPD treats Latinos and African Americans worse than others in the city (ALZ Executive Summary, p. 2).

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[612] As indicated in the Executive Summary to the survey report: "This research was commissioned by the federal monitoring team to assess community perceptions of the Seattle police, gauge the prevalence of community interactions with the police, and understand the nature of those interactions. This is the second survey of its kind commissioned by the monitoring team, and it follows a similar survey conducted in August 2013 that asked many of the same questions to a similar audience" (Executive Summary, p. 1).

Specifically, the report indicated that since 2013, amongst Latinos, approval of the SPD had improved from 54% to 65% and disapproval had decreased from 39% to 23%. With respect to LGBT Seattleites, approval of the SPD had improved from 55% to 72% and disapproval had decreased from 44% to 27%; amongst Asian Americans, approval of the SPD had improved from 27% to 70% and disapproval had decreased from 27% to 17%. With respect to Whites, approval of the SPD had increased from 60% to 66% and disapproval had decreased from 35% to 25%. The most notable group that had not "warmed" towards SPD, however, were African Americans where the statistics remained virtually unchanged with 48-49% approving of the SPD and 40-42% disapproving (ALZ Executive Summary, p. 3).

The Monitoring Team also reported having conducted interviews with community members and police personnel over a period of several months: while it was acknowledged that community comments were mixed, officers reportedly believed that relations with the community were "generally and increasingly solid and positive," even though officers "readily admit[ted] that the department still has much work to do to realize the full potential of its community policing strategies and programs" (3rd Systemic Assessment, pp. 3-4).

Among the "isolated communities" and community activists interviewed by the Monitoring Team, the Monitor reported that people complained that little had changed and "that SPD, like police across the country, continue a history of violence, disrespect and apathy against individuals in some communities." Still, the Monitor reported that, "SPD is, to at least some extent, defying national trends through their own, affirmative efforts toward reestablishing a closer, collaborative relationship with the community going forward" (3rd Systemic Assessment, pp. 4, 18).

The Monitor further reported that the SPD's investment in Community Oriented Policing had potentially resulted in an increase in solved homicides. The Monitor reported that the homicide clearance rate had increased from 35% in 2012 (when the Consent Decree was entered) to 57% in 2013 and 68% in 2014. Although the Monitor acknowledged that homicide clearance rates were not "a perfect measure," he argued that greater public trust in the police could be expected to result in more cooperation from the public and increased clearance rates (3rd Systemic Assessment, pp. 16-17). The Monitor concluded his report with the following substantive remarks:

> The SPD has engaged in significant efforts to put itself on a solid path toward building stronger relationships with the Seattle community. In particular, the Chief's emphasis on the issue, the re-structuring of policing efforts through the micro-community policing plans, the agency's training strategies, and the overall willingness to engage in and embrace the reform effort with the community are clear signs that the SPD understands where it needs to go and is willing to undertake the difficult changes associated with this. (3rd Systemic Assessment, p. 35)

As with his other reports, however, the Monitor went on to ask for more, reporting that the SPD still had "a great deal of work to do to fully institutionalize community-oriented policing strategies into all aspects and corners of the organization" (3rd Systemic Assessment, p. 35). Interestingly, it was this habit, of first praising the SPD, and then identifying additional work that needed to be done that raised the ire, over the long term, of many of the SPD and city-affiliated research participants who concluded that no matter what the SPD did, it would never be good enough for the Monitor.

January 22, 2016	Fourth Systemic Assessment: Office of Professional Accountability (OPA)[613]	Seattle Police Monitor

Fourth systemic assessment: office of professional accountability.

The Monitor's fourth systemic assessment, relating to the City's "Office of Professional Accountability" (OPA) was filed with the court on January 22, 2016.

The OPA, in existence since 1999, serves as the City agency responsible for receiving and investigating both internal and community complaints against the police. The Department of Justice's 2011 investigation found that "the structure of OPA [was] sound" and that OPA investigations were "well-organized, well-documented, and thoughtful." However, the investigation also found that "OPA fail[ed] to provide adequate oversight to prevent a pattern or practice of excessive force… [and did] not provide the intended backstop for the failures of the direct supervisory review process" (DOJ Investigation Report, 2011, p. 5).

> Consequently, the Consent Decree contains provisions to encourage SPD to 'ensure that all complaints regarding officer conduct are fully and fairly dealt with; that all investigative findings are supported by the evidence and documented in writing; and that officers and complainants receive a

[613] U.S. v. Seattle, Document No. 294, filed January 22, 2016.

> thorough, fair, and expeditious resolution of complaints. (4th Systemic Assessment, p. 15)

The Monitor's assessment of the OPA was limited in scope. The assessment was focused on evaluating OPA's intake of complaints and the conduct of its investigations but did not evaluate many of the organization's other responsibilities. The Monitor remarked that, unlike the other assessments being conducted,

> the purpose of this assessment is not to assess compliance with specific requirements under the Consent Decree, nor to declare that the SPD is in initial or full and effective compliance with the Decree. The purpose of this assessment, rather, is to provide the Parties, the Court and the Monitoring Team itself vital information to complete two important tasks: (a) to revise the OPA Manual with evidence-based data, informed by real-world experience, actual SPD trends, and objective facts observed across cases by neutral reviewers, not hypotheticals or unsubstantiated claims; and (b) to advise the Court, armed with such data, about how to "create a better framework of independent review of the various policies, organizations and systems that will monitor the performance of the Seattle Police Department.[614] (Fourth Systemic Assessment, p. 2)

The consent decree specifically sought to ensure OPA's compliance through two specific requirements: 1) the SPD was required to revise policies regarding employee reporting of misconduct and protection against retaliation and 2) the OPA was required to complete a manual which would "formalize OPA's procedures, best practices, and training requirements."[615] The Monitor reported that the required policies and an updated OPA Manual had been approved by the court in July 2014 and that policy and manual revisions had been recently submitted to the court on January 14, 2016 (4th Systemic Assessment, p. 2).

Overall, the Monitor found that "the design of SPD's complaint investigation process [to be] exceptionally strong and very well structured." Still, the Monitor found that "although the quality of the great majority of OPA investigations are generally satisfactory or better," the OPA needed to make certain "targeted changes to its operations, … before it can be considered in practice, and not merely existing on paper,

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[614] A minute order was filed by the Court on August 26, 2015, ordering the parties to file "an approach for SPD accountability and review systems [to be used] … to create a better framework for independent review of the various policies, organizations and systems that will monitor the performance of the Seattle Police Department." (U.S. v. Seattle, Document No. 228, filed August 26, 2015).

[615] See, Settlement Agreement, U.S. v. Seattle, Document No. 3-1, at paras 165-167.

as the 'backstop' to the failures of any other part of the accountability system" (4th Systemic Assessment, pp. 3-4). The Monitor identified issues and concerns regarding 1) "the quality and consistency of interviews," 2) "the timeliness of the interviews;" and 3) the quality of "investigations that raise[d] potential criminal or terminable offenses (such as false statements)" (4th Systemic Assessment, p. 4).

The Monitor recommended a more robust use of civilian investigators, which he believed would potentially mitigate any deference or perception of deference to SPD witnesses and skepticism toward civilian witnesses. It was noted that the OPA Director made this same point in an October 16, 2015 memorandum to the court regarding SPD Accountability Systems when he observed that "the current situation of an all-commissioned intake and investigation staff is a serious challenge to OPA's actual and perceived independence"[616] (4th Systemic Assessment, p. 4). The Monitor also identified concerns relating to the timeliness of OPA investigations after having identified that "in a full one-fourth of OPA cases, the unit did not meet the well-known, 180-day deadline," under which any untimely findings could not be used to impose discipline on an SPD officer. Finally, the Monitoring Team reported that where OPA investigations involved or raised potential allegations of criminal conduct against SPD staff, OPA tended to "address[] less than it could and should have on issues that came to light during the context of the criminal investigation" (4th Systemic Assessment, pp. 4-5).

The Monitor also suggested that the City consider changes to its accountability structure to mitigate the negative impacts of the "cabined nature of OPA's charge," which did not allow the organization to "readily address…more systemic problems of police culture and procedure" (4th Systemic Assessment, p. 7).

Perhaps most significantly, the report noted that about 39% of OPA complaints were initiated from within the SPD, which was "a remarkable number given that, during DOJ's 2011 investigation, internal complaints were 'rare to non-existent'" (4th Systemic Assessment, at 21).[617]

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[616] See U.S. v. Seattle, Docket. No. 238 (Memo of OPA Director Pierce Murphy), at p. 6.

[617] Although one member of the SPD's command staff advised me that the number of internal complaints had actually gone "out of control" and that officers were unnecessarily making internal complaints out of the fear that they themselves would get into trouble if they did not.

February 16, 2016	Fifth Systemic Assessment: Crisis Intervention [618]	Seattle Police Monitor

Fifth systemic assessment: crisis intervention.

The Monitor's fifth systemic assessment, relating to the SPD's "Crisis Intervention Program," was filed with the Court on February 16, 2016.

The assessment reported that the SPD had taken "major steps" in reducing police uses of force against persons suffering from mental crisis and reached "initial compliance" in that area of the Consent Decree.[619] As reported by the *Seattle Times*:

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[618] U.S. v. Seattle, Document No. 269, filed February 16, 2016.

[619] Section III. B. (paragraphs 130-137) of the Settlement Agreement contained provisions relating to SPD use of force against persons in crisis:

B. CRISIS INTERVENTION

Para. 130. "SPD will continue its work in providing training in verbal tactics with the goal of reducing the use of force against individuals in behavioral or mental health crisis, or who are under the influence of drugs or alcohol, and to direct or refer such individuals to the appropriate services where possible. SPD has currently provided Crisis Intervention training to approximately 365 officers. SPD will continue to provide Crisis Intervention training as needed to ensure that CI trained officers are available on all shifts to respond to incidents or calls involving individuals known or suspected to have a mental illness, substance abuse, or a behavioral crisis ('individuals in crisis')."

Para. 131. "SPD will maintain its program of dispatching CI trained officers to incidents or calls involving individuals in crisis."

Para. 132. "CI trained officers will take the lead, when appropriate, in interacting with individuals in crisis. If a supervisor has assumed responsibility for the scene, the supervisor will seek the input of CI trained officers on strategies for resolving the crisis event where it is reasonable and practical to do so."

Para. 133. "To be considered 'CI trained,' SPD officers will be required to undergo a 40-hour initial comprehensive CI training, and eight hours of in-service CI training annually thereafter. SPD's CI training will continue to address field evaluation, suicide intervention, community mental health resources, crisis de-escalation, and scenario exercises. The training may include on-site visitation to mental health facilities and interaction with individuals with a mental illness. Additionally, the CI training will provide clear guidance as to when an officer may detain an individual solely because of his/her crisis. SPD will consult with the Crisis Intervention Committee ("CIC") regarding changes to the curriculum going forward."

Para. 134. "SPD officers who do not receive the comprehensive CI training will receive basic training on crisis intervention. This training should include a subset of the topics and training methods included in the CI training, and will also explain the circumstances in which a CI trained officer should be dispatched or consulted, and how situations involving impaired subjects should be addressed when a CI trained officer cannot respond. SPD will consult with the CIC regarding the curriculum and appropriate number of hours for this training."

Para. 135. "SPD, in conjunction with the CIC, will evaluate its current training for dispatchers on identifying calls for service that involve individuals in crisis. SPD will ensure that all dispatchers are appropriately trained to identify calls for service involving individuals in crisis and dispatch CI

> [t]he SPD's treatment of the mentally ill or chemically impaired was a significant finding of the DOJ's 2011 investigation into the use of excessive force by officers. The investigation found police routinely used unconstitutional levels of force in making arrests, often against people who were mentally ill or intoxicated. (*Seattle Times*, 2/17/2016)[620]

According to the Monitor's report, the SPD provided basic training to every officer on the department and advanced training to "some 550" officers. "CIT" trained officers were reportedly being dispatched to virtually every call involving people in crisis and "there has been a real, tangible, and objective change in the way Seattle police are interacting, compassionately and with an eye toward treatment, with those in crisis" (5th Systemic Assessment, pp. 14, 22; *Seattle Times*, 2/17/2016). Further, the *Seattle Times* reported the SPD to be "the first major policy agency in the country to gather detailed

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trained officers to the crisis event. SPD will consult with the CIC regarding the curriculum and appropriate number of hours for this training."

Para. 136. "SPD will continue and expand its tracking of information regarding SPD's interactions with individuals in crisis and provide this data to SPD's current CI Team. SPD will consult with the CIC to determine what interactions result in data collection, and the types of information to be collected based on the level of interaction. Subject to the CIC's review and recommendations, and applicable law, SPD should gather and track the following data:

a) date, time, and location of the incident;

b) subject's name, age, gender, and address;

c) whether the subject was armed, and the type of weapon;

d) whether the subject is a U.S. military veteran;

e) complainant's name and address;

f) name and badge number of officer on the scene;

g) whether a supervisor responded to the scene;

h) techniques or equipment used;

i) any injuries to officers, subject, or others;

j) disposition, and;

k) brief narrative of the event (if not included in any other document)."

Para. 137. "SPD will review the outcome data generated through the process described above, and may use the data for developing case studies for roll call and CI training, recognizing and highlighting successful individual officer performance, developing new response strategies for repeat calls for service, identifying training needs for the annual in-service CI training, making CI training curriculum changes, or identifying systemic issues that impede SPD's ability to provide an appropriate response to a behavioral crisis event" (Settlement Agreement, U.S. v. Seattle, Document No. 3-1, filed 7/27/2012).

[620] Carter, M. (2016, February 17). 'Real, tangible' change in SPD's crisis response. *Seattle Times*. Retrieved from https://www.seattletimes.com.

data on responses to calls requiring crisis intervention and whether force was used" (*Seattle Times*, 2/17/2016).

According to the data available to the SPD, officers had resorted to force in just 2% of the calls involving persons in crisis from June to August, 2015 with the department "on track for around 10,000 crisis contacts per year" (5th Systemic Assessment, pp. 5, 11). The Monitor further noted that, in those cases where force was used, 84% of the time, the lowest-level of reportable force was used with the next level of force (Level II) being used in the remainder of incidents. Level III uses of force (involving uses of serious or deadly force) were not reported in any of the crisis calls (5th Systemic Assessment, p. 11).

> These numbers suggest that the SPD is using significant and appropriate restraint in difficult situations, making decisions that preserve safety and reduce use of force. This is a significant finding, indicative of the culture shift that has taken place – and supportive of initial compliance. (5th Systemic Assessment, p. 12)
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> The Monitor summarized his findings as follows:
>
> 1) The SPD is dispatching their now large and trained cadre of CI-Certified officers to crisis events in the great majority of instances.
>
> 2) Initial data indicates that officers use force against individuals in crisis less than two percent of the time and, when they do use force, 80 percent of the time they use the lowest level of force (and not once used the highest level of force), even in high-risk situations.
>
> 3) Over the past two years, all officers have received some level of crisis intervention training, which has been approved by the Department of Justice, the Monitor, and the Federal Court.
>
> 4) A sufficient number of officers appear to be stationed throughout the City, and on all watches, to provide coverage for crisis incidents.
>
> 5) SPD has institutionalized attention to crisis intervention work by establishing and funding the CIT Program, implementing training and data collection processes, and continuing to take the lead in maintaining the CIC.
>
> 6) SPD is making strong efforts to guide people in crisis into the social service system, as opposed to arresting and jailing them (5th Systemic Assessment, pp. 1-2).

February 25, 2016	Court Order approving Plan for Assessment of SPD Accountability Processes[621]	Judge James Robart
March 16, 2016	Order approving Revisions to OPS Manual "With One Exception"[622]	Judge James Robart
June 6, 2016	Minute Order Scheduling Status Conference Re: SPD Accountability Systems Review[623]	Judge James Robart
July 14, 2016	Court Order approving Fourth Year Monitoring Plan[624]	Seattle Police Monitor; Judge James Robart
August 9, 2016	Court Order Authorizing City to Draft Legislation concerning SPD's Accountability Systems[625]	Judge James Robart
September 26, 2016	Compliance Status & Seventh semi-annual report[626]	Seattle Police Monitor

Compliance status & seventh (& last) semi-annual report.

The Monitor's seventh and last semi-annual report, was filed with the court on September 26, 2016. In that report, the Monitor reported that the SPD had "made 'significant progress' over the past year in complying with many aspects of a consent decree to address excessive force and biased policing" (*Seattle Times*, 9/28/2016).[627] For the first time, the Monitor identified a possible time frame for the City to reach full compliance; suggesting that it could occur "in as little as a year from now" (Fall 2017).[628] According to the Monitor, "[i]t has been a prodigious effort to come this far, and the distance traveled now exceeds the distance that remains" (7th semi-annual report, p. 2).

The Monitor credited Mayor Murray, with providing the leadership necessary to achieve the necessary reforms: "Mayor Ed Murray promised nearly three years ago that reform of the SPD was the top priority of his first term. He has been good to his word and significant credit is due to [him]." He also credited Chief O'Toole for "her sharp focus

[621] U.S. v. Seattle, Document No. 275, filed February 25, 2016.

[622] U.S. v. Seattle, Document No. 278, filed March 16, 2016.

[623] U.S. v. Seattle, Document No. 293, filed June 16, 2016.

[624] U.S. v. Seattle, Document No. 298, filed July 14, 2016.

[625] U.S. v. Seattle, Document No. 305, filed August 9, 2016.

[626] U.S. v. Seattle, Document No. 317, filed September 26, 2016.

[627] Miletich, S. (2016, September 28). Seattle police win praise. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[628] The court actually made its first finding of "initial compliance" on January 10, 2018.

on compliance with the Consent Decree" and for "building necessary bridges, and collaborating both internally and with the key stakeholders outside the SPD" (7th semi-annual report, p. 2).

The Monitor's report also suggested that the SPD culture appeared to have changed since the Settlement Agreement had been reached; although he noted that it would take time to ensure that the culture change had been "'baked in' to the fabric of the Department." The Monitor also lauded the department's rank-and-file "who have had to learn and implement new policies, receive and internalize extensive new training, work under more sustained supervision, document and report more about their daily performance, and respond constructively to greater accountability" (7th semi-annual report, pp. 2,3).

The Monitor highlighted that officers were now appearing to exercise restraint in using force against people in crisis. He also noted a reduction in the use of moderate to high levels of use of force, suggesting that this "may signal that officers, on the whole, are de-escalating more incidents and reserving force for only those instances where it is necessary, proportional and reasonable" under the circumstances (7th semi-annual report, pp. 2-3).

However, as reported by the *Seattle Times*, the seventh semi-annual report did not discuss pending issues of accountability. In fact, earlier that Summer, the membership of the Seattle Police Officers' Guild (SPOG) had "overwhelmingly rejected" a contract offer from the City that included reforms relating to police accountability and discipline. During a court hearing on August 15, 2016, after the union rejected the contract in late July, the assigned federal Judge stated: "the court and the citizens of Seattle will not be held hostage for increased payments and benefits..." (*Seattle Times*, 7/21/2016, 8/16/2016, 9/28/2016).[629] In fact, it turned out to be issues of accountability that would ultimately derail the compliance schedule for the Consent Decree, resulting in a finding by the court, on May 21, 2019, that the City had fallen "partially" out of compliance with the Consent Decree as it related to its police accountability regime.[630]

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[629] Miletich, S. (2016, July 21). Seattle police union soundly rejects contract. *Seattle Times*; Miletich, S. (2016, August 15). In tongue lashing, judge won't let guild hold police reform 'hostage.' *Seattle Times*; Seattle Times, 9/28/2016. Retrieved from https://www.seattletimes.com.

[630] U.S. v. Seattle, Document No. 562, filed May 21, 2019.

The Monitor's last five systemic assessments, relating to Supervision (December 31, 2016), Type II Force Investigation & Reviews (a Reassessment) (January 27, 2017), the Early Intervention System (EIS) (March 23, 2017), Use of Force (April 16, 2017) and Stops, Search & Seizure (June 18 ,2017) were all filed between December 31, 2016 and June 18, 2017.

October 20, 2016	Unfair Labor Practice Complaint filed by Seattle Police Management Association (SPMA) alleging Police Accountability reforms in violation of contract[631]	Seattle Police Management Association (SPMA)
December 13, 2016	Court order approving SPD Force Investigation Unit Procedural Manual[632]	SPD FIT; Judge James Robart
December 31, 2016	Sixth Systemic Assessment: Supervision[633]	Seattle Police Monitor

Sixth systemic assessment: crisis intervention.

The Monitor's sixth systemic assessment, relating to the SPD Supervision, was filed with the Court on December 13, 2016.

The Monitor noted that the Consent Decree contained four provisions (paragraphs) relating to supervision, "requiring SPD to deploy a sufficient number of well-trained sergeants who can provide the supervision, guidance, and oversight necessary to provide real-time accountability to line-officers."[634]

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[631] U.S. v. Seattle, Document No. 347, filed December 30, 2016, p. 2.

[632] U.S. v. Seattle, Document No. 341, filed December 23, 2016.

[633] U.S. v. Seattle, Document No. 351, filed December 31, 2016.

[634] Para. 153. "The City will provide and SPD will deploy an adequate number of qualified field/first-line supervisors (typically sergeants) to assure that the provisions of this Agreement are implemented. SPD will employ sufficient first-line supervisors to assure that first-line supervisors are able to: 1) respond to the scene of uses of force as required by this Agreement; 2) investigate each use of force (except those investigated by FIT) in the manner required by this Agreement; 3) ensure documentation of uses of force as required by this Agreement; and 4) provide supervision and direction as needed to officers employing force."

Para. 154. "As a general rule, all operational field officers (including patrol officers) should be assigned to a single, consistent, clearly identified first-line supervisor. First-line supervisors should normally be assigned to work the same days and hours as the officers they are assigned to supervise."

Para. 155. "Sergeant training is central to effective first-line supervision. The City and SPD will ensure that personnel assigned to a planned assignment of acting sergeant for longer than 60 days will be provided adequate training to fulfill the supervisor obligations under this Agreement,

The 2011 DOJ investigation specifically found that the pattern of excessive force attributable to the SPD was, in part, the product of inadequate supervision. Specifically, the DOJ found that "SPD has tacitly allowed a pattern or practice of excessive use of force by failing to provide adequate supervision of force." The DOJ continued that:

> [t]he failure to supervise patrol officers' use of force has occurred at every level, from the first-line supervisor's (typically a sergeant) investigation and review, to the chain of command's secondary review of that investigation, to the final review by command staff. (DOJ Investigation, 2011, pp. 4, 17)

As part of the supervision failures, the DOJ identified a systemic failure to adequately train sergeants. In addition, the DOJ found that "SPD fails to provide adequate supervision to assess biased policing concerns by (1) failing to conduct data analysis regarding its officers' activity and (2) failing to conduct thorough investigations of biased policing allegations" (DOJ Investigation, 2011, pp. 19, 31).

As reported by the Monitor,

> the Consent Decree focuses on four main topics concerning supervision. The first is the adequacy of supervision by the chain of command. The second concerns "unity of command," or ensuring that SPD personnel are "assigned to a single, consistent, clearly identified first-line supervisor." The third relates to sergeant training, ensuring that any personnel assigned as a long-term "acting sergeant" receives specific training within sixty days of their appointment on the responsibilities and requirements of such a supervisor position. Finally, it must be clear that SPD "deploy[s] an adequate number of qualified . . . supervisors to assure that the provisions" of the Consent Decree are implemented. (6th Systemic Assessment, p. 1)

The Monitor found the SPD in initial compliance with the supervision requirements of the Consent Decree "subject to two important considerations." First, the Monitor commented that he had "previously found deficiencies in supervisory review of Type II force cases based on a 2014 sample." As such, a follow-up assessment was required to determine if the "quality and rigor of Type II investigations and reviews by supervisors" had improved over the prior two years. Second, an upcoming assessment of Investigative stops and bias-free policing would "explore whether supervisors are

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either prior to serving as acting sergeant, or as soon as practicable (and in no event longer than 90 days from the beginning of the planned assignment)."

Para. 156. "Precinct commanders and watch lieutenants will continue to closely and effectively supervise the first-line supervisors and officers under their command, particularly whether commanders and supervisors identify and effectively respond to uses of force" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed 7/27/2017).

sufficiently reviewing documentation for such stops – as such, the outcome of those assessments would also have an impact on the Department's overall compliance with the supervision requirements of the Consent Decree" (6th Systemic Assessment, p. 2).

January 3, 2017	Court approves 2017 SPD Training Plan.[635]	Judge James Robart
January 4, 2017	Status Conference Re: SPMA Unfair Labor Practice Complaint.[636]	City of Seattle
January 6, 2017	Court Order Regarding Accountability Legislation.[637]	Judge James Robart
January 27 2017	Seventh Systemic Assessment: Type II Force Investigation & Review Re-Assessment[638]	Seattle Police Monitor

Seventh systemic assessment: type II force investigation & reviews (re-assessment).

The Monitor's seventh systemic Assessment, relating to Type II Force Investigation and Review, was filed with the Court on January 27, 2017.

The Seventh Systemic Assessment was intended as a follow-up report to the First Systemic Assessment, which, although it found the SPD in initial compliance with a number of the provisions regarding force investigation and review, identified a need for additional progress relating to intermediate-level, Type II force investigations.

The report made a general observation regarding consent decree progress up to the time of the publication of the assessment:

> SPD continues making progress toward compliance with many important provisions of the Consent Decree. It has taken great effort to come this far – sometimes with one step back for two steps forward. The Monitoring Team acknowledges and commends those who have been resolutely keeping their eyes on the goals of effectuating constitutional policing, ensuring officer and public safety, building better community relationships, encouraging greater clarity and transparency from the SPD, and seeking meaningful and depoliticized input by persons from the communities and groups most aggrieved by past incidents of unconstitutional police practices. (7th Systemic Assessment, p. 1)

[635] U.S. v. Seattle, Document No. 353, filed January 3, 2016.

[636] U.S. v. Seattle, Document No. 347, filed December 30, 2016.

[637] U.S. v. Seattle, Document No. 357, filed January 6, 2016.

[638] U.S. v. Seattle, Document No. 360, filed January 27, 2017.

The report also acknowledged that "despite 92 percent of the Seattle population wanting to see body cameras used by SPD officers, only a very small number of officers currently use the camera in what is either the third or fourth 'pilot' of the technology."[639] The Monitor acknowledged the local challenges that resulted in implementation delays, but strongly encouraged movement in this area, which he had previously referred to as essential to accountability involving police uses-of-force:

> Seattle has long, and in many ways justifiably, prided itself on consultation and civic engagement and debate until a consensus seems to be reached. In theory, this way of making policy has the virtue of being highly democratic and inclusive because it gives equal force to all constituents. In practice, however, these virtues can become distorted when the process is geared not toward implementing the overwhelming policy preferences of the majority in a manner that preserve and defend the rights of all but toward thwarting meaningful consideration of a workable policy whatsoever. (7th Systemic Assessment, p. 4)

The Monitor commented that a change in police union leadership had brought about the rejection of a collective bargaining agreement negotiated between the City and the police unions. As noted by the Monitor, "[t]he new union leadership suggested that if there were more money for the rank-and-file, they might take a more flexible bargaining position. The Court has made clear that constitutional reforms would not be held hostage to monetary demands" (7th Systemic Assessment, p. 4). The Monitor further commented on the fact that the union representing police Lieutenants and Captains "took a different tack" by filing an unfair labor practice claim "that threatens to tie up the reform process in endless negotiations and proceedings ricocheting between the state labor board and the federal court" (7th Systemic Assessment, pp. 4-5).

The Monitor concluded on a negative note:

> The Monitoring Team suggested almost a year ago that the SPD could reach full and effective compliance with the Consent Decree in late summer or early fall 2017. At a status conference in early January 2017, the Court estimated that it might be 2018 or beyond before that point is reached – in no small part due to a lack of definitive action in the areas briefly described here. Indeed, describing the progress on issues related to body cameras, union agreements, and the prospective system of "accountability" in Seattle as glacial gives glaciers a bad name. (7th Systemic Assessment, p. 5)

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[639] As noted above, it was not until July 17, 2017, that Mayor Murray issued an executive order intended to overcome union resistance to the implementation of a body worn camera program.

With respect to the specific assessment of use of force investigations, the Monitor evaluated all Type II use of force investigations that took place in the first quarter of 2016. The Monitor reported that there had been "a noticeable improvement" in line supervisors' investigations of Type II uses of force and in force investigation reports. The Monitor also positively noted that the Force Review Board and the Force Review Unit "continue to do a commendable job of identifying policy issues and inconsistencies, as well as issues with the actual force and tactics, that were not caught earlier in the process" (7th Systemic Assessment, p. 6). Even though the Monitor expressed concerns as to whether the SPD had established a "solid record of uniform and consistent compliance," he identified proactive steps as having been taken by the SPD to use "Administrative Lieutenants" to ensure high quality reviews and investigations and, thus, found the SPD to be in "initial compliance" with paragraphs 103-111 of the Consent Decree.[640]

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[640] Paragraphs 103-111 of the Consent Decree read as follows:

Para. 103. "For Type II and Type III uses of force, all involved officers will complete an officer statement using descriptive language. The statement will include: 1) the reason for the initial police presence; 2) a detailed description of the incident circumstances, including the words, actions, and/or threat posed by the suspect warranting the need for force; 3) a detailed description of the force used by the officer giving the statement; 4) a detailed description of the force used by other officers if clearly observed; 5) a detailed description of any apparent injury to the suspect, any complaint of injury, or the lack of injury, including information regarding any medical aid or medical evaluation provided."

Para. 104. "Upon notification of a Type II use of force, a supervisor will respond to the scene and thoroughly investigate all Type II events unless officer or public safety will be compromised as a result. No supervisor who participated in, or ordered the force, will conduct or be involved in conducting the investigation of the incident. In thoroughly investigating all Type II events, the investigating supervisor at a use of force incident will:

a) Respond to the scene, examine the subject of the force for injury, interview the subject for complaints of injury, and where necessary, summon medical aid via SPD Communications.

b) If the subject does not require medical attention, and probable cause exists for his/her arrest, the supervisor may arrange for transport to a police holding facility or directly to jail.

c) The supervisor will obtain sufficient basic information to determine if a FIT response is required. Whether required or not, a supervisor retains the discretion to refer any use of force to FIT for FIT's determination of whether to take investigatory responsibility over the matter.

d) Whenever there is an indication of possible criminal conduct by an officer, the officer will not be compelled to provide a statement.

e) If a FIT response is not appropriate, the supervisor will conduct the investigation, as an impartial fact-finder and will not be responsible for determining the ultimate disposition of the incident. The supervisor will:

(1) Identify and secure evidence to enable the supervisor to describe in detail the use of force and the facts and circumstances surrounding it.

(2) Ensure collection of evidence sufficient to establish material facts related to the use of force, where reasonably available, including physical evidence, audio and video recordings, photographs, and other documentation of injuries or the absence of injuries.

(3) Make reasonable attempts to locate relevant civilian witnesses including the subject and third parties, and arrange for witnesses to be interviewed. Supervisors should use interview techniques taught in use of force investigation courses, including avoiding leading questions.

(4) Where practicable and warranted in the circumstances, ensure that all interviews with civilian witnesses are recorded. Interviews of the subject, or the subject's refusal to be interviewed, will be audio or ICV recorded, if possible.

(5) As with civilian witnesses, conduct separate interviews of officers involved in a use of force incident, unless unreasonable under the circumstances.

(6) Require each officer at the scene to complete either a witness statement (if they did not use Type II use of force) or a Use of Force Statement (if they did use Type II use of force). Each officer will describe what he/she did and saw as comprehensively and descriptively as possible and in the context of the use of force by other officers, identifying all other officers involved in the incident when possible. The supervisor will assure such statements comply with SPD guidelines.

(7) Review any ICV or holding cell video related to the incident, and red flag for retention ICV that documents contact with the subject.

(8) Canvass the area for privately-owned video that may have captured the contact, and attempt to obtain copies voluntarily. If owner refuses, document the location and/or owner of the video. If no privately-owned video is discovered, document that none was found.

(9) Photograph the location where the incident occurred, to determine damage, and ensure that relevant evidence is collected. Photograph any officer injuries or areas of complained injury, and any damaged government or private property.

(10) Respond to the subject's location, and photograph the subject for identification purposes, and any visible injuries or places where the subject complains of injury.

(11) Consider all relevant evidence, including circumstantial, direct, and physical evidence and make credibility determinations and resolve material inconsistencies in statements, if feasible. When possible, assess the subject's injuries and determine whether the subject's injuries are consistent with the force reported used by the officer(s).

(12) When a supervisor concludes that there may have been misconduct, the supervisor will consult with an on-duty commander of the permanent rank of lieutenant or above and ensure that OPA is notified."

Para. 105. "An email or other form of notification of a reportable use of force will be forwarded to the supervisor's commanding officer by the end of the shift during which the force occurred. The notification will contain basic information concerning the incident."

Para. 106. "Each supervisor will complete and document a use of force supervisory investigation using a Supervisor's Force Investigation Report (a revised form 1.40b) within 72 hours of learning of the use of force, unless an extension is approved by the supervisor's commanding officer. The Supervisor's Report will include the following:

a) The supervisor's narrative description of the incident. A supervisor's narrative will summarize the force used by the officers and the subject, injuries sustained by the subject and the officer, and will describe the sequence of events. Additionally, it will document the supervisor's actions in reviewing or screening the incident. The summary should provide a commander reviewing the supervisor's summary a complete understanding of the incident from beginning to end, including, crucially, when each officer used force, why the force was necessary at each point in time, and how each injury, if any, occurred.

February 7, 2017	Court order approving SPD Crowd Management Policy[641]	Judge James Robart
March 23, 2017	Eighth Systemic Assessment: Early Intervention System (EIS)[642]	Seattle Police Monitor

b) The report will be accompanied by the use of force packet which contains documentation of all evidence that was gathered, including physical evidence; photographs; and names, phone numbers, addresses, and summaries of statements by all civilian witnesses to the incident. In situations in which there are no known witnesses, the report will specifically state this fact. In situations in which witnesses were present but the author of the report did not determine the identification, phone number, or address of those witnesses, the report will state the reasons why.

c) The names of all other SPD employees witnessing the use of force and summaries of their statements.

d) The supervisor's evaluation of the evidence, including any material inconsistencies in the evidence or statements."

Para. 107. "SPD Policy 6.240.XII.B.11 already establishes a process by which the use of force packet is forwarded through the chain of command to the involved officer's bureau commander. SPD will revise and clarify the process for review of a use of force report to incorporate the process detailed in this section of this Agreement."

Para. 108. "Upon completion of the supervisor's use of force investigation report and packet, the investigating supervisor will forward the packet through the chain of command. The reviewing lieutenant will review the report packet to ensure it is complete and the investigation was thorough and reach findings as to whether the use of force was lawful and consistent with policy. Each higher-level supervisor in the chain will review the packet to ensure that it is complete, the investigation was thorough, and that the findings are supported by a preponderance of the evidence."

Para. 109. "When it appears to a supervisor that there is additional relevant and material evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings, that supervisor should ensure that additional investigation is completed. When it appears to a supervisor that the findings are not supported by a preponderance of the evidence, that supervisor will modify the findings after consultation with the investigating supervisor and previous reviewers, and document the reasons for this modification, including the specific evidence or analysis supporting the modification. Any supervisor in the chain of command may discuss the modification with the investigating supervisor and/or reviewers. If any investigative deficiencies exist, the reviewer will initiate corrective action where appropriate. Every supervisor in the chain of command is responsible to assure the accuracy and completeness of the Investigation Reports completed by supervisors."

Para. 110. "When the precinct commander finds that the investigation is complete and the findings are supported by the evidence, the investigation file will be forwarded to the Use of Force Committee."

Para. 111. "At the discretion of the officer's chain of command, or OPA in the case of potential misconduct, a use of force investigation may be assigned or re-assigned for investigation to FIT or to another supervisor, whether within or outside of the precinct in which the incident occurred, or may be returned to the Unit for further investigation or analysis. Where, after investigation, a use of force is found to be out of policy, or the investigation of the incident is lacking, the Chief or designee will direct and ensure appropriate corrective action, if warranted. When the use of force indicates policy, training, tactical, or equipment concerns, the Chief or designee will ensure also that necessary training is delivered and that policy, tactical, or equipment concerns are resolved" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

[641] U.S. v. Seattle, Document No. 363, filed February 7, 2017.

[642] U.S. v. Seattle, Document No. 374, filed March 23, 2017.

Eighth systemic assessment: early intervention system (EIS).

The Monitor's eighth systemic assessment, relating to the SPD Early Intervention System, was filed with the Court on March 23, 2017.

In its 2011 investigation report, the Department of Justice found that the SPD's "Early Intervention System" was "broken" (DOJ Investigation, 2011, p. 22). Specifically, the DOJ found that the EIS thresholds were 1) "far too high and interventions on officer's behavior far too late," 2) "the interventions that follow an EIS trigger happen far too long after the triggering incident;" and 3) EIS reviews by supervisors were "superficial at best" (DOJ Investigation, 2011, pp. 22-23). In addition, the DOJ found that:

> SPD failed to track officers over time to see if interventions have successfully curbed the behavior that initially triggered the EIS; SPD allows the sergeant who initially signed off on the use of force subject to the EIS to review the EIS; officer participation in the EIS process is voluntary; and officer performance evaluations frequently fail to reference EIS interventions. (DOJ Investigation, 2011, p. 23)

The Monitor reported that:

> Over the past few years, SPD has made relatively good progress in implementing an improved EIS. It has developed basic protocols for identifying officers whose conduct may require closer evaluation. The SPD has trained supervisors how to evaluate employee performance. It has employed fair, non-punitive interventions where performance required correction or closer supervision. (8th Systemic Assessment, p. 1)

Although the Monitor found that the SPD "remains at some distance from full and effective compliance," it had "achieved a level of progress that is reasonable under the circumstances." As such, the Monitor found the SPD in "initial compliance" with paragraphs 157 through 163 of the Consent Decree.[643]

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[643] Paragraphs 157 through 163 of the Settlement Agreement read as follows:

Para. 157. "The City's EIS system will continue to be used for risk management purposes and not for disciplinary purposes. SPD will monitor the EIS to ensure it is meeting its objective of providing SPD with notice before behaviors become problematic."

Para. 158. "SPD will review and adjust, where appropriate, the threshold levels for each of the current EIS indicator criteria, and the EIS indicators. The Monitor will review and approve the revised EIS threshold levels and indicators".

Para. 159. "SPD will revise its EIS policy to include a mechanism for review of an officer whose activity has already triggered a threshold for one of the EIS indicator criteria, so that the threshold

March 24, 2017	Declaration of Chief of Police in Support of SPD Body-Worn Camera Policy[644]	Chief Kathleen O'Toole
April 6, 2017	Ninth Systemic Assessment: Use of Force[645]	Seattle Police Monitor

Ninth systemic assessment: use of force.

The Monitor's ninth systemic Assessment, relating to the SPD use of force, was filed with the Court on April 6, 2017.

The Department of Justice's 2011 investigation of the SPD identified a pattern or practice of unconstitutional use of force, which included "[d]eficiencies in SPD's training, policies, and oversight with regard to the use of force" (DOJ Investigation, 2011, p. 3). The Monitor acknowledged that since the time of the Settlement Agreement, the Court had approved two revisions to the SPD's use-of-force policies (on December 17, 2013[646] and on July 27, 2015[647]) and that the SPD had engaged in extensive use-of-force training which had also been filed with the court over a two-plus year period.[648] Perhaps

level is lower if EIS is triggered again, where appropriate. For example, if an officer has participated in a certain number of uses of force in a six-month period, SPD will design a protocol for lowering the threshold for subsequent review."

Para. 160. "SPD will collect and maintain information related to supervisor, precinct, squad, and unit trends, consistent with the provisions in this section."

Para. 161. "SPD will collect, maintain, and retrieve information related to the following precinct-level activity:

a) uses of force;

b) OPA complaints and their dispositions;

c) number of individual officers who have triggered EIS reviews; and

d) supervisor EIS reviews with officers."

Para. 162. "Supervisors should periodically review EIS activity of officers in their chain of command."

Para. 163. "SPD will revise its EIS policy and procedure, as necessary, so that interventions assist officers in avoiding potentially troubling behavior. Specifically, SPD policies and procedures will ensure that (1) the intervention strategy is implemented in a timely manner; (2) data regarding the implementation of the intervention is tracked in EIS; and (3) if necessary, the employee's supervisor reviews the progress of the intervention strategy" (Settlement Agreement, U.S. v. Seattle, Document 3-1, filed July 27, 2012).

[644] U.S. v. Seattle, Document No. 380, filed March 24, 2017.

[645] U.S. v. Seattle, Document No. 383, filed April 6, 2017.

[646] U.S. v. Seattle, Document No. 115, December 17, 2013.

[647] U.S. v. Seattle, Document No. 225, July 27, 2015.

[648] U.S. v. Seattle, Document Nos. 144, 151, 152, 153, 165, 168, 199, 254 & 277 (filed between May 2014 and March 2016).

most importantly, the Monitor observed that at the time of the DOJ investigation, it would have been impossible to even conduct an assessment, because, prior to the beginning of the reform process, SPD officers often failed to report uses of force, force that was reported went unreviewed and when investigations were actually conducted, they were generally incomplete and inadequate (9th Systemic Assessment, p. 1, n. 3).

Based on a qualitative and quantitative evaluation of the force used by officers over the course of the implementation of the Consent Decree. The Monitor found that:

> overall use of force by the SPD is down – both across time under the Consent Decree and compared to the time period studied by the original DOJ investigation. Overall, use of force has gone down even as officer injuries have not gone up and crime, by most measures, has not increased. At the same time, the force that SPD officers do use is, by and large, reasonable, necessary, proportional, and consistent with the Department's use of force policy. (9th Systemic Assessment, p. 2)

Based on the conclusion that "officers are using less force overall, without negatively impacting officer safety or public safety, and are using force consistent with law and SPD policy in those increasingly infrequent instances when force is deployed," the Monitor concluded that the SPD was "in initial compliance with Paragraphs 69 to 90 of the Consent Decree."[649]

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[649] Paragraphs 69 to 90 o the Consent Decree read as follows:

Para. 69. "Officers' actions should increase public safety, be effective and constitutional, and embrace principles of procedural justice. In order to achieve this balance in the application of force, the Department commits (a) to maintaining a police force that is highly trained and knowledgeable, not only on matters of law and professional standards on use of force, but also on matters of reporting, investigating, and reviewing uses of force; and (b) to engaging with and educating the public on the appropriate use of force."

Para. 70. "Although the City and SPD dispute the patterns or practices of excessive force alleged in DOJ's Report, the Parties nevertheless agree that SPD uses of force, regardless of the type of force or weapon used, and consistent with Graham v. Connor, should be guided by the following principles.

a) Officers should use de-escalation techniques, when appropriate and feasible, in order to reduce the need for force.

b) As a general principle, consistent with law enforcement objectives, officers should de-escalate the use of force as resistance decreases, while staying in control and as safety permits.

c) The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.

d) Officers should use improvised weapons, such as flashlights, only in compliance with a proper policy and training on impact weapons.

e) Officers should be trained that a hard strike to the head with any impact weapon, including a baton, could result in death, and any strikes to the head should be consistent with policy and training.

f) Officers normally should not use reportable force against handcuffed or otherwise restrained subjects unless necessary or reasonable under the circumstances to stop an assault, escape, or as necessary to fulfill other legitimate law enforcement objectives.

g) Officers should not use force against individuals who only verbally confront them and do not impede a legitimate law enforcement function.

h) As soon as practicable following a reportable use of force, SPD should ensure that the incident is accurately and properly reported, documented, and investigated."

Para. 71. "SPD will revise, as necessary, its use of force policies, procedures, and/or training consistent with the principles above."

Para. 72. "A fundamental goal of the revised use of force policy will be to account for, and review or investigate, every reportable use of force and, where necessary, to reduce any improper uses of force while serving to direct resources to the most serious uses of force."

Para. 73. "Consistent with current practice, when SPD conducts its review of the implementation of the revised use of force policies, it will seek the timely input of the relevant members of the Training Section, line officers, supervisors, and PSS."

Para. 74. "Revisions to SPD's weapons-specific policies, procedures, and training will be guided by the principles contained in this section."

Para. 75. "The use of force policies will address the use and deployment of all authorized force weapons that are available to SPD officers. The specific policies for each force weapon will provide guidance for each weapon's use."

Para. 76. "The weapon-specific policies will continue to include training and certification requirements that each officer must meet before being permitted to carry and use the authorized weapon. Officers will only carry weapons authorized by the Department. SPD will consult with the Monitor as to whether and when each uniformed officer should be required to carry at least one Less Lethal Device."

Para. 77. "SPD will implement policies for each of the following weapons using these guidelines."

Para. 78. "Officer Discharges of Firearms will continue to be tracked as critical firearms discharges in EIS as uses of force. SPD will continue to document critical firearms discharges in SPD's annual use of force report."

Para. 79. "The CED policy will continue to contain the training and tactics guidance regarding Less-Lethal Options and SPD's Annual CED Recertification Course, and other sources, and will continue to incorporate the following guidelines:

a) A verbal warning should be given before use unless it is unsafe to do so or if it compromises a legitimate law enforcement objective.

b) As with the initial CED application, each subsequent application is a separate application of force that must be individually justified as reasonable.

c) All CED users will be trained in: 1) the potential risks of prolonged or repeated applications; 2) the appropriate procedures following a CED application; 3) the required documentation of a CED application in a use of force report; and 4) the appropriate use of the CED in drive stun mode.

d) All CED users will also be trained in the considerations of the additional environmental hazards such as flammable materials or falling hazards that may preclude the use of a CED.

e) All CED users will also be trained on the consideration of unique characteristics of the subject such as age, frailty, pregnancy and other medical conditions.

f) CED users will not intentionally target the subject's head, neck, or genital area unless to protect officer or public safety, or to accomplish a legitimate law enforcement objective."

Para. 80. "Officers will continue to receive annual CED certifications consisting of physical competency, weapon retention, SPD policy, including any policy changes, technology changes, and scenario-based training."

Para. 81. "SPD will continue to implement integrity safeguards on the use of CEDs to ensure compliance with SPD policy, including conducting random and directed audits of CED deployment data. The audits will compare the downloaded data to an officer's reports on use of force. Discrepancies within the audit will be addressed and appropriately investigated."

Para. 82. "When a supervisor or FIT conduct investigations of CED use in Type II or Type III investigations, the investigator will assure that the use of force report thoroughly describes each CED application and that the CED data is downloaded and that data analysis is included in the use of force report."

Para. 83. "SPD will continue to track CED applications as uses of force in EIS and continue to include CED data and analysis in its use of force annual report."

Para. 84. "The OC Spray policy and training will incorporate the evolving guidance contained within the SPD Post-Basic Law Enforcement Academy ("BLEA") course on Less-Lethal Force as well as guidance from the medical community. The policy and training will include at least the following guidelines:

a) Officers will use OC spray only when such force is reasonable, including when used for crowd dispersal or protection.

b) Unless it presents a danger to the officer or others, or compromises a legitimate law enforcement objective, officers should use a verbal warning to the subject or crowd that OC spray will be used and defer using OC spray a reasonable amount of time to allow the subject to comply with the warning.

c) After the initial application of OC spray, each subsequent spray must also be reasonable and the officer should reevaluate the situation accordingly.

d) The application of OC Spray on persons in restraints such as handcuffs must be consistent with a legitimate law enforcement objective, or to protect officer or public safety."

Para. 85. "Officers will continue to be trained in and follow protocols developed by SPD on their responsibilities following OC Spray use, including minimizing exposure of non-targeted individuals and decontamination of exposed subjects. Officers will continue to request medical response or assistance for subjects exposed to chemical spray when they complain of continued effects after having been decontaminated, or they indicate that they have a pre-existing medical condition (e.g., asthma, emphysema, bronchitis, heart ailment, etc.) that may be aggravated by chemical spray."

Para. 86. "Officers will use only agency-issued or approved OC Spray."

Para. 87. "SPD will continue to maintain written documentation of the number of OC Spray canisters annually distributed to, and utilized by, each officer. Analysis of OC deployments will continue to be included in SPD's use of force annual report and tracked in EIS as a use of force.:

Para. 88. "SPD will incorporate in its use of force policies specific provisions concerning the use of impact weapons and guidelines for use. Officers will be trained and certified for department-approved impact weapons before being authorized to carry these weapons. Officers will also be recertified at reasonable intervals. Use of any improvised impact weapons will fall under the same guidelines and officers will be required to articulate how the use of the weapon was objectively reasonable. Consistent with current policy, impact weapon use will be limited to situations in which such force is reasonable and consistent with training, for example, when it is necessary to protect the officer, the subject, or another party from immediate physical harm."

DePolicing.

Importantly, in the 9th Systemic Assessment, the Monitor examined and addressed ongoing allegations of "de-policing" as it related to the implementation of the Consent Decree.[650] As previously noted, in May 2014, more than one hundred Seattle police officers filed a lawsuit (later dismissed) alleging that the newly imposed use of force policies had resulted in officers shying away from appropriate uses of force, over fear of being punished for simply doing their job.[651]

In his 9th systemic assessment, the Monitor first acknowledged the allegations of depolicing:

> some critics of the Consent Decree raised concerns early on that it would lead to an increase of crime in Seattle. For one thing, they argue that preventing officers from using necessary force would discourage them from being proactive (the "de-policing" explanation). For another, they say that it encourages criminals by changing their risk-reward calculus in favor of more criminal activity (the "rational criminal" explanation). (9th Systemic Assessment, p. 59)

Para. 89. "When a supervisor or FIT conduct investigations of impact weapon use in Type II or Type III investigations, the investigator will assure that the use of force report thoroughly describes each impact weapon strike that the officer recalls. Consistent with current training policy and practice, impact weapons should not be used on persons who are handcuffed and under control or otherwise restrained persons under control, or persons complying with police direction."

Para. 90. "Analysis of data regarding the use of impact weapons will continue to be included in SPD's use of force annual report and tracked in EIS as a use of force" (Settlement Agreement, U.S. v. Seattle, Document No. 3-1, filed July 27, 2012).

650 The monitor had previously commented on his awareness of allegations of "depolicing" in his 2nd and 4th semi-annual reports. In his 5th semi-annual report, the monitor also identified "encouraging signs" that SPD officers were "not attempting to address unconstitutional policing issues by unacceptably reducing policing" (5th semi-annual report, p. 5).

651 Allegations of "de-policing" were not new to the Seattle Police Department. In fact, such allegations were being made well before the DOJ investigation took place. After the police shooting of an African American man on May 31, 2001, there were claims that SPD officers were engaging in depolicing for fear they would be called "racist" for engaging in legitimate enforcement activities (*Seattle Times*, 6/26/2001; Tizon, A. & Ith, I. (2001, August 2). Stats contradict `de-policing' claims - East Precinct officers say they have backed off after racism charges, but numbers say otherwise. Seattle Times). In addition, in 2007, it was reported that SPD officers responding to a City council-sponsored survey were claiming that officers were engaging in depolicing out of fear of receiving citizen complaints and the subsequent investigation of those complaints by the OPA. (*Seattle Times*, 5/1/2007). In addition, a column in the *Seattle Times* in early 2011, before the announcement of the DOJ investigation, quoted the President of the Seattle police union as instructing his officers to take a more "passive" approach to their jobs in order to avoid citizen complaints and allegations of excessive force. (*Seattle Times*, (2/20/2011). Retrieved from https://www.seattletimes.com.

However, like the *Seattle Times,* when reporters looked into allegations of de-policing in 2001 (8/2/2001), the Monitor found no evidence of de-policing taking place with respect to the implementation of the Consent Decree. The Monitor reported that his team "tested whether evidence of [de-policing could] be found in patterns of crime reporting during the 28 months of the present assessment." Although the Monitor found a significant statistical correlation between Group A crimes reported in Seattle and changes in SPD uses of force, he found that "contrary to predictions" the statistical correlation between the two was "positive: as crime goes up, so does use of force." The Monitor reported that "consequently, not only does it not appear that decreased use of force has been associated with increased crime, it is actually the opposite: crime is highest when officers have used the most force."[652]

The Monitor team went on to test the association of the overall crime numbers and SPD use of force numbers, by dividing Group A crimes into two different groups: personal crimes and property crimes. The Monitor found that "there is no obvious correlation between [SPD' use of force and crime incidence … Specifically, a statistical analysis of both property and person crime indicates that neither is a significant correlate of the use of force." The Monitor further found that, in fact, "SPD officers are using more force when personal crime is higher" which the Monitor found once again "runs contrary to the predictions of both the de-policing and rational crime explanations, which would predict that crime would be higher where use of force levels were lower" (9th Systemic Assessment, p. 62).

Ultimately, after having conducted their statistical analyses, the Monitoring team concluded that

> we] suspect[] – though cannot definitively prove at this time with the available data – that the decreasing numbers of use of force over time have been driven by a reduction in inappropriate, unnecessary, or unconstitutional force rather than a reduction in lawful and necessary force vital for crime-fighting. (9th Systemic Assessment, p. 62)[653]

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[652] The Monitor subsequently concluded that "there is no evidence to support either the de-policing or the rational criminal explanations which would predict a negative correlation (as uses of force decreases, crime increases)." (9th systemic report, p. 60).

[653] These conclusions were consistent with statements by the police chiefs in Washington D.C. and Pittsburgh who argued that claims of de-policing in those cities were "a myth" (Chanin, 2012, pp. 183-187).

Still, claims of de-policing continue to be legion, with Seattle officers at the forefront of making these claims.[654]

May 3, 2017	Court Order approving SPD Draft Body Worn Video Policy[655]	SPD; Judge James Robart
May 21, 2017	City Council approves Police Accountability Ordinance[656]	Seattle City Council
June 18, 2017	Tenth Systemic Assessment: Stops, Search & Seizure[657]	Seattle Police Monitor

Tenth systemic assessment: stops, search & seizure.

The Monitor's Tenth (and last) systemic assessment, relating to the SPD Stops, Search & Seizure, was filed with the Court on June 18, 2017. The report addressed "two basic issues," first, the constitutionality of SPD "stops and frisks" and, second, disparities with respect to SPD stop activities (10th Systemic Assessment, p. 3)

In what the *Seattle Times* referred to as "a major milestone," the report found the SPD to be in compliance with the Consent Decree with respect to stop-and frisk practices (*Seattle Times*, 6/20/2017).[658] The *Times* speculated that as a result of the completion of the ten systemic assessments, the court could find the SPD in "full compliance with all or part of the court order," although the paper recognized that "the timing could be influenced by November's mayoral election and protracted contract issues with police unions" (*Seattle Times*, 6/20/17).

As a result of his review of SPD detentions taking place between July 1, 2015 and January 30, 2017, the Monitor found that "vast majority" of stops and frisks were "adequately justified" and "most stops were appropriately limited to a reasonable scope

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654 See Chanin & Sheets, 2018, p. ["The views of one Seattle Police Department officer clearly illustrate the concept [of de-policing]: '[p]arking under a shady tree to work on a crossword puzzle is a great alternative to being labeled a racist and being dragged through an inquest, a review board, an FBI and U.S. attorney investigation and a lawsuit," citing Leo J., July 30, 20101, Cincinnati cops out, *U.S. News & World Report*, 131, p. 10]. Also citing, L. Byron, August 3, 2012, Are Seattle Police officers holding back?, *KING 5 News*. Retrieved April 9, 2016, from http://www.king5.com/story/news/local/seattle/2014/08/03/13146738/.

655 U.S. v. Seattle, Document No. 390, filed May 3, 2017.

656 Miletich, S. (2017, May 23). City council approves police oversight system with historic 8-0 vote. *Seattle Times*. Retrieved from https://www.seattletimes.com.

657 U.S. v. Seattle, Document No. 394, filed June 18, 2017.

658 Miletich, S. (2017, June 20). Monitor: SPD making gains on reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

and reasonable duration as required under law and SPD policy" (10th Systemic Assessment, p. 5). The Monitor found that "the number of stops and detentions of individuals that are not supported by sufficient legal justification is exceedingly small. Importantly, an individual's odds of being a subject of a 'bad' stop do not depend on that individual's race" (10th Systemic Assessment, p. 109). This finding was important due to the Department of Justice's 2011 original assertion that "confusion" existed amongst SPD officers, at that time of the DOJ investigation, about legal standards relating to stops and searches (DOJ Investigation, 2011, p. 6).

Ultimately, the Monitor made the following findings:

> … because SPD's officers have the appropriate legal and policy justification for stops and frisks in a vast majority of instances, the Department is in initial compliance with Consent Decree paragraphs 138 through 144 addressing stops and detentions.[659] Informed both by prior

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[659] Paragraphs 138 through 144 of the Settlement Agreement read as follows:

Para. 138. "The Parties agree that pro-active policing is necessary to accomplish strong community-based policing and effective crime control, and that police-community contacts should be conducted in accordance with the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. SPD should ensure that investigatory stops and detentions are part of an effective law enforcement objective. The Commission may make recommendations to the City on any changes to SPD policies, practices, or training regarding stops and detentions based upon community input and best practices."

Para. 139. "To achieve these outcomes, SPD will adhere to the requirements below."

Para. 140. "SPD will revise, as necessary, the Social Contact, Terry Stop, & Arrest Policy, Section 6.220, to ensure that the definitions of Social Contact and Terry Stops explicitly conform to constitutional requirements. Specifically, the policy will (1) define Social Contacts and non-custodial interviews as encounters that are voluntary and consensual; and (2) prohibit investigatory stops where the officer lacks reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime."

Para. 141. "SPD will continue to require that officers be able to specifically and clearly articulate reasonable suspicion when they conduct investigatory stops or detentions, or conduct field interviews for Terry stops."

Para. 142. "SPD will provide all SPD patrol officers with in-service training on an annual basis, based on developments in applicable law and SPD policy, sufficient to address the following topics:

a) the importance of police-community contacts for effective policing and community relations and trust;

b) Fourth Amendment and related law; SPD policies, and requirements in this Agreement regarding investigatory stops and detentions;

c) First Amendment and related law in the context of the rights of individuals to verbally dispute officer conduct;

d) legal distinction between social contacts, non-custodial interviews, and investigatory Terry stops;

> monitoring of bias-free policing training and the fact that most SPD stops appear to not be subjecting people of some races to more legally impermissible stops, at least with respect to the Fourth Amendment, the Monitor finds that SPD is initial compliance with paragraphs 145 through 152 addressing the creation of the bias-free policing policy, officer training, and supervisory responsibilities. (10th Systemic Assessment, p. 11)[660]

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e) distinction between various police contacts according to the scope and level of police intrusion; and

f) the facts, circumstances, and best practices that should be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention, including when an individual is free to leave, and when an officer might identify him or herself during a contact."

Para. 143. "Additionally, SPD will provide all officers with regular roll call trainings regarding social contacts, non-custodial interviews, and investigatory stops and detentions."

Para. 144. "Consistent with SPD policies and procedures, absent exceptional circumstances, by the end of each shift, a supervisor will continue to obtain and review his/her supervisees' incident reports and any other reports that document the basis for investigatory stops and detentions to determine if they were supported by reasonable suspicion and consistent with SPD policy, federal, or state law; and determine if the officer requires review of agency policy, strategy, tactics, or training" (Settlement Agreement, U.S. v. Seattle, Document No. 3-1, filed July 27, 2012).

[660] Paragraphs 145 through 152 of the Settlement Agreement read as follows:

Para. 145. "The Parties agree that SPD should deliver police services that are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in the Department. Officers should treat all members of the Seattle community with courtesy, professionalism, and respect, and should not use harassing, intimidating, or derogatory language."

Para. 146. "SPD will revise, as necessary, the Unbiased Policing policy, in conjunction with the Commission, to provide the following clear guidance:

a) Clarifying that the policy against biased policing extends to all protected classes under state, federal, and local laws, including race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, or disability in making law enforcement decisions.

b) Reaffirming that officers may not use race, ethnicity, or national origin in determining reasonable suspicion or probable cause, unless race, ethnicity, or national origin is used as part of a suspect(s) description.

c) Reaffirming that officers will (1) not engage in, ignore, or condone bias based policing; (2) be responsible for knowing and complying with the policy; and (3) report incidents where they observe or are aware of other officers who have engaged in bias-based policing."

Para. 147. "The Parties recognize that training on issues of bias present in our society is complicated and critical. SPD, in conjunction with the Commission, will develop and provide training on bias-free policing for all patrol and other relevant officers, supervisors, and command staff. SPD will develop a training curriculum, with input from the Commission, that builds on existing discriminatory policing training, determine the appropriate modality or combination of modalities (scenario-based, classroom, academy, etc.) and training assessment tools. Training development should consider the following topics."

Para. 148. "Patrol officers:

a) constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of this Agreement;

June 23, 2017	Court Order Directing Briefing and Scheduling a Status Conference Regarding Court Review of Accountability Ordinance[661]	Judge James Robart
July 17, 2017	Seattle Executive Order 2017-03: Implementing Body-Worn Camera Program[662]	Mayor Ed Murray
August 1, 2017	Memorandum to Chief of Police: "Analysis re: 'Full & Effective' Compliance with the Consent Decree"[663]	Rebecca Boatright, Chief Legal Officer, SPD Brian Maxey, Chief Operating Officer, SPD
September 7, 2017	Court Order Approving Portions of Accountability Ordinance[664]	Judge James Robart

b) strategies, such as problem-solving policing, procedural justice, and recognizing implicit bias, to avoid conduct that may lead to biased policing or the perception of biased policing;

c) precinct-level cultural competency training regarding the histories and cultures of local immigrant and ethnic communities."

Para. 149. "Supervisors and command staff:

a) what constitutes discriminatory policing under state, federal, and constitutional law;

b) how to identify discriminatory practices when reviewing investigatory stop data, arrest data, and use of force data; and how to respond to a complaint of discriminatory police practices, including conducting a preliminary investigation of the complaint in order to preserve key evidence and potential witnesses;

c) how to evaluate complaints of improper pedestrian stops for potential discriminatory police practices; and

d) engaging the community and developing positive relationships with diverse community groups."

Para. 150. "SPD leadership and supervising officers will continue to reinforce to subordinates that discriminatory policing is an unacceptable tactic, and officers who engage in discriminatory policing will be subject to discipline."

Para. 151. "In consultation with the Commission, SPD should consider whether to revise SPD Manual 5.140 to identify supervisory responsibility in responding to allegations of discriminatory policing."

Para. 152. "If an individual affirmatively states that he or she is the subject of discriminatory policing, the officer's supervisor should, where reasonable, respond to the scene and determine if additional action, including a complaint to OPA, is warranted" (Settlement Agreement, U.S. v. Seattle, Document No. 3-1, filed July 27, 2012).

[661] U.S. v. Seattle, Document No. 397, filed June 23, 2017.

[662] Located at: http://murray.seattle.gov/wp-content/uploads/2017/07/EO-2017-03-body-worn-cameras.pdf#:~:text=Executive%20Order%202017-03%3A%20An%20Executive%20Order%20implementing%20a,is%20compelling%20research%20showing%20that%20body-worn%20video%20dramatically.

[663] Received from research participant. On file with author.

[664] U.S. v. Seattle, Document No. 413, filed September 7, 2017.

September 8, 2017	Monitor Files Compliance Status Report (arguing City not yet in Compliance).[665]	Monitor Bobb
September 12, 2017	Mayor Ed Murray Resigns[666] Seattle Times reports on Email sent by Chief O'Toole stating SPD in compliance regardless of Monitor Compliance Report)[667]	Mayor Ed Murray Chief Kathleen O'Toole
September 13, 2017	Bruce Harrell appointed Interim Mayor[668]	By City Council
September 18, 2017	Tim Burgess appointed Interim Mayor[669]	By City Council after resignation of Bruce Harrell
September 29, 2017	City's Motion to Declare it in Full & Effective Compliance with the Consent Decree[670]	Peter Holmes, Seattle City Attorney
October 13, 2017	DOJ's Memorandum in Support of City's Request for Declaration of Full & Effective Compliance[671] CPC Response in favor of finding of compliance.[672]	Annette Hayes, US Attorney for Western District of Washington; John Gore, Acting Asst. AG

7.3.3. Full & Effective Compliance & Beyond

By October 13, 2017, both parties and the CPC were arguing to the court that the City should be found in "full and effective compliance" with the Settlement Agreement. The only holdout was the Monitor, who used precatory language in a September 8, 2017 filing, wherein although he acknowledged the SPD had "reached major milestones" as determined by the ten systemic assessments, he also opined that "the ten assessments, all clearly important, nevertheless do not constitute all the requirements of the Consent

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[665] U.S. v. Seattle, Document No. 416, filed September 8, 2017.

[666] Seattle Times Editorial Board (2017, September 13). Mayor Murray right. *Seattle Times* ["Mayor Ed Murray did the right thing resigning Tuesday. Allegations from his past were getting in the way of Seattle's present and its future"]. Retrieved from https://www.seattletimes.com.

[667] Miletich, S. (2017, September 12). Seattle Police dispute monitor on reform compliance. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[668] Beekman, D. (2017, September 14). 'A time for healing,' temporary mayor vows. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[669] Beekman, D. (2017, September 19). Seattle gets third Mayor in less than a week. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[670] U.S. v. Seattle, Document No. 419, filed September 29, 2017.

[671] U.S. v. Seattle, Document No. 422, filed October 13, 2017.

[672] U.S. v. Seattle, Document No. 421, filed October 13, 2017.

Decree" (Compliance Status Report, p. 3).[673] The Monitor identified important remaining issues, including questions surrounding a controversial police shooting of a 30-year-old African-American mother of four. The Monitor also commented that he had previously identified instances of disparate policing and noted that "[a]ccordingly, SPD and the City must now consider what may be driving that disparity, whether such disparity is unwarranted, and, if that disparity is unwarranted, what steps may be taken to ensure greater equity" (Compliance Status Report, p. 17). The Monitor also noted "the importance of the resolution of current changes pending in Seattle's institutional system of accountability and the conclusion of the current labor negotiations between the City and the police officer unions" (Compliance Status Report, pp. 17-18). Finally, the Monitor reminded the Court that the Inspector General position, "perhaps the single most important guarantee that the SPD will continue to practice constitutional policing beyond the life of the Consent Decree," had still not been filled (Compliance Status Report, p. 18).

By the end of November, however, the *Seattle Times* was reporting that "sources not authorized to publicly discuss the matter contend that Bobb [since the time of the filing of his status report], has somewhat softened his position."[674]

November 28, 2017	Term of Mayor Jenny Durkan begins[675]	
January 10, 2018	**Order Finding Initial Compliance with Consent Decree[676]**	**US District Judge James Robart**

On January 10, 2018, Judge Robart found the City in "full and effective compliance" with the Settlement Agreement. In making his finding, Judge Robart commented on the concerns previously expressed by the Monitor: "[t]he court is cognizant of these concerns and understands that the City must address them going forward. Indeed, the City acknowledges that '[r]eform will continue in the sustainment period'" (Order Finding Initial Compliance, p. 13). The Judge commented that,

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[673] U.S. v. Seattle, Document No. 416, filed September 8, 2017.

[674] Miletich, S., (2017, November 23). Judge looking into shooting of Lyles, SPD union contract. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[675] Beekman, D. (2017, September 29). In busy first day as Mayor, Durkan crisscrosses City. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[676] U.S. v. Seattle, Document No. 439, filed January 10, 2018.

> [f]ulfilling Phase I is an enormous milestone and one in which the City and SPD should take pride, … Nevertheless, the court cautions the City and SPD that this does not mean their work is done. In many ways, Phase II is the most difficult portion of the Consent Decree to fulfill … The ability to sustain the good work that has begun is not a foregone conclusion, … It will require dedication, hard work, creativity, flexibility, vigilance, endurance, and continued development and refinement of policies and procedures in accordance with constitutional principles. (Order Finding Initial Compliance, p. 14)

Judge Robart concluded that "[i]f collective bargaining results in changes to the accountability ordinance that the court deems to be inconsistent with the Consent Decree, then the City's progress in Phase II will be imperiled…" (Order Finding Initial Compliance, p. 15).

March 13, 2018	Court Order Approving Phase II Sustainment Period Plan[677]	Seattle Police Monitor; Judge James Robart
June 18, 2018	Court approval of Revisions to SPD Bias-Free Policing & Crisis Intervention Policies[678]	SPD; Judge James Robart
August 13, 2018	Carmen Best appointed as SPD Chief[679]	Appointed by Mayor Durkan
August 14, 2018	Court approval of SPD Revisions to Use-of-Force Policy[680]	SPD; Judge James Robart
October 23, 2018 October 26, 2018	Orders Scheduling a Status Conference regarding Police Union (SPOG) Contract[681]	Judge James Robart
November 19, 2018	Court Order approving revisions to SPD Voluntary Contacts, Terry Stops and Voluntary Detention policies[682]	SPD; Judge James Robart
December 3, 2018	Order to Show Cause Whether the Court Should Find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree[683]	US District Judge James Robart
December 12, 2018	Order approving revisions to SPD Use-of-Force policy	US District Judge James Robart

[677] U.S. v. Seattle, Document No. 448, filed March 13, 2018.

[678] U.S. v. Seattle, Document No. 453, filed June 18, 2018.

[679] Beekman, D. (2018, August 14, 2018). Carmen Best voted in as Seattle police chief. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[680] U.S. v. Seattle, Document No. 477, filed August 14, 2018.

[681] U.S. v. Seattle, Document No. 485, filed October 23, 2018; Document No.487, filed October 26, 2018.

[682] U.S. v. Seattle, Document No. 501, filed November 19, 2018.

[683] U.S. v. Seattle, Document No. 504, filed December 3, 2018.

December 17, 2018	Order approving revisions to SPD Early Intervention System policy	SPD; Judge James Robart
January 2, 2019	Order Holding Case in Abeyance and Modifying Deadlines Until USDOJ Appropriations are Restored	USDOJ; Judge James Robart
January 29, 2019	Order Lifting Stay and Extending Deadlines	Judge James Robart
April 19, 2019	Order Scheduling Status Conference Re: OSC	Judge James Robart
May 21, 2019	**Order Finding City of Seattle Partially Out of Compliance with the Consent Decree**; Order to Parties to Formulate a Methodology for Assessing Accountability Regime to Achieve Consent Decree Compliance[684]	**US District Judge James Robart**

Sixteen months later, after the Durkan administration negotiated away some of the provisions of the City's "Police Accountability Ordinance," Judge Robart was finding the City "partially out of compliance with the Consent Decree." In doing so, Judge Robart ruled against both of the parties (the City and the DOJ) who had argued in tandem that since the Settlement Agreement did not specifically address issues of police accountability, any issues or concerns relating to the union contract being in conflict with the Accountability Ordinance were not within the jurisdiction of the court.[685] The court ruled that,

> although the Consent decree contains no explicit mandate concerning the arbitration process or the burden of proof therein, the Consent Decree expressly requires the City, when 'establish[ing] or reorganiz[ing] a government agency or entity whose function includes overseeing . . . investigating, or otherwise reviewing the operations of SPD,' to 'ensure these functions and entities are consistent with the terms of the [Consent Decree]. Further, the United States and the City have acknowledged that any accountability system proposed or instituted by the City may not conflict with either the terms or the purposes of the Consent Decree. (Consent Decree ¶ 219.) (Order Finding the City Partially Out of Compliance, pp. 6-7)

[684] U.S. v. Seattle, Document No. 562, filed May 21, 2019.

[685] See, U.S. v. Seattle, Document No. 512, filed December 17, 2018 [City of Seattle's Response to Court's Order to Show Cause]; Document No. 528, filed February 13, 2019 [United States' Response to the Court's Order to Show Cause].

In his order, Judge Robart was particularly critical of both the City and the DOJ for their positions suggesting that police accountability was not within the four corners of the Settlement Agreement:

> The City and the United States may not repudiate [] repeated past representations to the court—concerning the old accountability system's inadequacy, the need for reform, and the court's jurisdiction in this area—for the sake of political expediency today. Both expressly by their words and implicitly by their actions and lack of objection, the parties have acquiesced in the court's review of the Accountability Ordinance and, more generally, SPD's accountability systems as a part of assessing whether the City has sustained full and effective compliance with the Consent Decree in Phase II. The court initiates that review now, and as described below, finds the City to be out of compliance with respect to its accountability systems. (Order Finding the City Partially Out of Compliance, p. 10)

Judge Robart then ordered the parties, "with the assistance of the Monitor and the CPC, to formulate a methodology (1) for assessing the present accountability regime, and (2) for how the City proposes to achieve compliance" (Order Finding the City Partially Out of Compliance, p. 14).

May 23, 2019	Court Order approving revisions to SPD Crisis Intervention, Bias-Free Policing & Employee Conduct Policies[686]	SPD; Judge James Robart
July 2019	City retains 21CP Consultants to review Accountability Systems[687]	Seattle Mayor's Office
August 16, 2019	Court Order approving revisions to SPD Use-of-Force policy.[688]	Judge James Robart
October 15, 2019	Order Regarding City's Motion to Approve its Accountability Methodology [including order to parties to submit joint proposal regarding Monitor's role in assessing compliance on Accountability][689]	Judge James Robart
November 15, 2019	Order approving revisions to SPD Voluntary Contacts, Terry Stops and Detention policies[690]	SPD; Judge James Robart

[686] U.S. v. Seattle, Document No. 563, filed May 23, 2019.

[687] Miletich, S. (2019, July 15). Mayor's approach to Seattle police reforms could prolong oversight, council members say; union offers to talk. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[688] U.S. v. Seattle, Document No. 580, filed August 16, 2019.

[689] U.S. v. Seattle, Document No. 585, filed October 15, 2019.

[690] U.S. v. Seattle, Document No. 592, filed November 15, 2019.

December 13, 2019	"An Assessment of the City of Seattle's Police Accountability System"[691]	21CP Consultants
January 21, 2020	Court Order approving revisions to SPD Early Intervention System policy[692]	SPD; Judge James Robart
May 7, 2020	Parties Stipulated Joint Motion to Terminate Paragraphs 68-168 of the Consent Decree[693]	DOJ; City of Seattle
May 11, 2020	NAACP Opposition Declaration to Motion to Dismiss Consent Decree[694]	NAACP King County President Carolyn Riley-Payne

On May 7, 2020, even though the City had taken no action to renegotiate its contract with SPOG and made no revisions to its police accountability structure as ordered by the court almost a year earlier, the City and the DOJ filed a joint motion to terminate those portions of the Settlement Agreement where the Monitor's systemic assessments had previously found compliance. The motion was an attempt to ensure that the City would no longer be bound by any parts of the Consent Decree outside of the area of police accountability. Within four days of filing that motion, the NAACP of Seattle King County went on record with the Seattle City Council opposing that request. The CPC promised to file a motion regarding the request by early June.[695]

Before the CPC could even opine on the motion,[696] however, protests broke out all over the United States, to include in Seattle, over the May 25, 2020 murder of George Floyd by officers of the Minneapolis Police Department. Within ten days of George Floyd's death, and less than one week after protests begin in Seattle, the City moved to withdrawal its motion, with City Attorney Holmes stating that,

> we are about to witness the most vigorous testing of our city's accountability systems, … it's become clear to me that we need to pause before asking U.S. District Judge James Robart to terminate [portions of the Consent Decree] so that the City and its accountability partners can

[691] U.S. v. Seattle, Document No. 598, filed December 13, 2019.

[692] U.S. v. Seattle, Document No. 607, filed January 21, 2020.

[693] U.S. v. Seattle, Document No. 611, filed May 7, 2020.

[694] Retrieved from https://www.seattlekingcountynaacp.org/press-releases-and-statements/presidents-statement-read-at-seattle-city-council-today-on-ending-the-consent-decree.

[695] Miltetich, S. (2020, May 25). Local, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[696] The CPC did eventually file an opposition to the motion to dismiss five days after the City withdrew its request. (See, U.S. v. Seattle, Document No. 622, filed June 9, 2020).

conduct a thorough assessment of SPD's response to the demonstrations. (*Seattle Times*, 6/9/2020)[697]

Mayor Durkan agreed saying: "We need to take a pause … With what's going on right now, we need to engage more people" (*Seattle Times*, 6/9/2020).

May 25, 2020	Murder of George Floyd by Minneapolis Police Department officers[698]	
May 29, 2020	Seattle Police Accountability Protests Begin[699]	
June 1, 2020	OPA announces processing of "12,000 individual complaints concerning the Seattle Police Department's (SPD) response to th[e] weekend's demonstrations"[700]	Office of Professional Accountability.
June 4, 2020	Notice to Withdraw City of Seattle's Pending Motion [to dismiss portions of consent decree][701]	City of Seattle
June 4, 2020	King County Labor Council Motion on SPOG to acknowledge systemic racism in SPD and negotiate police accountability[702] Chief Best appears on "Face the Nation"[703]	King County Labor Council Chief Carmen Best
June 9, 2020	CPC Response to Joint Motion to Terminate[704]	CPC

[697] Miletich, S., Beekman, D. Hellman, M. & Greenstone, S. (2020, June 3) As complaints pour in about police at Seattle protests, city will withdraw request that could lift federal oversight. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[698] New York Times (2020, September 12). What we know about the death of George Floyd in Minneapolis. *New York Times.* Retrieved from https://www.nytimes.com/article/george-floyd.html.

[699] Takahama, E., Beekman, D., Greenstone, S. & Roberts, P. (2020, June 2). Durkan promises to meet with Seattle protest organizers: 'The plan has to come from community voices.' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[700] Brazile, L. (2020, June 1). 12,000 complaints filed against Seattle Police after weekend of protests, *KUOW-NPR*, Retrieved from https://kuow.org/stories/12-000-complaints-filed-against-seattle-police-after-weekend-of-protests.

[701] U.S. v. Seattle, Document No. 621, filed June 4, 2020.

[702] Kroman, D. (2020, June 4). Address racism or get out. *Crosscut.com*. Retrieved from https://crosscut.com/2020/06/labor-council-seattle-police-union-address-racism-or-get-out.

[703] Face the Nation (2020, June 4). Transcript: Chief Carmen Best. [Chief Best suggested that: "This is a pivotal moment in history, … We are going to move in a different direction, and policing will never be the same as it was before"]. *Face the Nation.* Retrieved from https://www.cbsnews.com/news/transcript-chief-carmen-best-on-face-the-nation-june-14-2020/.

[704] U.S. v. Seattle, Document No. 622, filed June 9, 2020.

June 17, 2020	King County Labor Council expels SPOG from Council[705]	King County Labor Council.
August 11, 2020	Chief Carmen Best Resigns[706]	

7.3.4. Special issues relating to Consent Decree implementation

There were a number of isues that challenged the implementation of the Seattle cosent decree; all of which could be found to have existed in other jurisdictions as well. Many of these issues were the result of local politics and the resultant ability of the Seattle police unions to impede reforms (to include the implementation of a body worn camera program, limits on the hiring of outside Deputy and Assistant Chiefs, police accountability, and civilian oversight of the police). Others were common to all jurisdictions facing consent decrees (to include the costs of implementation and the impact of federal politics on the process as a whole).

The Seattle police unions & implementation.

On May 15, 2019, the *Seattle Times* commented that: "[the Seattle Police Officer's Guild] SPOG has complained about and fought many of the reforms, including the now-required use of body cameras, and bitterly criticized federal oversight and the civilian-led Office of Police Accountability (OPA)" (*Seattle Times*, 5/15/2019).[707] And, in fact, the implementation of any number of reforms associated with the Consent Decree raised the ire of both Seattle Police Department unions, usually with them insisting that

[705] Kroman, D. (2020, June 17). King County Labor Council expels Seattle police union. *Crosscut.com*. Retrieved from https://crosscut.com/2020/06/king-county-labor-council-expels-seattle-police-union.

[706] Beekman, D. (2020, August 11). Police Chief says she will step down. *Seattle Times* ["Seattle Police Chief Carmen Best says she will step down in the wake of protests against police brutality, criticism over the Police Department's response and votes by the City Council to shrink the police force and cut her wages."]; see also, Beekman, D. (2020, August 12). Best: Budget cuts, disrespect drove her decision. *Seattle Times* [Chief Best noted that the City Council's plan to cut the SPD budget would result in newer officers, "who are most likely to be officers of color," losing their jobs." Note Walker's conclusion that the hiring of newer, more diverse police workforces had the potential of improving officer receptivity to reform-oriented training (Walker, 2012, p. 84)

[707] Carter, M. & Miletich, S. (2019, May 15). Federal judge finds Seattle partially out of compliance with police reform deal. *Seattle Times*. Retrieved from https://www.seattletimes.com.

any changes relating to police accountability were the subjects of mandatory bargaining and could not be unilaterally imposed by the City outside of contract negotiations.[708]

The unions became embroiled in any number of Consent Decree related reforms to include, the mandated use of body-worn cameras for SPD officers, the hiring of Deputy and Assistant Chiefs from outside the SPD, and the provisions of the City Council's Police Accountability Ordinance.

Politics & the police unions.

As previously noted, the police reform literature is replete with references to police union opposition to reform and the difficulties inherent in ensuring fair and consistent discipline and accountability for misconduct. Not only is Seattle no exception to this issue, but given the history of the City as "a union town," union issues have tended to dominate many of the police reform conversations in the City.

In 2014, the Seattle Police Officer's Guild (SPOG) was admitted to the King County Labor Coalition, described as "a union of unions" and the relationship between the police union and the labor community was being called "uncommonly close." SPOG joined the Coalition "on the urging of its former president, Ron Smith, and the ties grew closer when Kevin Stuckey, who is black, took over as president" (*Crosscut*, 6/4/2020).[709]

By 2018, labor council representatives were hosting a press conference calling on the Seattle City Council to ratify a new contract with SPOG (*Crosscut*, 6/4/2020). According to one research study participant, "it was strategic on [the union's] behalf to have other labor with us when [they] were going through contract negotiations with the City as [organized labor] had a strong political influence on Council."[710]

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[708] See, Chapter 7.8, *infra*.

[709] According to Crosscut: "Stuckey made a show of advocating for labor causes outside of his own, including on behalf of new scheduling laws before the Seattle City Council and for nurses striking outside of Swedish hospital." Kroman, D. (2020, June 4). Address Racism or Get Out. Crosscut.com. Retrieved from https://www.crosscut.com.

[710] And, in fact, SPOG was able to get the support from other unions, not just in pressuring the City Council to approve a contract granting significant pay raises to officers, but in also pressuring Council members not to try to reopen the contract even after it was criticized for being non-compliant with the Consent Decree (see, Chapter 7.8, *infra*).

The 2018 SPOG contract would end up being a turning point (in the wrong way) for consent decree implementation, ultimately being a primary reason for Judge Robart to find the city partially out of compliance with the Consent Decree (U.S. v. Seattle, Document 562, p. 13).

SPOG certainly had a poor reputation among community activists in Seattle. In 2014, *The Stranger*, an alternative newspaper in Seattle, referred to SPOG as "a club of retrograde good old boys that embodies the most toxic aspects of cop culture" (*The Stranger*, 4/16/2014).[711] *The Stranger* particularly took aim at the SPOG newspaper, *The Guardian,*

> After a spate of misconduct cases arose in 2010, eventually resulting in the US Department of Justice finding that Seattle police have a pattern of using excessive force, editorials began appearing in the SPOG newspaper, *the Guardian*, attacking political leaders who supported reform, opposing the reform plan, and calling to overturn programs intended stop racial profiling. The city's Race and Social Justice Initiative is "an assault on traditional and constitutional American values," one *Guardian* piece declared. Efforts to combat racial profiling were "socialist policies" perpetrated by "the enemy" (with "the enemy" being city officials who wanted to work on the racial profiling issue). Another piece, published the same year a cop threatened to "beat the fucking Mexican piss" out of an innocent man, argued cops should be allowed to call citizens "bitch" and "n***a" (asterisks appeared in the original). SPOG compared the Justice Department's investigation to the federal government's bloody standoffs at Waco and Ruby Ridge. They said the city attorney charging an officer with assault after the officer kicked a teenager lying on the ground was "a calculated and evil move." They sued to block the police reform plan after it was approved by a judge. And they said that several assistant chiefs partnering with elected officials to implement early reforms were a sign that "the enemy" had found "new allies... at the very top of SPD." (*The Stranger*, 4/16/2014)

Given the allegations against SPOG, the DOJ might have been better served by joining SPOG as a party in the §14141 litigation, as was done in Montgomery County in 2000 and the City of Buffalo in 2007.[712] That tactic may have given the Court more

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[711] Holden, D. (2014, April 16). Reform in Reverse. *The Stranger*. Retrieved from https://www.thestranger.com.

[712] In two DOJ actions, relevant unions were included as parties (see, Amended Memorandum of Agreement Between the United States Department of Justice and the City of Buffalo, New York and the Buffalo Police Department, and the Police Benevolent Association, Inc. July 9, 2007. Retrieved from https://perma.cc/7WGA-RV2Q; and Memorandum of Agreement Between the United States Department of Justice, Montgomery County, Maryland, the Montgomery County Department of Police, and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. Retrieved from https://perma.cc/44US-AELU

authority over the collective bargaining process that ultimately derailed the City's road to compliance.

Police accountability and the unions.

The first sign that Consent Decree implementation might be going off the rails with respect to the union rank and file was when on July 21, 2016, it was announced that rank and file officers had "overwhelmingly rejected a four-year contract with the city, dealing a major setback to Seattle Mayor Ed Murray in his efforts to obtain police-accountability measures." The vote was overwhelmingly against the contract with 823 votes against and only 156 votes in favor of the contract (*Seattle Times*, 7/21/2016). Participants commented that this was the first sign to the Murray administration that the union leadership, which was at that time working collaboratively with Chief O'Toole, simply could not deliver on accountability-related reforms. During a subsequent court hearing on August 15, 2016, Judge Robart was quoted as saying: "the court and the citizens of Seattle will not be held hostage for increased payments and benefits" (*Seattle Times,* 8/16/2016).

On October 20, 2016, the Seattle Police Management Association, representing Seattle Police Lieutenants and Captains, filed an unfair-labor-practice compliant with the Public Employment Relations Commission (PERC) alleging that the City Council was prohibited from moving forward with police accountability legislation without first bargaining the issues with the union.[713] By December 1, 2016, the Seattle City Attorney was seeking judicial intervention from Judge Robart believing that the SPMA grievance could have a "material effect" on the timing of the accountability measures, which he believed to be tied to Consent Decree compliance. The Judge declined to intervene after meeting with the parties on January 4, 2017, remarking that without knowing what was going to happen he did not want to "muck[] around" in the dispute (*Seattle Times*, 1/5/2017).[714]

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[713] Miletich, S. (2016, December 1). City asks judge overseeing police reform to step into union dispute. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[714] Miletich, S. (2017, January 5). Judge declines to intervene in SPD-reforms dispute. *Seattle Times*. Retrieved from https://www.seattletimes.com.

As previously noted, the Seattle City Council eventually passed a police accountability ordinance on May 21, 2017.

On July 26, 2017, SPOG filed its own unfair labor practices complaint regarding the Mayor's Executive Order, issued on July 17, 2017, ordering the implementation of a body-worn camera program for SPD officers. The union grievance was filed even after Judge Robart had refused, on July 18, 2017, to approve draft police accountability legislation until he was informed what provisions would be subject to bargaining with the union. Judge Robart, quite famously proclaimed during that hearing that: "the citizens of Seattle are not going to pay blackmail for Constitutional policing" (*Seattle Times*, 7/19/2017a).[715]

By January 2018, however, the Police Accountability Ordinance was the subject of a SPOG compliant as it related to changes made by the ordinance with respect to who and how the SPD would investigate allegations of police misconduct. Once again, the union argued that the accountability ordinance provisions relating to discipline were the subject of mandatory bargaining (*Seattle Times*, 1/3/2018).[716] The grievances were eventually dropped by the union after a contract contradicting a number of the provisions of the accountability ordinance was approved by the rank and file on September 21, 2018 (*Seattle Times*, 9/21/2018).[717]

In a letter dated October 22, 2018, Mayor Durkan and Chief Best informed Judge Robart of the tentative agreement (TA) which they suggested "advance[] the core reforms and requirements of the Consent Decree and provides a national example of civilian-led accountability." The letter highlighted that "the TA fully implements the Court approved body camera policy, the duties of the Inspector General under the Accountability Ordinance and continues the historic civilianization of complaint investigations at the Office of Professional Accountability." The letter closed that "the City is confident that this TA ensures continuous improvement at the Seattle Police

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[715] Miletich, S. (2017, July 19). Federal judge: 'The citizens of Seattle are not going to pay blackmail for constitutional policing.' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[716] Carter, M. (2018, January 3). Police union files complaint about reform. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[717] Miletich, S. (2018, September 21). Rank & file vote to ratify contract. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Department and moves beyond the standard of Constitutional police services and closer to a community where all – including the most marginalized – feel safe."[718]

On November 13, 2018, the City Council approved the tentative agreement (*Seattle Times,* 11/14/2018).[719] The City submitted a "Notice of Final Collective Bargaining Agreement & Proposal for Review" to the court on November 30, 2018.[720] On December 3, 2018, Judge Robart issued an "Order to Show Cause Whether the Court Should Find That the City Has Failed to Maintain Full and Effective Compliance With the Consent Decree," requiring the parties and the CPC to present their arguments in favor or against such an order.[721]

Interestingly, the contract included language that required a presumption of termination for officers who engaged in dishonesty, but also required that such findings be supported by a "clear and convincing evidence" standard of proof. This, even though the Court had previously ruled, at the behest of the DOJ, that such a standard would be in conflict with the Consent Decree.[722] In filings dated October 29, 2018 and February 13, 2019, however, the DOJ reversed its stance. The DOJ argued that its previously held position that adding a "clear and convincing evidence burden without any clear basis could potentially undermine public confidence – a goal of the Consent Decree Process," was in fact, incorrect:

> As discussed in our October 29, 2018 brief, this analysis was in error as it failed to account for the fact that the use of the clear and convincing standard (1) was not new; and (2) had a clear basis for inclusion. *See* (Dkt. 490) at 8-9. Namely, the use of the clear and convincing standard accompanied the addition of heightened accountability through the presumption of termination. (U.S. Response to Order to Show Cause)[723]

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[718] U.S v. Seattle, Document No. 484, filed October 22, 2018.

[719] Miletich, S. (2018, November 14). City Council Oks police-union contract; deal faces scrutiny by federal reform judge. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[720] U.S. v. Seattle, Document No. 503, filed November 30, 2018.

[721] U.S. v. Seattle, Document No. 504, filed December 3, 2018.

[722] U.S. v. Seattle, Document No. 357, filed January 6, 2017.

[723] U.S. v. Seattle, Document No. 528, filed February 13, 2019. The change-of-position on this issue, made by the DOJ, led some research participants to conclude that federal politics was potentially influencing the DOJ's work on the Seattle Consent Decree.

On February 20, 2019, the CPC weighed in on the issue, opposing both the City and the DOJ. The CPC argued that

> [n]otably, the parties to the CBA's have not provided the court with an inventory of which aspects of the Accountability Ordinance they consider preempted or in conflict with the CBAs. While the City lists a few areas, SPOG has remained silent as to its interpretation, reserving the ability to contend later that much larger swathes of the Accountability Ordinance are abrogated. (CPC Response to Order to Show Cause)[724]

The CPC then went on, in a declaration prepared by the former OPA Auditor, to identify 36 specific areas where the SPOG and SPMA Collective Bargaining Agreements differed with the Police Accountability Ordinance.[725]

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[724] U.S. v. Seattle, Document No. 531, filed February 20, 2019. The CPC also pointed out that "[t]hese CBAs don't just require a higher standard for dishonesty, or even for a narrow range of serious misconduct. The CBAs have in effect eliminated the preponderance standard for all serious misconduct" (p. 20).

[725] See, U.S. v. Seattle, Document 533, Appendix A, filed February 20, 2019 (Declaration of Judge Anne Levenson (Ret.)) with the following differences specified:

"1. The SPOG CBA requires that CBA language prevails over any City ordinance whenever the CBA conflicts with an ordinance provision. The SPMA CBA states that City ordinances are paramount except where they conflict with the express CBA provisions. The City's position is that if there is any inconsistency (not just direct conflict) between the Ordinance and CBA language, the CBA language supersedes.

2. Ensuring a fair and effective accountability system is not a stated purpose in either CBA, which will affect how all of the ambiguous provisions will later be interpreted whenever there is a dispute or disciplinary challenge

3. The CBAs do not ensure all ranks are treated equally in the accountability system.

4. Failure to incorporate disciplinary appeal reforms: ▪The CBAs maintain use of arbitration and grievances for disciplinary challenges, in addition to the PSCSC, thus continuing to allow forum-shopping.

5. Failure to incorporate disciplinary appeal reforms: "A preponderance of the evidence" for the burden of proof and the standard of review will no longer be the standard for a wide range of serious misconduct, including dishonesty.

6. Failure to incorporate disciplinary appeal reforms: ▪The SPOG CBA does not prohibit City employees or recent SPD employees from being on the PSCSC, and neither the SPOG nor SPMA CBA require all appellate decision-makers to have subject matter expertise.

7. Failure to incorporate disciplinary appeal reforms: ▪If certain employees choose arbitration, their hearings will bar access by the public, complainants, and the media.

8. Failure to incorporate disciplinary appeal reforms: ▪Timelines for appeals, intended to reduce delays in appellate proceedings and final resolution, will now differ depending on the appellate route chosen by the employee.

9. The CBA provisions stating that employees must be complete and truthful in OPA investigations preempt SPD policy requiring honesty in all communications, and the CBAs define

dishonesty as intentionally providing false information or incomplete responses to specific questions regarding material facts, instead of using an objective standard.

10. The CBAs continue to bar the imposition of discipline, regardless of the misconduct, if an investigation exceeds 180 days even by a single day. The calculation of the timeline and extensions are unclear and union approval of extensions is required

11. Failure to incorporate reforms related to investigations of criminal misconduct: ▪The CBAs continue to limit OPA's authority in investigations of criminal misconduct, which often involve the most serious types of misconduct.

12. Failure to incorporate reforms related to investigations of criminal misconduct: ▪The SPOG CBA forecloses OPA authority, yet requires that the 180-day timeline continues to run, when allegations are referred for criminal investigation, other than when the misconduct occurred in a different jurisdiction or is under review by a prosecutor.

13. The SPOG CBA sets a four-year statute of limitations and provides for a limited set of exceptions. Discipline for serious misconduct, including dishonesty and Type III use of force, is barred if the complaint is made more than four years after the incident, and the statute of limitations is still a bar to accountability when misconduct is concealed by peers, supervisors, or subordinates.

14. The SPOG CBA requires secondary employment reforms be bargained, further delaying this long overdue reform, despite an Executive Order having been issued.

15. The SPOG CBA does not provide OPA and OIG full subpoena authority

16. The CBAs do not provide that all relevant OPA and SPD personnel records be retained, or that all records be retained for the time period recommended to better ensure accountability.

17. The SPOG CBA limits the OPA Director's authority to establish the most effective mix of sworn and civilian investigative staff, limits civilian investigators to only two, and either limits or forecloses civilian investigators involvement when allegations may result in termination.

18. The SPOG CBA limits the OPA Director's authority to manage rotations and transfers of sworn staff, not providing the OPA Director the discretion to determine the most effective mix of sworn and civilian investigators.

19. The SPOG CBA allows accrued time, such as vacation time, to be used by an employee to satisfy disciplinary penalties that are supposed to be unpaid days off

20. The CBAs allow evidence that should have been disclosed during an OPA investigation to be first raised in the due process hearing or on appeal.

21. The CBAs do not give the Chief managerial latitude to place employees on leave without pay when the Chief determines it is necessary.

22. The SPOG CBA undercuts management authority to set performance standards and take into account OPA history in assignment to and transfer from specialty assignments

23. The SPOG CBA diminishes the certainty of other timelines intended to reduce delays.

24. The SPOG CBA does not ensure complainant anonymity and may not allow investigation of allegations identified after classification.

25. The CBAs do not require inclusion in the OPA file or disclosure to complainants, the public, the City Attorney, and oversight entities of changes in findings or discipline made by the Chief, or require any notifications or public transparency when discipline or findings are later changed as a result of an appeal.

26. The CBAs do not include the terms of ongoing separate agreements, so that any impacts can be known. (Note: Possible impact; the Court needs additional information.)

27. The CBAs do not adopt recommendations to establish an effective mediation program and do not provide for consultation with the CPC and OIG in reforming the program.

Judge Robart ultimately agreed with the CPC and, on May 15, 2019, found the City partially out of compliance with the Consent Decree.

Ultimately, the question has to be asked: Why would Mayor Durkan, who was responsible for insisting that Seattle enter into a consent decree with a court-appointed

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28. The CBAs provide for only a pilot rapid adjudication program, do not adopt some recommendations to establish an effective program, and do not provide for consultation with the CPC and OIG in establishing the program.

29. The SPOG CBA limits SPD's authority to use civilians in a range of SPD managerial and operations positions

30. The SPOG CBA requires the Chief to take notes and share them with SPOG when meeting with a complainant prior to making a discipline decision

31. The SPOG CBA requires OPA to share its investigation plans with SPOG.

32. The SPOG CBA cites an agreement of the parties on the OPA Manual, but it does not state the specifics of that agreement.

33. Other Area Requiring Attention: The SPMA CBA refers to a separate agreement regarding the CPC, the terms of which are not known

34. The SPOG CBA does not make clear that the CAO represents SPD in disciplinary challenges

35. The SPOG CBA requires OPA interviews to be conducted in an SPD facility.

36. The SPOG CBA allows employees terminated for cause to purchase their service weapons, while the Ordinance bars such employees from later obtaining a concealed carry license under the Law Enforcement Officers Safety Act.

37. The CBAs do not recognize the advisory role of accountability system entities in providing expertise in setting the City's bargaining agenda and for ongoing guidance during negotiations.

38. The SPOG CBA extends the problematic terms for OPA investigations to EEO investigations.

39. The CBAs do not disclose all collective bargaining re-opener topics and timelines, and do not recognize the advisory role of accountability system entities in providing expertise in these discussions.

40. There are inaccuracies in the CBAs, including improper references to responsible entities.

41. There are inaccuracies in the SPOG CBA concerning SPD investigative units.

42. There are inaccuracies in the SPOG CBA concerning City law.

43. The SPOG CBA language is overly broad in defining when Garrity should be used.

44. The status of SPMA and City bargaining of body-worn video (or, if complete, the final agreement) should be made public.

45. The SPOG CBA provisions for the City's contribution to paying the salary of the SPOG President appears problematic.

46. The SPOG CBA does not establish who is responsible for paying for the resolution of disputes concerning the salary of the SPOG President.

47. The SPOG CBA does not give supervisors authority to approve or manage SPOG representative's time requests.

48. SPD Policy 2.050 requires amendment of all written directives and procedures to align with terms of CBAs."

monitor in the first place (when she was the U.S. Attorney) put herself in the position of negotiating a contract that would ultimately derail the Consent Decree reform process?

Study participants have suggested that in Seattle, Durkan needed union support to get elected and re-elected and for any future political aspirations, to include the Governorship or federal elective office: "Washington is a very labor-oriented state – she will need the unions to get the support she needs."[726] Research participants further pointed to SPOG's involvement in the King County Labor Council as a political axe that was wielded in support of seeking a contract with the union, at almost any cost.[727]

Next, one has to question as to how the City Council (which was in 2012 aggressively pro-consent decree) could be complicit in such an action? Study participants observed that by the time the Tentative Agreement got to Council, their hands were figuratively tied. The union membership and the City Administration had agreed to a long-awaited contract with the police that included provisions relating to body-worn cameras, an Inspector General and a more civilianized OPA; the City Council simply could not get "into the weeds" of the agreement and was under the same political pressure as was the Mayor.

The fact that the CPC was the only organization to challenge the collective bargaining agreements with the unions, and was ultimately successful, highlights their ultimate influence as a civilian oversight mechanism and was certainly not something

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[726] As recognized by the *Seattle Times* after Mayor Durkan put forward the tentative contract with SPOG, "Durkan found herself facing a powerful police union, with a long history of trading reforms for money, most recently with the backing of organized labor. Rather than seizing on perhaps a once-in-a-generation opportunity to fundamentally alter the police union's power, Durkan, who has a past record of challenging the guild, has chosen to take what she regards as a more realistic approach" (Miletich, S., (2019, August 17). Durkan to make SPD reforms 'top priorities' — in due time. *Seattle Times*, 8/17/2019a). The murder of George Floyd in 2020, however, may have been a turning point with respect to police union influence over politics in Seattle. On June 18, 2020, the King County Labor Coalition voted to expel SPOG from its membership even after SPOG's board of directors acknowledged in a letter directed to the Coalition that "institutional racism exists not only in the criminal justice system but more broadly," and its President met with council delegates in an effort to allow the union to remain as a member of the Coalition (*Crosscut.com*, 6/16/2020).

[727] Recall that Labor council representatives had "even hosted a press conference in 2018, calling on the Seattle City Council to ratify [the] new contract with the police union." (*Crosscut.com*, 6/4/2020).

that was anticipated when they were first created by the Memorandum of Understanding.[728]

Body-worn cameras.

Similar to the police accountability issues, the Seattle Consent Decree did not require the SPD to adopt a body worn camera program. However, the Monitor argued forcefully in his fifth semi-annual report that body worn cameras were "a key tool for accountability and transparency." Mayor Murray, after failing to obtain an agreement from the union to implement a body worn camera program without a pay increase, went ahead and implemented the program through an executive order, which almost immediately resulted in the filing of an unfair labor practice grievance by SPOG with the Public Employees Relations Commission. Although SPOG was ultimately rebuffed by Judge Robart who declared that "[t]he citizens of Seattle are not going to pay blackmail for constitutional policing," the issue was not ultimately resolved until the City, through the new collective bargaining agreement, agreed to compensate officers an additional two percent for wearing body cameras. (*Seattle Times*, 6/22/2017;[729] Hardaway, 2019, pp. 189-190).

More than one research participant acknowledged it was likely a mistake not to include provisions for the implementation of a body-worn camera program in Seattle's Settlement Agreement. As stated by one participant intricately involved in the implementation process, "the general lesson is that when you excluded fundamental stuff from a consent decree, the shit will still hit the shore…nature abhors a vacuum."

Hiring of outside deputy and assistant chiefs.

As part of the City's proposal to reform the SPD, the City Council, Mayor Murray and the new Chief of Police, Kathleen O'Toole, all agreed that she needed the authority

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[728] This remarkable success belies the comments of some members of the CPC that the organization ultimately was a "toothless tiger," whose recommendations were commonly ignored by the City.

[729] Miletich, S. (2017, June 22, 2017). SPD body cameras stalled over. *Seattle Times* ["More than a month after a federal judge approved the Seattle Police Department's long-awaited proposal to equip officers with body cameras, the timing for the rollout remains clouded amid tense labor negotiations. The Seattle Police Officer's Guild, which has a history of trading wage hikes for reforms, has asked for extra pay of about 1 ½ percent for officers who wear body cameras, according to three sources familiar with the talks"]. Retrieved from https://www.seattletimes.com.

to hire Deputy and Assistant Chiefs from outside the SPD to "bring in new blood" and avoid insular decision-making. The Seattle Police Management Association (SPMA), however, opposed this proposal, which required a change in City Ordinance to take place.[730]

The ordinance change was enacted in January 2014, leading to a May 7, 2014 unfair business practice grievance by the SPMA who argued that it negatively impacted promotion opportunities for SPD Captains and, as such, was a subject of mandatory bargaining. Although the grievance was initially rejected by a state public-employment board in June, 2014 (*Seattle Times*, 6/4/2014), the dismissal was later vacated with a hearing on the issue held in February 2015 (*Seattle Times*, 2/25/2015).[731] The issue was ultimately resolved when the SPMA dropped their complaint after the city agreed "to establish a leadership-development program to assist captains and lieutenants in developing skills to move up the ladder or to make them attractive to other departments." Only then, was Chief O'Toole permitted to hire two new assistant chiefs from outside the SPD (*Seattle Times*, 3/12/2015).[732]

Civilian oversight.

As the Monitor opined in his September 2017 status report, he believed the Inspector General position to be "perhaps the single most important guarantee" of consent decree sustainability (Compliance Status Report, p. 18). In this area, the Monitor was in conflict with the CPC, in what some study participants referred to as "a turf war" over control of the civilian oversight functions in Seattle. Participants suggested that the CPC came into the discussion with the desire to control the various police oversight functions, and in fact, when lobbying in favor of an initial draft of the accountability ordinance, CPC members strenuously argued that the CPC needed the

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[730] "The ordinance, enacted in January, repealed a 1978 restriction that limited the police chief to selecting senior commanders from the current pool of captains and lieutenants" (Miletich, S. (2014, June 4). Panel rebuffs police union bid to limit new chief's hirings. *Seattle Times*. Retrieved from https://www.seattletimes.com).

[731] Miletich, S. (2015, February 25). Police union seeks to block chief's hiring of outsiders. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[732] Sullivan, J. (2015, March 12). Police Chief and her new team. *Seattle Times*. Retrieved from https://www.seattletimes.com.

authority to formerly evaluate both the Inspector General and the OPA Director (*Seattle Times*, 5/18/2017).[733]

Although the CPC ultimately lost its battle to control the other Seattle oversight organizations, the new Police Accountability Ordinance did make the CPC a permanent body. But the road to a permanent CPC was described as "rocky" by virtually all of the participants involved in CPC-related issues. One knowledgeable participant suggested that one of the reasons for ongoing conflicts was that the Seattle consent decree was not clear on giving the commission "a process by which they would have had to be seriously engaged as a primary stakeholder or given powers that established it as a permanent entity with established powers." The participant suggested that having more defined authority for the commissions would have allowed the "conversation to be more about substance, rather than process and personality."

Costs.

In the current research, the costs of the implementation of the Consent Decree were a consistent concern of virtually all of the participants (to include community members involved in pressuring the city to reform). Many participants expressed concern that the Monitor himself appeared to be treating the City as a "cash cow;" although other participants decried these criticisms as unfounded and demeaning to the Monitor's integrity.

As noted by one SPD union leader, "the Monitoring team had a laundry list of stuff they wanted and it was breathtakingly expensive. Money well spent? Probably not…" However, that same participant continued to question the foundation of the DOJ's investigation and contrary to most participants, questioned even the need for reform of SPD training.

Even so, some community participants and CPC members described feeling "ripped off" by the Consent Decree process. According to one CPC member: "the DOJ appeared to suggest that any resistance to consent decree spending is an opposition to police reform – however, fiscal prudence does not equate to opposition to police reform." Another community member described the Consent Decree as "a blunt instrument that

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[733] Miletich, S. (2017, May 18). Citizen panel campaigns to expand. *Seattle Times*. Retrieved from https://www.seattletimes.com.

takes a huge amount of money and time." A civil rights organization leader commented that,

> there was a lot of grumbling about having to pay for the reforms. Community members noted that if the City had just fixed everything five to ten years ago, as we had asked, we wouldn't have to be spending the money on the DOJ and the Monitor.

From the perspective of Mayor McGinn's administration, the City in 2012 had really serious budget problems: "we were trying to preserve policing the best we could, we were juggling things around to maintain staffing levels and response times, and then we had the Monitoring Team with their signature IT project that was expected to cost millions."

According to a high-ranking member of the SPD, "we had to do a lot of financial gymnastics, frankly, it turned into a shell game with the city turning a blind eye to ensure we were able to get into compliance." According to that same participant, "everyone, including the DOJ wanted to deemphasize how much it was costing; eventually we got there, but it did require the City getting money into the department, sometimes in disingenuous ways." Another high-ranking member of the SPD, however, disagreed, claiming the department simply had to be "innovative" in how they managed city funds and emphasized other funding opportunities in order to help achieve the necessary changes. Yet another member of the SPD command staff believed that the Consent Decree implementation "was too expensive: training, CIT, first aid, firearms training, they were all unfunded mandates that required money to come from different parts of the SPD and other city departments … on top of that, paying the Monitoring team was excessive."

Another high-ranking city official referred to the whole process as "ironic" noting that

> if we had just spent the money on the police department in the first place, the costs would have been dramatically less than the cost of the Consent Decree … we could have saved all the additional costs of monitoring and process, which cost easily more than $1 million each year.

Federal politics.

As previously discussed, the academic literature relating to consent decree enforcement is replete with references to the political nature of §14141 enforcement, noting more aggressive enforcement under Democratic administrations and a more passive use of the §14141 enforcement options under Republican administrations – with the Trump administration, to a large extent, shutting down §14141 investigations and denouncing the use of consent decrees against local police.

Within the SPD's command staff, the DOJ's investigation report was perceived to be no more than "a political hit" on the SPD in order to give the Obama administration "an easy win" in the police reform arena. Some participants observed that consent decrees tended to be dependent on "the ebb and flow of federal politics … under Obama, there was an upsurge – we just happened to get caught in it."

The decision of the DOJ to support the City's position that police discipline and accountability was not part of the requirements of the Consent Decree was particularly controversial. While some participants believed that the DOJ decision to argue against discipline and accountability being considered part of consent decree compliance was the result of political pressure from the Trump administration; others believed that it was a reasonable position taken by professional prosecutors given the contractual nature of the Consent Decree and a philosophy of federalism which generally assumes local control of policing functions.[734] Judge Robart, eventually ruled that discipline and accountability was an essential part of the Seattle Consent Decree and Monitor Bobb agreed with the Judge, noting in his final report that:

> As early as June 2014, in our Third Semiannual Report, the Monitoring Team recognized that the disciplinary system the was a failure. "Events during the last six months have made clear that SPD's disciplinary system is byzantine and arcane. Providing SPD officers and the Seattle community with a rational, reasonable disciplinary system will require swift and sustained effort. It is difficult to envision the SPD reaching full and effective compliance with the Consent Decree without a well- functioning system for

[734] And, in fact, this was not the first time that the DOJ and a defendant-city unsuccessfully argued to a federal judge in a consent decree case that the city should be found in compliance. In Los Angeles in March, 2006 (during the second term of the Bush Administration), the City of Los Angeles, with the support of the DOJ, requested that the court "loosen some of the Consent Decree requirements." The Judge, however, rejected the motion, and instead extended the Consent Decree for an additional three years, "openly questioning the Justice Department's commitment to its own case" (Kupferberg, 2008, p. 150).

> imposing discipline on police officers found to have violated SPD policy." The Team agreed to remain available for technical assistance with respect to the discipline system. The Department never requested that technical assistance despite our conclusion that "an irrational and convoluted system cannot be allowed to systematically undo the accountability that a host of other policies and practices are intended to foster." … The consent decree will not end until the "bizarre and arcane" discipline and accountability systems are fixed. (Bobb, 2020, p. 7)

Interestingly, determining whether or not the City and the DOJ's positions were reasonable depends more on a person's philosophical perspective with respect to consent decree litigation than anything else. If a consent decree is perceived as a binding legal contract to be interpreted narrowly in the interest of recognizing the inherent local nature of policing, the position that discipline and accountability were not part of Seattle's consent decree compliance would be persuasive. If, however, one interprets the Consent Decree in a more holistic manner, where the contract is being used to ensure effective and Constitutional policing in the long-term, a working discipline and accountability system would be essential to maintaining a sustainable program of reform.

As a result of the change in the political winds, many of the research participants kept out a watchful eye for any changes in DOJ positions that may have been more consistent with the philosophies of the Trump administration as opposed to the prior Obama administration. And, many of these participants specifically identified the DOJ's willingness to reverse its position on the standard of proof needed to terminate an officer and its willingness to oppose the judge's out-of-compliance finding, to be more consistent with the Trump ideology, than that of the Obama administration.[735]

[735] Even so, when Judge Robart first made his finding of full compliance, the CPC concurred with that decision and suggested in an October 13, 2017 filing that the DOJ's motives in supporting the "full and effective compliance" finding was not motivated by political concerns: "It is important to call out our belief that the United States' position in this case at this juncture is fully consistent with the mandate and approach brought to bear from the outset in 2011 by the Civil Rights Division and the local U.S. Attorney's Office." (U.S. v. Seattle, Document No. 421, n. 1; Miletich, S. (2017, October 14). Justice Dept supports finding of full compliance. Seattle Times. Retrieved from https://www.seattletimes.com.)

7.4. Seattle Consent Decree Implementation – The View from the Top

The perspectives and thoughts of those in charge of the implementation effort, to include Judge Robart, DOJ spokespeople, the Seattle police chiefs and the court-appointed Monitor, offer an important perspective on the status and progress of the implementation efforts throughout the course of the Seattle federal reform effort. In fact, public comments by these officials ranged from supportive to dismissive and from cajoaling to collaborative, depending on the timing of the statement and the perspective as to how much force needed to be used to attain the ultimate goal of long-term sustainable police reform.

7.4.1. The Judge[736]

The story of the implementation of the Consent Decree can also be told through the in-court statements and orders of the U.S. Federal District Court Judge assigned to the Seattle consent decree litigation, James Robart. The judge's statements were extensively reported by Seattle news outlets and include substantive opinions and conclusions in written orders of the court. Assigned randomly to the Seattle case at its inception in 2012, Judge Robart was appointed to the federal district court by President George W. Bush on December 9, 2003. Robart was a 1973 graduate of the Georgetown University Law Center. Prior to his appointment, Robart was a civil litigator in private practice, reportedly gaining a reputation as "a highly respected corporate lawyer."[737]

Outside of the Seattle Consent Decree litigation, Robart became best known for his February 3, 2017 ruling when he granted a nation-wide temporary restraining order against President Trump's executive order on travel and immigration. Trump

[736] Given that the Seattle litigation has not yet been concluded and Judge Robart's positions on the implementation of the Consent Decree are well documented in the media and in his written orders, Judge Robart was not asked to participate in this study.

[737] See, U.S. District Court biographical information, located at: https://www.wawd.uscourts.gov/judges/robart-bio.

subsequently attacked Robart on Twitter, saying the decision was "ridiculous" and referred to Robart as "a so-called judge."[738]

Judge Robart was subsequently defended in the media by former United States Attorney Michael McCay, referred to as "active in Republican politics in Washington State," who referred to Robart as "a smart, thoughtful guy and very even-tempered." Then former-U.S. Attorney Jenny Durkan, described Judge Robart as "a very strict federal judge who believes in the rule of law… I think he truly believes in the independence of the judiciary, to the marrow of his bones." According to the *New York Times*, Durkan "added that Judge Robart needed to be seen in the context of the moderate Republican traditions of the Pacific Northwest." McKay and Durkan were reportedly the leaders of a bipartisan selection committee that vetted federal judges for recommendations to the Bush administration in 2003 and recommended Robart's appointment to the federal judiciary (*New York Times*, 2/4/2017).

Over the course of the Consent Decree litigation, Judge Robart was particularly active and expressive in his comments from the bench. His statements and orders ranged from supportive, to cajoling, critical and, sometimes dismissive. While the end of the story has not yet been written, the judge's statements, thus far, help to provide a picture of a City and a police department sometimes accepting and sometimes struggling with the external pressure placed upon them to reform:

Table 7.4. Public Statements of Judge Robart

Date	Statement
Aug. 24, 2012	Judge gives "provisional approval" to settlement. Robart states that the funding and appointment of the Monitor was "the linchpin to making this work." Robart likens the Monitoring job to: "the talents of 'a lawyer…a deputy chief, a deputy mayor and being able to change his clothes in a phone booth" (*Seattle Times*, 8/25/2012).[739]

[738] Thomas Fuller (2017, Feb. 4). New York Times, 'So-Called' Judge Criticized by Trump Is Known as a Mainstream Republican. *New York Times*. Retrieved from https://www.nytimes.com/2017/02/04/us/james-robart-judge-trump-ban-seattle.html.

[739] Carter, M. & Miletich, S. (2015, August 25). Judge wants more say on Seattle police reform - He says monitor is key, must have resources. With provisional OK, clock starts on deadlines. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
Nov. 28, 2012	Robart compares the proposed costs of Seattle monitoring to other cities: suggesting that "Seattle was neither paying for an expensive foreign car or a cheap one but was getting a 'nice solid American car' in the middle of the cost range." Robart suggests that the entirety of "the burden was not on the SPD – the 'other 50% of the process' falls on the community to report crime and act as partners with the police…[b]oth need to forge a new partnership, listening to each other and working together" (*Seattle Times*, 11/29/2012).
March 12, 2013	Judge approves a first-year blueprint for reforming the SPD "but issues a blunt warning to the city that he is unhappy with the political infighting that cluttered the negotiations." (*Seattle Times*, 3/13/2013a).[740] The Judge addressed an injunction filed by the Seattle Police Officers' Guild and the Seattle Police Management Association in state court to prevent consent decree implementation from interfering with their contract or collective bargaining rights: asserting he was "not aware of any jurisprudence which allows a state court to tell me what to do in my settlement agreement." He considered the efforts to be "a further distraction" from implementation of the Settlement Agreement. The Judge "highlighted what he called 'significant milestones' reached to date: the settlement agreement and appointment of a monitor, the development of a first-year plan and the appointment of a Community Police Commission (CPC) by the mayor" (*Seattle Times*, 3/13/2013a).
Nov. 26, 2013	Judge denies CPC's motion to formally intervene in the case, "citing concerns that it might slow the process of reforms," but grants the CPC amicus curia status (U.S. v. Seattle, Document No. 106; *Seattle Times*, 12/12/2013).
Dec. 17, 2013	Judge approves SPD use-of-force policy; opines in written order that the role of the court and the Monitor "is not to dictate policies to the SPD, but rather to insure that the Proposed Policies conform to the requirements of the Consent Decree, the United States Constitution, and judicial decisions interpreting the City's constitutional obligations." (U.S. v. Seattle, Document No. 115).
April 3, 2014	An "exasperated" judge warns that the SPD may be under court supervision until 2019 "unless it significantly improves the progress of reform that have lagged as a result of missed deadlines and mismanagement." Robart states that "what will not be tolerated is a lack of will." Robart "referred to problems in the police discipline system, saying they 'exploded this year' when the interim police chief dismissed a number of cases"; Robart "cautioned that in the future, notwithstanding the department's labor contracts, he reserved the right to unilaterally change unconstitutional results as a 'last resort'" (*Seattle Times*, 4/4/2014).[741]

[740] Carter, M. (2013, March 13). Federal Judge Oks blueprint. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[741] Miletich, S. (2014, April 4). SPD needs reforms now, judge warns city. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
Aug. 19, 2014	"Despite what he labeled an unexplainable delay [in getting a data management system into place] 25 months into the process, Robart said he would grant [an] extension because there was no other choice in order to get the job done right… We have an unfortunate situation in Missouri, the same problems that led to the settlement agreement in Seattle – use of force and tracking such incidents, training, stops and detentions, bias-free policing and supervision of officers – are at issue in Ferguson." Robart opined that "in Seattle people will be deprived of constitutional policing until [a data management system was] 'up and running'…We don't need armored personnel carriers. We need the public to support us." "Robart referred to resistance to change among some in the ranks, pointing to a federal lawsuit filed by more than 100 Seattle officers on May 28 challenging the constitutionality of new use-of-force policies drafted under the settlement agreement." "To those individuals," Robart said, "I simply say: 'Get over it. The train has left the station. It's not going to turn around. The good old days are not coming back." (*Seattle Times*, 8/20/2014).[742]
June. 30, 2015	Favorably noting SPD de-escalation training as profiled in the *New York Times* on 6/27/2015, "I am so pleased that my city is not New York, not Charlotte, not Baltimore…" (*The Stranger*, 6/30/2015).[743] "Robart praised [Mayor] Murray, Police Chief Kathleen O'Toole, the city's police unions and many officers for their commitment to reform and making Seattle a national model for change" (*Seattle Times*, 7/1/2015).[744] Referring to a recently publicized agreement between the Mayor and the CPC to make the CPC a permanent body: "The parties seem to have run off the railroad … I don't really care what accord was reached last night. None of it will be put into effect until you bring it back here…It strikes me reading these news reports that we have various groups seeking to grab power, … And that's not going to happen because the court is the one who controls the settlement agreement" (*The Stranger*, 6/30/2015).
Dec. 20, 2015	Letter from Judge Robart to CPC: "Unfortunately, the current campaign on the part of some CPC's members to perpetuate CPC's own existence — prematurely — demonstrates a lack of perspective with regard to the broader police reform process which the court, in its role of overseeing the entire ... Consent Decree, cannot afford, …" (*Seattle Times*, 12/21/2015).[745]

[742] Miletich, S. & Beekman, D. (2014, August 20). Judge scolds Seattle police but agrees to later deadline. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[743] Herz, A. (2015, June 30). Federal Judge, Decrying Local Attempts to "Grab Power," Says He's the Boss of Police Reform. *The Stranger*. Retrieved from https://www.thestranger.com.

[744] Miletich, S. (2015, July 1). Federal judge blasts plan to expand power of SPD review board. *Seattle Times*. Retrieved from https://www.seattletimes.com

[745] Miletich, S. (2015, December 21). Future of citizen police panel uncertain. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
Aug. 9, 2016	Court orders Police Accountability Legislation to be submitted to the court before consideration by the City Council. "The parties' proposal is inefficient in that it deprives the City of critical court guidance in shaping SPD accountability systems to ensure that the elements adhere to the terms and purpose of the Consent Decree, …The parties' proposal also potentially places the court in the undesirable position of having to 'veto' completed legislation" (U.S. v. Seattle, Document No. 305).
Aug. 15, 2016	Reacting to the Seattle Police union's rejection of a tentative contract: "To hide behind a collective-bargaining agreement is not going to work… The court and the citizens of Seattle will not be held hostage for increased payments and benefits…I'm sure the entire city of Seattle would march behind me." Commenting on SPD Leadership: "I think we have the right person [Chief O'Toole] to [achieve compliance]." Noting that 41% of national shootings by police were of blacks who represent 20% of the population: "Black lives matter." (*Seattle Times*, 8/16/2016).
Jan. 4, 2017	Robart warns Seattle Police Management Association not to "conclude that 'running, hiding or sticking one's head in the sand' will allow it to avoid the requirements of constitutional policing" (*Seattle Times*, 1/5/2017). "Based on overall progress under the 'enlightened leadership' of Police Chief Kathleen O'Toole and the assistance of the court's monitor, Merrick Bobb, the city is in position to reach full compliance with the Consent Decree in 2018 and be 'free of me'" (*Seattle Times*, 1/5/2017).
July 18, 2017	"The citizens of Seattle are not going to pay blackmail for constitutional policing." Addressing "rumblings" that the City would be found in full compliance, "It's not going to happen" noting the DOJ's new leadership was not supportive of the use of consent decrees. "Seattle police have become a model of how to do things right. But questions remain…" (*Seattle Times*, 7/19/2017a).
Sept. 7, 2017	Court order: "Until the collective-bargaining process is complete, the court cannot be assured the [Police Accountability] Ordinance, as it stands today, is a final product" (U.S. v. Seattle, Document 413).

Date	Statement
Jan. 10, 2018	Robart finds the City in "full and effective compliance" with the Consent Decree. "The credit for these dramatic improvements goes in large part to the diligent and on-going work of the SPD – both its rank and file officers and it's command staff." "The court also wishes to highlight the exceptional work of Chief Kathleen O'Toole during her tenure with SPD in sustaining the significant progress noted above, …In particular, the court commends Chief O'Toole on her leadership in developing a more community-based policing approach for SPD. These efforts are receiving national attention and are making a difference in the level of trust the community places in SPD." Robart explains that the SPD must maintain compliance over the next two years as part of Phase II: "In many ways, Phase II is the most difficult portion of the Consent Decree to fulfill…The ability to sustain the good work that has begun is not a foregone conclusion. It will require dedication, hard work, creativity, flexibility, vigilance, endurance, and continued development and refinement of policies and procedures in accordance with constitutional principles." "If collective bargaining results in changes to the accountability ordinance that the court deems to be inconsistent with the Consent Decree, the City's progress in Phase II will be imperiled." (U.S. v. Seattle, Document No. 439).
Oct. 23, 2018	Court Order seeking information on tentative contract between City and Seattle Police Officer's Guild (U.S. v. Seattle, Document No. 485).
Nov. 5, 2018	Referring to new police union contract, "When the city takes the position that there's nothing in there that is inconsistent with the Consent Decree, I don't believe that to be accurate." "Salary is not my issue … I saw it creep in what I thought was a pretty sleezy way. Let's take that one off the table and let's concentrate on the constitutional reform." Referring to 2% bonus pay for wearing body cameras, "What I hear is a two percent bribe for them to follow an order that I have already entered in the case" (*The Stranger*, 11/6/2018).[746]
Dec. 3, 2018	On his own motion, Robart issues an "Order to Show Cause Whether the Court Should Find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree." Order comments on arbitration board's decision to reinstate an officer fired for excessive force: "Although this single incident may be insufficient for the court to rescind the City's Phase II status under the Consent Decree, it raises the specter that the new CBA's rejection of reforms in the Accountability Ordinance will undermine the progress that the City has made to date and stymie its efforts to complete Phase II in little more than a year" (U.S. v. Seattle, Document No. 504).

[746] Black, L. (2018, November 6). Seattle's Police Union Contract Had a Tough Day in Court. *The Stranger*. Retrieved from https://www.thestranger.com.

Date	Statement
May 15, 2019	Court hearing on OTC re: compliance: Robart plays a June 2014 dashcam video in court showing an SPD officer punching a handcuffed prisoner. [Officer was terminated by Chief O'Toole and later reinstated by an arbitrator]. "Robart took part of the morning to review the history of attempts at police reform in Seattle, dating back to the mid-1990s and an incident in which an SPD homicide detective reportedly stole $10,000 from the apartment of a man who had been killed by police and then tried to return it with the help of his Sergeant … Robart said addressing the issue of officer accountability remains the primary stumbling block before the department's removal from federal oversight." Judge orders City to come up with a working plan to address future compliance. (*Seattle Times*, 5/15/2019).
May 21, 2019	Order finding City "Partially Out of Compliance with the Consent Decree." "The City and the United States may not repudiate these repeated past representations to the court—concerning the old accountability system's inadequacy, the need for reform, and the court's jurisdiction in this area—for the sake of political expediency today. Both expressly by their words and implicitly by their actions and lack of objection, the parties have acquiesced in the court's review of the Accountability Ordinance and, more generally, SPD's accountability systems as a part of assessing whether the City has sustained full and effective compliance with the Consent Decree in Phase II. The court initiates that review now, and as described below, finds the City to be out of compliance with respect to its accountability systems." (U.S. v. Seattle, Document No. 562, p. 10).
Oct. 15, 2019	Robart warns the city not to use an outside consultant report to justify its current accountability system: "[such] exercise will be a failure, reform will be delayed, and full and effective compliance with the Consent Decree will recede further into the future." Robart criticizes the DOJ for its "largely unhelpful response" in continuing to argue that accountability fell outside the scope of the Consent Decree. (U.S. v. Seattle, Document No. 585).

Issues regarding judicial oversight over the Seattle consent decree.

Of course, not all observers will support the presiding judge and his or her decisions, regardless of whether the judge is following law, precedent and generally accepted procedure and process.

In this case, Robart was widely perceived as having been an "activist" judge and, in a number of situations, disagreed with the parties (the City and the DOJ), sometimes going along with the position of the Monitor and/or the CPC and sometimes seeming to forge his own way ahead. The Judge's August 15, 2016 declaration that "Black Lives Matter," made after criticizing the police union for "holding the City 'hostage'" in their contract negotiations, reportedly drew "a startled, audible reaction" from the courtroom

audience (*Seattle Times*, 8/16/2016). Further the judge's December 3, 2018 "Order to Show Cause Whether the Court Should find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree" was issued on his own motion,[747] with the court ordering the parties to brief issues including "whether the court's understanding of the [] events is accurate?"[748]

Perhaps most significant was the Judge's decision to find the City partially out-of-compliance over the objection of both parties, the City of Seattle and the DOJ. Although the CPC argued in favor of the out-of-compliance finding,[749] and the Monitor appeared to be in support of the judge's decision, the court's decision to overrule the position of both the plaintiff and the defendant, appeared to participants to be the very definition of "judicial activism."

The Judge also repeatedly referred to news coverage in court hearings and asked the parties to respond to such reports, rather than relying on the parties to bring forward all issues on their own.[750] Finally, Judge Robart's judicial demeanor was not one of a passive arbiter of the facts. In fact, he was repeated referred to in the media as taking on passionate positions while adjudicating the case.[751]

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[747] U.S. v. Seattle, Document No. 504. Although it seems likely that the motion may have been brought as a result of private conversations with the Monitor.

[748] The court had noted that the collective bargaining agreement with SPOG was inconsistent in significant parts with the previously passed Accountability Ordinance and that an officer ordered terminated by Chief O'Toole for an excessive use of force had been reinstated by an independent arbitrator (U.S. v. Seattle, Document No. 504, pp. 5-8).

[749] U.S. v Seattle, Document No. 531, filed February 20, 2019.

[750] See, for example, The Stranger (6/30/2015) [where Judge Robart reportedly stated that "he was 'very frustrated and upset' by what he's been reading in local news outlets about an agreement reached last night between Mayor Ed Murray and the Community Police Commission (CPC) to jointly give the commission permanent civilian oversight status through council ordinance;" Anzel Herz, (2015, August 26). Federal Judge Calls The Stranger's Reporting on SPD "Inflammatory," but It's Clear He Learned from It. *The Stranger*. Retrieved from https://www.thestranger.com.

[751] See, for example, *Seattle Times*, 4/4/2014 [which describes Judge Robart as "exasperated," warning that the SPD "could be under court supervision until 2019 unless it significantly improve[ed] the progress of reforms that have lagged as a result of missed deadlines and mismanagement"]; *Seattle Times*, 7/7/2015 [Judge Robart referred to as "lambast[ing] efforts to expand the authority of a citizen review board without the court's approval;" Miletich, S., July 19, 2017, Judge declines to approve PA legislation. *Seattle Times* [Judge Robart quoted as saying: "The citizens of Seattle are not going to pay blackmail for constitutional policing"]. Retrieved from https://www.seattletimes.com.

As would be expected, not all stakeholders were supportive of the entirety of the judge's orders relating to the Consent Decree. The DOJ lawyers themselves were somewhat dismissive of the judge's decision to find the City out-of-compliance with the Consent Decree, over their objection, when they responded to the Court's request for input on the City's methodology for assessing the City's accountability scheme, by "maintain[ing] its position that the choices and decisions the City makes with respect to its police accountability system (beyond those expressly stated in the Consent Decree) are outside the scope of the Consent Decree" (U.S. v. Seattle, Document No. 574, p. 2).[752] Some study participants suggested that the DOJ position was reflective of the Trump administration's desire to get out of the "consent decree business;" while other study participants noted that the DOJ's position was largely consistent with its prior positions viewing Consent Decrees as contracts, with federal reform efforts generally limited to the "four-corners" of Settlement Agreements.

According to one study participant: "people did not know how to read the Judge. He was always posturing…even though he [tends to] make good decisions in the end." Some participants were quite supportive of the judge, but critical of the Monitor:

> if he [Judge Robart] had the right monitor, he would have been the perfect judge for this case; but the Monitor brought the wrong issues before him at the wrong time with the wrong recommendations … and the judge got distracted."

Other participants felt that the Judge would sometimes "beat the city over the head" about things [the City] could not control.

Judge Robart was also criticized by City participants, in part, for his reported tendency to "take what he reads in the paper as gospel…we don't get to refute what's in the paper…he does a lot of breast beating, but with no real affect."

7.4.2. The DOJ Perspective

In its public statements, the DOJ used its bully pulpit to pressure city leaders to cooperate with the reform effort. The DOJ message, similar to the ongoing messaging

[752] Which comment was found by the Judge in his "Order re: City's Accountability Methodology" to be a "largely unhelpful response" (U.S. v. Seattle, Document No. 585, p. 3).

provided by Judge Robart, were sometimes critical and/or cajoling and, at other times, positive and supportive:

Table 7.5. DOJ Public Statements

Date	Statement
September 2011	Assistant Attorney General Tom Perez (USDOJ Civil Rights Division), in announcing the DOJ investigation: "effective, accountable policing is critical for any healthy community…The Justice Department's interest is in ensuring that the people of Seattle can rely on their Police Department to protect public safety and respect their rights" (*Seattle Times*, 9/3/2011).
December 2011	AAG Tom Perez was quoted in the *Seattle Times* as saying that "the department's practices to assure accountability and public trust are 'broken' and that the only sure fix is through court-ordered, long-term reform and an outside special monitor to oversee it" (*Seattle Times*, 12/17/2011). Tom Bates, the executive assistant U.S. Attorney in Western Washington is quoted as saying: "We continue to be encouraged that the Seattle Police Department is taking positive steps to implement reforms, and we will continue to work with city and SPD leaders to institute real and lasting change" (*Seattle Times*, 12/22/2011).
February 2012	AUSA Bates: "There is a sense of urgency to get things done…Having this [a proposed Consent Decree] lingering and looming isn't good for anyone" (*Seattle Times*, 2/3/2012).
May 2012	AUSA Bates: "The budget numbers being projected by the City are simply wrong. The cost of any agreement will not be remotely close to the figure cited today. We are confident that once the City understands our proposed agreement, it will conclude that what we cannot afford is further delay … Constitutional policing does not inhibit or hamstring good policing, and it is irresponsible to suggest it does" (*Seattle Times*, 5/15/2012).
May 16, 2012	Letter to Seattle City Attorney from Jonathan Smith, Chief of the DOJ Special Litigation Section, responding to City's counter-proposal for Settlement Agreement: ""We are particularly troubled and surprised that the City has not included any measures to respond to the issues of discriminatory policing, community engagement, or the City's accountability system, [and asserted that the city was making the] process unnecessarily contentious and personal, [increasing the risk of] unnecessary litigation" (*Seattle Times*, 7/8/2012).
May 23, 2012	Letter to Seattle City Attorney from Jonathan Smith, Chief of the DOJ Special Litigation Section: "accused the city of going 'backwards' on its agreement to accept a consent decree and a monitor. He wrote the city now was proposing that all remedies, including those that address use of force, be covered in a memorandum of understanding that would not be subject to court oversight and independent monitoring." Smith noted that "while the Justice Department appreciate[s] that bargaining through incremental moves is a 'common negotiation strategy – this is not a common matter…The goal of this case is to accomplish essential reforms to the Seattle Police Department, Real solutions require a comprehensive approach, not piece meal bargaining" (*Seattle Times*, 6/26/2012a).[753]

[753] Seattle Times Archives (2012, June 26). Brief History of the Probe. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 2012	AAG Perez "joked that Seattle Mayor Mike McGinn's fingerprints were all over the [settlement] agreement" (*Seattle Times*, 7/29/2012a).[754]
August 2012	"During an hourlong court hearing Friday afternoon, Assistant U.S. Attorney Michael Diaz and Assistant City Attorney Jean Boler outlined the settlement agreement, calling it a 'fair, adequate and reasonable' way to resolve the Justice Department's contention that Seattle police routinely use excessive force and exhibit troubling signs of biased policing" (*Seattle Times*, 8/25/2012).
October 2012	AUSA Bates: "this [the appointment of the Monitor] is a critical milestone…The focus for everyone is coming together around meaningful reform and positive change" (*Seattle Times*, 10/31/2012).[755]
January 2013	Thomas Bates, executive assistant U.S. Attorney, Western Washington: "We are very much focused on moving forward. There is a strong agreement in place with an experienced monitor and firm court oversight. We don't see any reason why the reforms required by the agreement can't take root in the Seattle Police Department" (*Seattle Times*, 1/23/2013).[756]
March 2013	Upon approval of the first monitoring plan, a written statement by AUSA Bates stated as follows: "The City's agreement clears the way for the Court to approve the plan, which will guide reform efforts, … The Monitoring Plan lays out a collaborative and timely approach to implementing reforms that provides clear guidance and deadlines for the Seattle Police Department" (*Seattle Times*, 3/9/2013).
August 2013	Executive Assistant U.S. Attorney Thomas Bates regarding CPC request for continuance to consider the draft use-of-force policies: "We plan to ask the court to extend the deadline for public comment, including from the CPC and unions, so that everyone has sufficient time to review the policies and make recommendations, …We need to make sure reform efforts — and the deadlines that were created as part of Monitoring Plan — stay on track while doing everything we can to get reform right. The community's input will help us get it right" (*Seattle Times*, 8/22/2013).[757]
December 2013	Regarding the adoption of a new SPD use-of-force policy: "This policy will help ensure that the people of Seattle have a police department that respects the Constitution, secures the safety of the public, and earns the confidence of the community," Acting Assistant Attorney General Jocelyn Samuels, director of the Civil Rights Division, said in a statement" (*Seattle Times*, 12/18/2013).[758]

[754] Lynn Thompson (2012, July 29). McGinn struck balance with DOJ – Intense engagement led to policing agreement. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[755] Miletich, S. (2012, October 31). Stakes large in reshaping Seattle police, monitor says. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[756] Miletich, S. & Carter, M. (2013, January 23). SPD official quits new reform job. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[757] Carter, M. (2013, August 22). Judge is asked to delay new use-of-force policy for police. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[758] Carter, M. & Miletich, S. (2013, December 18, 2013). Judge OKs detailed rules on when, how police can use force. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
February 2014	After attending an "all-parties summit…to discuss the city's 18-month effort to address excessive force and biased policing," Acting Assistant Attorney General Jocelyn Samuels told a news conference that "Constitutional policing and effective policing go hand in hand" (*Seattle Times*, 2/5/2014).[759]
April 2014	In a letter signed by the Chief of the Special Litigation Section and U.S. Attorney Durkan, the city was criticized for producing work plans to train officers in the new use of force policies that "were not serious attempts to move reform forward" and "dug us in a deep hole, from which we have had to climb out over the past two months." The letter acknowledged that Mayor Murray "inherited" problems from the prior mayoral administration but noted that "while some delays are understandable as the new leadership gets up to speed, the reforms required by the Consent Decree cannot wait … None of us can afford halfhearted efforts or box-checking measures." The letter was further critical of the prior administration for inflating the cost of the reform effort by including initiatives that were "matters entirely unrelated" to the federal intervention: "It is unclear whether this was the result of sloppy accounting, or a purposeful attempt to stack costs and attribute them to the reform process, …While the public has a right to know the budgetary impact, it also is owed accuracy…" (*Seattle Times*, 4/2/2014).[760]
June 2015	After Judge Robarts ordered the City to present plans with respect to a new Police Accountability Ordinance to the court, U.S. Attorney Hayes was quoted as saying that "the DOJ looks forward to 'reviewing the results' of local efforts to push forward reform 'as soon as they are presented to us, and along with the City and the Monitor, presenting those to the Court for review and approval before they go into effect'" (*The Stranger*, 6/30/2015). "As the court made clear, the Consent Decree forms the bedrock for police reform in the City of Seattle and the community plays a vital role in the reform process" (*Seattle Times*, 7/1/2015).

[759] Miletich, S. (2014, February 5). Officials: Significant Progress on Police Reform. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[760] Miletich, S. (2014, April 2). SPD Falling Short. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 2015	Vanita Gupta, Acting Assistant AG, Civil Rights Division, in a meeting with the Community Police Commission "called the commission a 'model' for other cities undergoing reform efforts" (*Seattle Times*, 9/24/2015).[761] Attorney General Loretta Lynch at a forum at the Northwest African American Museum: "From Ferguson to Baltimore and from Cleveland to New York City, we have witnessed the pain and the unrest that can ensue when trust between law-enforcement officers and the communities they serve is damaged, broken, or lost, … In many cases, these tensions have their roots in a long and difficult history of inequality, oppression and violence, and they speak to issues that have tested our country's unity since its inception … They will not be overcome with easy solutions or simple strategies. ... But as Seattle's recent experience can attest, real progress is possible" (*Seattle Times*, 9/25/2015). U.S. Attorney Hayes: "the consent-decree driven organizational and operational changes around crisis intervention are taking root …We are seeing that the new policies and training implemented as part of the reform process are keeping both officers and the community safe, … The SPD data demonstrates officers are applying best practices from across the nation and that is making a difference. Trained and empowered police officers using discretion and de-escalation has led to positive results, including a growing number of referrals for mental health and substance abuse services" (*Seattle Times*, 9/7/2015).[762]
November 2015	Commenting on a positive report from the Monitor regarding SPD's new Force Review Board process: Annette Hayes, the U.S. Attorney for Western Washington noted that: "Critical to lasting reform is having internal systems and structures in place that provide consistent oversight and accountability, and real-time feedback to help a police department continually improve, …That is what SPD now has with the Force Review Board." (*Seattle Times*, 11/25/2015).[763] "Your [the CPC's] role is critically important and to the extent that you're feeling like we need to hear that voice and the work that you're doing more effectively and more authentically—that's something we'll be discussing" (*The Stranger*, 9/24/2015).[764]
August 2016	A "DOJ statement" regarding Judge Robart's order requiring the city to submit a draft Police Accountability Ordinance to the court for approval: "This is an important step forward and an opportunity for the City — its elected officials and community stakeholders — to come together to propose an approach that reflects best practices of accountability and is consistent with the terms and purposes of the Consent Decree, …" (*Seattle Times*, 8/10/2016).[765]

[761] Miletich, S. (2015, September 24). We're ignored, citizen police panel tells official from Justice Department. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[762] Sullivan, J. (2015, September 7). SPD report: Minimal force used in contacts with mentally ill. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[763] Miletich, S. (2015, November 25). Federal Monitor praises SPD Force Board. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[764] Herz, A. (2015, September 24). CPC to the feds: we'll go back to protesting the police if we're ignored. *The Stranger*. Retrieved from https://www.thestranger.com.

[765] Miletich, S. (2016, August 10). City told to hold off on Police Reform Plan. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
April 2017	Remarking on the Monitor's assessment of SPD uses of force, U.S. Attorney Hayes issued a written statement: "This positive assessment is a credit to the men and women of SPD, from line officers to command staff. They have embraced reform, made it their own, and fundamentally changed what is happening on the streets of Seattle" (*Seattle Times*, 4/7/2017a).[766]
October 2017	U.S. Attorney Hayes, regarding DOJ's recommendation that Judge Robart grant the City's request to be found in "full and effective compliance" with the Consent Decree: "We have not come to this conclusion lightly… Career civil rights attorneys and police-practices experts have spent more than five years investigating SPD, overseeing the creation of new policies and training, and independently reviewing the relevant data and the results of assessments conducted by the Court-appointed Monitor that examined the implementation of the Consent Decree's requirements …" (*Seattle Times*, 10/14/2017).[767] "The net result is that SPD's use of force, stops, and related data show that it has complied with all of the terms of the Decree, and has eliminated the pattern or practice of unconstitutional policing that led to DOJ's investigation and findings" (U.S. v. Seattle, Document No. 422, p. 2). "This conclusion does not mean the police department is perfect, nor does it end the hard work required under the Decree, … There is more to do and issues that need to be addressed. Rather, this milestone represents the end of one chapter and the beginning of another" (*Seattle Times*, 10/14/2017).
January 2018	U.S. Attorney Hayes refers to the order finding initial compliance as a "milestone [and a] credit to the hard work of SPD and City leadership, engaged community members including the Community Police Commission, and SPD officers whose dedication to the mission is essential to reform" (*Seattle Times*, 1/11/2018).[768]
February 2019	Arguing against a finding that the City was out of compliance with the Consent Decree due to issues regarding the police union contract and an arbitration decision unfavorable to the City, the DOJ argued that: "Unless there is reason to believe that the individual incident of misconduct reflects a systemic problem, an individual incident does not serve as the basis for finding a failure of sustained compliance" (U.S. v. Seattle, Document No. 528, p. 5). In addition, the DOJ argued that the City's practice of using independent arbitrators to review SPD discipline did not violate the Consent Decree (U.S. v. Seattle, Document No. 528, pp. 5, 9-18).
May 2020	DOJ filing in support of City's Motion for Termination of Consent Decree (U.S. v. Seattle, Document No. 618-1).

[766] Miletich, S. (2017, April 7). Monitor: Dramatic Turnaround for SPD on use-of-force reform. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[767] Miletich, S. (2017, October 14). Justice Dept. *Seattle Times* ["The Department of Justice, which nearly six years ago stunned the Seattle Police Department with its finding that officers too often used excessive force, urged a federal judge Friday to grant the city of Seattle's request to be found in 'full and effective compliance' with court-ordered reforms."]

[768] Miletich, S. & Carter, M. (2018, January 11). Seattle Police Reforms. *Seattle Times* ["In a landmark ruling, U.S. District Judge James Robart on Wednesday found the Seattle Police Department in 'full and effective compliance' with court-ordered reforms imposed on the city more than five years ago after a string of high-profile incidents involving use of force."]

Based on a review of public statements made by the DOJ and information provided by study participants, it appears clear that the Seattle investigation was ultimately the result of the ACLU letter (signed by representatives of 34 community groups) asking for the investigation after a number of high-profile incidents. Seattle was already on the DOJ's "radar" due to the same incidents. Contrary to the beliefs of the SPD command staff, the DOJ, when enforcing the provisions of §14141 do not just target the worst departments in the country – the litigation strategy includes identifying departments who can serve as examples for other departments. Given that the DOJ had not yet established a presence in the Pacific Northwest and the fact that Seattle had a progressive political base and a tax base which could finance a reform effort, it appeared to have the potential of being an "easy win" and an opportunity to show how effective §14141 litigation could be.

"Seattle could be seen as an opportunity … this is a city that should be able to do better … a city where there would be significant buy-in and the political will to change … a department that had the capacity, resources and sophistication to reform and do it really well."
Study research participant

The Perspective of U.S. Attorney Jenny Durkan.

One particular stakeholder became positioned in such a unique way as to warrant individual scrutiny of her public statements over the course of the DOJ investigation and consent decree implementation. As previously noted, Jenny Durkan served on both "blue ribbon" panels that evaluated SPD accountability issues (the 1999 "Citizens Review Panel" that recommended the creation of the Office of Professional Accountability where she was described as a "Seattle Attorney and former Executive Counsel to the Governor" (Citizen Review Panel, 1999, p. 2) and the 2008 "Police Accountability Review Panel" where she was described as "a prominent Seattle attorney known for successful criminal and civil litigation, and for her continued civic leadership" (Police Accountability Review Panel, 2008, p. 15). Durkan served as the first Citizen Observer on the Seattle Police Firearms Review Board from 1997 to 2000. She also served in 2003 as a member of the bipartisan committee that recommended Judge Robart for appointment to the federal bench. Durkan was appointed as the United States Attorney for the Western District of Washington by President Obama in October 2009, approximately 21 months after the release of the Police Accountability Review

Panel Report. In that capacity, she was one of the primary recipients of the December 3, 2010 ACLU letter which called for a DOJ investigation of the SPD and one of the two principal signatories of the December 16, 2011 DOJ investigation report.

Durkan resigned as the U.S. Attorney in September 2014 and announced her candidacy for Mayor of Seattle on May 11, 2017, shortly after then-Mayor Ed Murray, who had been credited for moving the Consent Decree reform process forward, withdrew his candidacy for re-election after becoming the subject of allegations of sexual abuse by members of his family. Murray endorsed Durkan's candidacy, and she was sworn in as Mayor of Seattle on November 27, 2017 after winning the November 7, 2017 municipal election.[769] Durkan launched her campaign for re-election on February 7, 2020.[770]

Durkan is the only person known to have served as both a plaintiff (as the appointed U.S. Attorney for Western Washington) and a defendant (as Mayor of Seattle) in an ongoing §14141 lawsuit. That, along with her historical knowledge of SPD issues of accountability, put her in a unique position in the history of §14141 enforcement actions. As one would expect, Durkan had her supporters and her detractors amongst study participants within the City and the SPD. While some participants believed that her motives in pursuing the investigation and consent decree were politically motived,[771] others believed her motives to be pure and her position that a consent decree and court-appointed monitor were required to "hard bake" police reform into the SPD culture, to be based on her extraordinary knowledge of systemic problems within the SPD and its accountability structures.

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[769] Biographical information for Durkan can be found at: www.jennydurkan.com; https://lovequotessweetdreams.com/jenny-durkan-wife/; http://www.seattle.gov/mayor/newsroom/about-the-mayor; Beekman, D. (2017, November 7). Jenny Durkan defeats Cary Moon to become Seattle's first woman mayor since the 1920s. *Seattle Times*. Retrieved from Jenny Durkan defeats Cary Moon to become Seattle's first woman mayor since the 1920s | The Seattle Times.

[770] Beekman, D. (2020, February 27). Seattle Mayor Durkan launches bid for reelection. *Seattle Times*. Retrieved from Seattle Mayor Durkan launches bid for reelection | The Seattle Times.

[771] More than one participant suggested that Durkan's actions in pursuing a consent decree was motivated by a desire to obtain an appointment from the next Democratic Presidential administration. Other participants suggested that Durkan always harbored the desire to be elected Mayor of Seattle and was "lying in wait" for an opportunity to parlay her police oversight efforts into a successful political campaign in a City known for its progressive politics.

Durkan's comments as U.S. Attorney were sometimes supportive of the SPD, and at other times, critical and are summarized below, chronologically:

Table 7.6. Public Statements of U.S. Attorney Jenny Durkan

Date	Statement
April 6, 2011	"Without trust, police officers can't do their jobs." "Durkan says her team will examine issues of trust and make recommendations to the department. 'Officers rely on citizens to give them good information, to let them patrol their streets, …Trust goes to the heart of safety. They have to trust that they're welcome—that they can get out of their cars and be safe. It's the linchpin to good policing" (*The Stranger*, 4/6/2011).
December 16, 2011	At the time of the release of the DOJ investigation findings: "Durkan…repeatedly expressed optimism that the department will see its way forward and embrace change. Both she and Perez repeatedly praised the Department of its cooperation." "We are also aware of — and sensitive to — the very real and raw feelings some residents of Seattle, particularly members of our diverse communities, have toward the Seattle Police Department, …We know there is work to be done. I am hopeful this will change, too" (*Seattle Times*, 12/17/2011).
March 30, 2012	"Whatever solutions we arrive at have to be part of a court-ordered agreement…I'm optimistic and I have every expectation that the city and the [Justice Department] will reach an agreement." "I think what I'm most encouraged about, though, is that I saw the mayor and the chief of police side-by-side saying they support reforms" (*Seattle Times*, 3/31/2012).
May 11, 2012	"Part of '20/20' heartens me very much…The framework is all there to get an agreement, … And at the end of the day, I still believe we will get to an agreement because the alternatives are just not good for anybody. Think about the impact of litigation to the city and the department." "You know that, over the years, we've had episodic issues in Seattle with the police. What has happened is that a panel will be appointed and come up with ideas, and a checklist will be made of reforms, and then they get put on the shelf." "We have to have specifics for each of the areas ... timetables, supervision and accountability, … We need them to put meat on the bones" (*Seattle Times*, 5/12/2012).[772]
April 8, 2013	Commenting on resignation of Chief Diaz and appointment of Interim Chief Pugel: "[Diaz] oversaw the first steps of the implementation of reforms within the Seattle Police Department, … I am grateful for his partnership and service, and wish him well."

[772] Carter, M. (2012, May 12). Durkan: City must flesh out its 20-20 proposal. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
	"[Pugel has shown] he can step up and lead… To move us forward, he will need to guide and implement the full range of reforms and set clear expectations and direction for every officer" (*Seattle Times*, 4/9/2013)[773]
April 27, 2013	Responding to Monitor's First semi-annual report: "We are at a new juncture — where all eyes and efforts must be on the road ahead, …Getting reform right, in a way that increases public safety and public confidence, has to be a priority for everyone in the department" (*Seattle Times*, 4/27/2013).
December 11, 2013	To the CPC: "What you say matters, …But it's important to know where and when to push. We will take the pushing and shoving, but as the Department of Justice we will fight to maintain a two-party agreement." "You don't own the community, …And you are not the only people getting community input" (*Seattle Times*, 12/12/2013).
December 18, 2013	Regarding the adoption of a new SPD use-of-force policy: "This is a major milestone in the reform process that will help rebuild trust and foster greater accountability" (*Seattle Times*, 12/18/2013).
January 18, 2014	Commenting on approval of anti-bias and stop & frisk policies: "These new policies will set the national standard and are a huge step forward" (*Seattle Times*, 1/18/2014).[774]
January 29, 2014	Upon the appointment of Interim Chief Bailey by Mayor Murray: "The next several months are critical to the reform process, and the commitments by all parts of city government are essential for success." "Done right, the new chief of police will have the necessary framework to lead the Seattle Police Department to be the national model for urban policing" (*Seattle Times*, 1/30/2014).[775]
April 3, 2014	"There has been a marked change in the last 90 days." "It is a marathon, not a sprint" (*Seattle Times*, 4/4/2014).
April 16, 2014	Commenting on the unity between Mayor Murray and other elected officials: "There is one message: Reform is here, it's going to happen" (*The Stranger*, 4/16/2014).
May 29, 2014	Commenting on a lawsuit filed by Seattle Officers alleging new SPD use-of-force policies were putting officers in danger: "[The policy was created] with the police, by the police and for the police." Commenting on the unified message from SPD command to officers: "Reform is under way. Get on the train, or leave." "Nobody can say the use-of-force policies make things harder for police officers, because they haven't been implemented yet" (*Seattle Times*, 5/30/2014).[776]

[773] Carter, M., Miletich, S. & Green, S. (2013, April 9). Rocky Tenure Over. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[774] Miletich, S. & Carter, M. (2014, January 18). Judge approves SPD's anit-bias, stop policies. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[775] Miletich, S. (2014, January 30). Bailey: It's time for new SPD 'roadmap.' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[776] Carter, M. & Miletich, S. (2014, May 30). U.S. Attorney swings back at lawsuit filed by Seattle cops. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
April 6, 2017	After resignation as U.S. Attorney; responding to DOJ's move to "pause" consent decree cases: "When they used force, 75 percent of the time it was against someone in a mental-health crisis or drug and alcohol crisis, …Now it's an infinitesimal amount. That makes a huge difference on the streets, and it's better for cops" (*Seattle Times*, 4/6/2017).[777]

Overall, it does appear that once Durkan's Office was fully engaged in the reform effort, her comments were mainly supportive suggesting the importance of the success of the reform effort to her own legacy. Of course, after Durkan was later elected as Mayor of Seattle (see Section 7.6.1, *infra*), her role changed and, as expected, her statements tended to be even more supportive of the City's position as the defendant in the Consent Decree litigation process.

7.4.3. The Seattle Police Chiefs

"There's no question that some of these consent decrees are arduous and complicated, but they will (force cities to) provide the kind of resources the department very often needs,"
Chuck Wexler, Executive Director of the Police Executive Research Forum, Quoted by Seattle Times, April 6, 2017

There were five Seattle police chiefs whose tenure covered the period of the establishment of the Consent Decree (2012) through the 2020 protests on policing. They included three permanent Chiefs (John Diaz, Kathleen O'Toole and Carmen Best) and two "interim" Chiefs (Jim Pugel and Harry Bailey).[778] Each Chief provided his or her own perspective on how to approach the DOJ reform effort. Chief Diaz started the process with a generally antagonistic approach, followed by interim Chiefs Pugel and Bailey who were publicly more supportive of the reform effort, but who were also part of the SPD's "old guard" command staff and, at times, spoke accordingly. It was only with the appointment of Chief O'Toole that, according to research participants, there was no

[777] Gurman, S. (2017, April 6). Justice Dept. wants pause in consent-decree cases. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[778] A third iterim Chief (Adrian Diaz) was appointed by Mayor Durkan on September 20, 2020, following the resignation of Chief Best and after data collection was completed in this research project.

space between the Mayor and the Chief with respect to the need to push reform efforts forward. With the appointment of Chief Best, however, even though she was the first female African American Chief in Seattle, she was "born and bred" within the SPD and was perceived as less able to push forward aggressive reforms within the department. The public comments of each Chief highlight what was commonly described by research participants as a "one step forward" and "one step back" road to reform.

The experience of Chief John Diaz.

As previously noted, SPD Assistant Chief John Diaz was first appointed Interim Chief by Mayor Nickels after Chief Gil Kerlikowske was appointed "Drug Czar" by President Obama in March, 2009. As an SPD insider,[779] within hours of the DOJ's findings being revealed, Chief Diaz was defending the department against the DOJ's perceived attack: "I want to make this clear … The department is not broken." Further, in an email to officers sent just before the DOJ report was made public, Diaz wrote: "We have many reasons to question the validity and soundness of the DOJ's conclusions. At this time, the city's simple request is to examine the data, methods and analyses used in support of these allegations and to reach these conclusions" (*Seattle Times*, 12/17/2011).

Diaz had previously referred to the DOJ investigation as "a free audit," although neither he nor his command staff ever acknowledged that the investigation was, in fact, warranted. As reported by the *Seattle Times* in September 2011: "Diaz and Kimerer, the deputy chief, disputed any notion that the department has been too complacent. 'I can't remember a period of resting on laurels,' Kimerer said. 'It's been a very, very dynamic place' (*Seattle Times*, 9/3/2011).

As of February 2013, the Monitor was seeking to determine "the degree to which the Chief, Assistant and Deputy Chiefs, and Captain communicate an honest endorsement and a thorough understanding of the letter and spirit of the Settlement Agreement and the factors that led to it" (Monitoring Plan for the First Year, 3/5/2013, p. 19).[780] In response to that draft plan, Chief Diaz seemed to prove the Monitor's point

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[779] Even though he was perceived as an "SPD insider," Diaz was the first minority chief in the history of the SPD (Seattle Times Staff (2018, January 10). Timeline of Seattle Police Reform. *Seattle Times*. Retrieved from https://www.seattletimes.com).

[780] U.S. v. Seattle, Document No. 59, filed March 5, 2013.

when he disputed the DOJ investigation report findings in a response to the draft plan and referred to the DOJ's concerns about biased policing as mere "allegations" (*Seattle Times*, 2/27/2013, 3/1/2013).[781]

Study participants noted that Diaz later acknowledged that fighting the DOJ at the outset ended up being a bad idea and that a more collaborative approach with the DOJ would have avoided unnecessary conflict and assisted in the reform process in the long-term.

When Diaz announced his retirement in April 2013, he continued to advocate on behalf of the SPD as a dynamic, learning organization:

> Across the country, people look at the Seattle Police Department as a department willing to try new innovations, new experiments, … It's in the DNA of this organization. A lot of places aren't willing to try new things because there's a risk attached to it. (*Seattle Times*, 4/9/2013)

Diaz retired shortly before the publication of the Monitor's first semi-annual report. In the introduction to the report, Diaz was mentioned almost in passing:

> The Monitor commends the City of Seattle and the Seattle Police Department (SPD or Department) for the progress that has been made—and there has been considerable progress—but cautions that compliance has only begun and that full and effective compliance remains for the future. We acknowledge Chief Diaz for his many years of service and devotion to the SPD and welcome interim Chief Jim Pugel. We look forward to working with him…We have had several useful and productive meetings with Chief John Diaz, interim Chief Jim Pugel and Assistant Chief Michael Sanford, former Compliance Coordinator Steve Brown, and his successor, Bob Scales… (1st semi-annual report, p. 1)

Diaz was described by some study participants as a "weak chief" and by others as having a "quiet leadership style." Then-U.S. Attorney Jenny Durkan commented that Diaz "oversaw the first steps of the implementation of reforms within the Seattle Police Department … I am grateful for his partnership and service, and wish him well" (*Seattle Times*, 4/9/2013).

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[781] Miletich, S. (2013, February 27). McGinn, Holmes clash on police-reform oversight. Seattle Times. Retrieved from https://www.seattletimes.com; Miletich, S. (2013, March 1). An old clash ignites McGinn Holmes split over police reform. *Seattle Times*. Retrieved from https://www.seattletimes.com.

The experience of Interim Chief Jim Pugel.

Interim Chief Pugel was another SPD insider, promoted from the rank of Assistant Chief to replace Chief Diaz until a permanent successor could be named. In the Monitor's Second semi-annual report, he commented positively on Chief Pugel's "open-mindedness and responsiveness to our inquiries and requests" and saw willingness "on the part of some SPD executives and supervisors to entertain feedback and to engage in meaningful and constructive discussions…" (2nd semi-annual report, pp. 2-3). Even so, the Monitor found that

> the SPD's resistance to the Settlement Agreement [was] not abating with adequate speed … it is unfortunate that there is still resistance to the notion that police officers and their supervisors must be accountable for misuse of force and discrimination and must challenge themselves to embrace new approaches. (2nd semi-annual report, pp. 5-6)

Upon being appointed, Chief Pugel made a number of comments with respect to his perspectives on the federally mandated Consent Decree:

- "Some feel the settlement contract when too far; some said it didn't go far enough … We all agree, though, that we are where we are. A federal judge has spoken."
- "Yes, there was a lot of turmoil … [Diaz] was at the tip of the sword without a road map, with a lot of competing interests … It's past … It's all done. It's past … We're all moving forward…" (*Seattle Times*, 4/11/2013).[782]

Although Pugel announced that the SPD was "moving forward" and consent decree controversies were in the past, in true SPD form, Pugel expressed his surprise upon receiving the DOJ investigation report and noted that the Department had "some university professors looking at that, using a scientific and academic approach, to see if we really were at 20 percent." Although Pugel did acknowledge that "huge" changes were taking place and that use-of-force incidents had not previously been well documented, he also downplayed the changes that were needed by saying that "[w]e're still going through the motions, but the motions are more thorough and analytical" (*Seattle Times*, 4/11/2013).

[782] Green, S. (2013, April 11). The man who will soon lead SPD. *Seattle Times*. Retrieved from https://www.seattletimes.com.

When the existence of a 1986 Department-sponsored video was leaked to the media that showed Pugel and other officers dressed as homeless men and singing a parody song to the tune of "Under the Boardwalk," Pugel pointed to the leak as highlighting that there were "pockets of resistance" within the SPD who were trying to undermine his efforts to reform the Department (*Seattle Times*, 4/26/2013).[783]

On his first day in office, Pugel went ahead and changed the SPD motto from "Preventing crime, enforcing laws, supporting public safety" to "Excellence, justice, humility, harm reduction." By May, 2013, the Monitor, while speaking to City Council, argued that Chief Pugel "needs to address concerns in the department about federally mandated reforms and make clear that the settlement agreement to enforce them is 'not going to go away.'" The Monitor acknowledged that Pugel told him, shortly after his appointment, that "the department needed to put the turmoil behind it and move forward with the reforms" (*Seattle Times*, 5/8/2013).[784]

During Pugel's tenure as Chief, research study participants noted that although there was some momentum when he was appointed Chief, the SPD was not getting the direction from the Monitoring Team and the DOJ that they wanted:

> We were told we needed to do better and needed to fix it, but they would not give us real direction on what was necessary for success; instead, there was lots of second guessing without much guidance or leadership … We wondered why they did not seem to have a playbook given how many consent decrees they had done.

By December 1, 2013, Pugel had demoted two Assistant Chiefs, one in charge of the Department's Technology Operations, after the Monitor's draft Second semi-annual report included "harsh criticism" of the SPD's progress in that area (*Seattle Times*, 12/1/2013).[785]

Effective January 1, 2014, the SPD adopted its new use-of-force policy. Upon the approval of the policy by Judge Robart, Chief Pugel issued a statement saying: "Today,

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[783] Carter, M. (2013, April 26). Interim Police Chief Regrets Old Video Mocking Homeless. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[784] Miletich, S. (2013, May 8). Interim Chief Needs to Back SPD Reforms, Monitor Says. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[785] Seven, R. (2013, December 1). Shake up – 2 police officials demoted. *Seattle Times*. Retrieved from https://www.seattletimes.com.

the Seattle Police Department took another step forward in our efforts to provide effective, humane and constitutional policing to our city" (*Seattle Times*, 12/18/2013).

When Mayor Murray was sworn in on January 1, 2014 one of his first actions was to fire Chief Pugel and replace him with a retired Assistant Chief, Harry Bailey. Pugel supporters have suggested that Murray replaced Pugel at the behest of the police union who had endorsed Murray over McGinn.

The experience of interim Chief Harry Bailey.

Chief Bailey served a tenure of less than six months, from January 9, 2014, until the confirmation of Chief O'Toole on June 23, 2014. Bailey's tenure was almost immediately impacted by his decision to dismiss six disciplinary cases, at the union's request, after prior requests had been turned down by Chief Pugel. Bailey's unilateral action in that regard highlighted the highly dysfunctional disciplinary system and subjected the Chief and the Mayor to universal condemnation from civil rights groups and the City Council (*Seattle Times*, 2/27/2014).[786]

Even so, in the Monitor's Third semi-annual report, released in June 2014, the Monitor commented positively on Bailey's tenure, noting that "[t]he Monitoring Team respects Interim Chief Bailey's contributions to the Seattle community throughout his career" and complementing Bailey for promoting a new Assistant Chief to head the Department's "newly fashioned Bureau of Compliance and Professional Standards" (3rd semi-annual report, p. 8).

The experience of Chief Kathleen O'Toole.

After a national search, Mayor Murray ended up hiring Kathleen O'Toole as Seattle's first female permanent Chief of Police. Chief O'Toole had remarkable progressive credentials, having previously served as the Police Commissioner for the City of Boston and the first Chief Inspector of the Garda Inspectorate in Ireland. She had also recently served as the court-appointed Monitor for the East Haven Connecticut Police Department.[787]

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[786] Miletich, S. (2014, February 27). Reversals of 6 SPD Misconduct Cases Face New Review. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[787] For 2014 biography of Chief O'Toole, see Seattle's next Police Chief - Mayor Murray.

Chief O'Toole's work was credited by the Monitor for bringing the SPD into compliance with the Consent Decree. In his final report, the Monitor was effusive in his praise for O'Toole:

> On June 23, 2014, Kathleen O'Toole became Chief of the SPD. Thereafter, there was a sea change in the attitude of the SPD executives toward the Consent Decree, the court, and the Monitor. Chief O'Toole, under the direction of Mayor Murray, had as her overriding goal full implementation of the Consent Decree as rapidly as practicable. She achieved that goal…Chief O'Toole and the Monitor were most often of one mind and were in constant communication. As Monitor, I spoke with the Chief on close to a daily basis. When I was in Seattle, as I was every 2 to 3 weeks, I would meet the Chief for breakfast along with other members of the Team, and we would frequently meet her also for dinner…
>
> At the end of the day, however, no one on the city side was more critical to this process than Kathy O'Toole. She was the pivot around which all the progress turned. If there ever was an ideal of a progressive police chief who understood and embraced reform at the same time as she could put herself in the shoes of the rank-and-file officer and understand him or her completely, it is Kathleen O'Toole (Bobb, 2020, pp. 7-8).

O'Toole was well received in the media and a review of her media quotes provides some insight into how she approached her job as an "outsider" Chief, trying to change the culture of the SPD and get it into compliance with the Consent Decree, while also trying to be supportive of the work of SPD's rank-and-file.

Table 7.7. Public Statements of Chief Kathleen O'Toole

Date	Statement
May 19, 2014	"Within minutes of being named as Mayor Ed Murray's choice for the position, she rattled them off [themes to be pursued as Chief]: tirelessly working to restore public trust; rebuilding pride in a wounded department; improving the quality of life and reducing violence in neighborhoods; and operating the department as an effective and efficient business." "We have to acknowledge mistakes of the past. … Nobody dislikes rogue cops more than good cops. If people make honest mistakes, we'll stand by them." (*Seattle Times*, 5/20/2014).[788]
June 5, 2014	To City Council Safety Committee considering her confirmation as Chief: "It's time to go out [into] every neighborhood in the City… [I want] to hit the ground running" (*Seattle Times*, 6/5/2014).[789]

[788] Miletich, S., (2014, May 20). O'Toole Picked for SPD, Eager to Outline Goals. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[789] Miletich, S. (2014, June 5). O'Toole Glides Through Hearing. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 23, 2014	At the time of her confirmation as Chief: "I want members of the Seattle PD to hold your heads high, …We're going to work together and we're going to accomplish some great things" (*Seattle Times*, 6/24/2014).[790]
June 26, 2014	Commenting on meeting with representatives of officers who filed a lawsuit against the new SPD use-of-force policy: "I think litigation should be the last resort because it undermines the spirit of cooperation going forward. … I thought it was a great dialogue, …I wanted to hear their perspective. I felt it was a productive meeting…There's no question it undermines that spirit of cooperation I want to promote," (*Seattle Times*, 6/26/2014).[791]
August 27, 2014	"The Seattle Police Department is moving full speed ahead in implementation of the Consent Decree and will not be distracted in the process… [the] vast majority of SPD officers are entirely committed to modernization and reform." (*Seattle Times*, 8/29/2014).[792]
September 30, 2014	Upon issuing a directive reducing the amount of paperwork necessary with respect to minor uses of force: "We saw instances where we had overreporting, … police officers have been erring on the side of caution and writing reports even when not necessary… Force is a necessary component" [of police work] … [proper and legal force] should be employed as needed." "I am not aware of any injury that has resulted from an officer hesitating to use force under current SPD policy, … I expect officers to take appropriate actions and not use the force policy as an excuse" (*Seattle Times*, 9/30/2014).[793]
October 20, 2014	Commenting on the lawsuit filed by 100+ Seattle officers against the SPD's new use-of-force policy being dismissed by the court: ""As Chief, I will ensure that our officers have the policies, training, equipment and support to do their jobs safely and effectively" (*Seattle Times*, 10/21/2014).[794]

[790] Miletich, S. (2014, June 24). O'Toole, confirmed as police chief, promises a force 'second to none.' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[791] Miletich, S., (2014, June 26). O'Toole and Officers Met Privately to Discuss Suit. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[792] Miletich, S. (2014, August 29). SPD Cops: City 'playing politics' with lives. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[793] Miletich, S. (2014, September 30). Chief Says Less Paperwork OK for minor use of force. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[794] Miletich, S. (2014, October 21). SPD Officers' Suit Over Use of Force Thrown Out. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
March 2, 2015	"I'm trying to ... breathe some life back into the place and get people enthusiastic about getting out and doing police work and recognizing good police work, … We all want the same thing at the end of the day, … We want this to be the model that others look to for constitutional policing and reform." Commenting on relationship with SPOG President Ron Smith: "I think he's demonstrated some very principled leadership in recent months as we've faced challenges, … Every indication is that he is entirely onboard for reform in this organization. He represents his members well, as he should. But he certainly hasn't been an impediment to change, nor has his board of directors." "[O'Toole] is fond of saying change and cultural reform can't be dictated" (*Seattle Times*, 3/2/2015).[795]
April 16, 2015	Commenting on the improved relationship with SPOG: "There will always be a professional tension in the relationship; it doesn't mean it has to be contentious, … At the end of the day, we want the same thing: to restore pride and get through the Consent Decree" (*Seattle Times*, 4/16/2015).[796]
April 17, 2015	Commenting on Judge Robart's approval of SPD de-escalation training: "The Seattle Police Department is proud to be at the forefront in providing this innovative de-escalation training to our officers, … We will continue to work collaboratively with the Department of Justice and Monitor Merrick Bobb to implement the Consent Decree and enhance community trust" (*Seattle Times*, 4/17/2015).[797]
June 16, 2015	"O'Toole, citing her recent attendance at a conference of major-city police chiefs, said she was approached by others asking about reform because Seattle is at the 'leading edge of this stuff'" (*Seattle Times*, 6/16/2015).
June 27, 2015	"I was trained to fight the war on crime, and we were measured by the number of arrests we made and our speed in answering 911 calls… but over time, I realized that policing went well beyond that, and we are really making an effort here to engage with people, not just enforce the law" *(New York Times*, 6/27/2015).[798]

[795] Miletich, S. (2015, March 2). Chief Aim: Re-energize SPD. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[796] Sullivan, J. (2015, April 16). A 'Mellowed' Leader at Helm of SPD's Union. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[797] Miletich, S. (2015, April 17). Federal Judge OK's key step in court-ordered SPD reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[798] Williams, T. (2015, June 27). Long Taught to Use Force, Police Warily Learn to De-escalate. *New York Times*. Retrieved from https://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html.

Date	Statement
June 30, 2015	"Reform is not easy, but I remain enthusiastic that we are at the forefront of police reform, … We are addressing decades of institutional culture and embedded practices. This change sometimes requires difficult conversations" (*New York Times*, 6/30/2015).[799]
September 7, 2015	Commenting on SPD data showing officers using minimal force in contacts with the mentally ill: "We're doing far more work related to service than we are enforcement, … Policing goes way beyond law enforcement, this underscores that" (*Seattle Times*, 9/7/2015).
September 23, 2015	Commenting on "Anti-reform Rhetoric" contained in SPOG Newspaper, *The Guardian*: "The Seattle Police Department is moving full speed ahead in implementation of the Consent Decree, as evidenced by recent data. The vast majority of SPD officers are entirely committed to modernization and reform. Individual commentary should not be seen as a barometer for the progress we have made, which has been substantial" (*The Stranger*, 9/23/2015).
October 2, 2015	Commenting on a public survey showing improvements in public satisfaction with SPD: "The men and women of Seattle Police Department continue to enhance community trust every day, … While much work remains, this latest survey shows measurable progress" (*Seattle Times*, 10/2/2015).[800]
January 10, 2016	Commenting on invitation to attend the State of the Union Address in Washington D.C.: "I have to believe that collaborative effort led to this invitation, … Certainly we are not done, but I think we're definitely ahead of the curve, …" (*Seattle Times*, 1/10/2016).[801]
November 21, 2016	Commenting on results of 2016 Presidential Election: "We are on the road to reform, … We have our road map, our consent decree. We'll continue to work with many of the same people in the Department of Justice. So none of the political developments will deter us. We're moving full speed ahead with the plan" (*Seattle Times*, 11/21/2016).[802]
April 7, 2017	Commenting on Monitor's report showing overall reduction in SPD use-of-force: "…this reduction in the use of force cannot be attributed to anything other than what can now be statistically shown: officers in the field are de-escalating volatile situations with regularity and skill, putting in practice the training that has established Seattle as a national leader in policing reform" (*Seattle Times*, 4/7/2017a).

[799] Williams, T. (2015, June 30). Seattle Police Investigating 2 Officers Shown in Report, *New York Times*. Retrieved from Williams, T. (2015, June 30). Seattle Police Investigating 2 Officers Shown in Report, New York Times.

[800] Carter, M. (2015, October 2). Public's Opinion of SPD Improves over last 2 years. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[801] Miletich, S. (2015, January 10). O'Toole to be Sitting with First Lady. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[802] Miletich, S. (2016, November 21, 2016). SPD reform 'locked down' but Could Trump 'Let it all Die'? *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 20, 2017	Responding to findings by the Monitor that SPD was in-compliance with "Stop & Frisk" reforms: "Preliminarily, we are heartened that this report is consistent with ... data we released earlier in May, which demonstrates our ability to similarly analyze and assess our activities, … We are also, obviously, pleased that we were found to be in compliance with the material sections of the Consent Decree. In the coming days, we will be parsing through this report to determine how we continue to move forward in partnership with the community to better identify factors underlying any disproportionalities in the data" (*Seattle Times*, 6/20/2017).
July 17, 2017	Commenting on the Mayor's Executive Order Requiring SPD to implement use of Body-Worn Cameras: "No one is more committed to equipping officers with body cameras than I am. As studies and our own pilot (program) have shown, body cameras are critical tools, not just for holding all involved to account for their actions, but also to enhance safety of officers and community members. …We have received favorable responses from officers who have been involved in our pilot program, and with their assistance and that of the community, have worked diligently and collaboratively to design a policy that strikes the appropriate balance between transparency and privacy in often sensitive circumstances" (*Seattle Times*, 7/17/2017).[803]
September 12, 2017	Email to Department responding to Monitor's report that SPD had yet to comply with court-ordered reforms which included a 47-page memo from "two top aides" that took the position that the SPD was in full and effective compliance:[804] "I am requesting that the Mayor's Office and City Attorney highlight these compelling arguments and conclusions in the City's response to the Monitor's filing…Sadly, in our very challenging business, the next controversy or tragic event is always on the horizon. In such cases, we welcome fair scrutiny and accountability. We have institutionalized systems to ensure careful, transparent investigation and analysis. At the same time, you should be commended for the hundreds of thousands of contacts you skillfully and compassionately handle every year." "Each day department members ask me where we stand in terms of compliance. Believe me, I wish I had a definitive answer. Nonetheless, please know that I am incredibly proud of the real, measurable success you have achieved over the past few years" (*Seattle Times*, 9/12/2017).[805]

[803] Miletich, S. (2017, July 17). Rebuffing Union, Mayor Murray Orders Seattle Police to Begin Wearing Body Cameras. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[804] The memo, dated August 1, 2017, signed by the SPD's chief legal officer (Rebecca Boatright) and the Chief Operating Officer (Brian Maxey) concluded that there "can be no dispute that Seattle Police Department has not only met ... but exceeded and continues to exceed" the terms of the Consent Decree. … To the extent that concept is now ambiguous, it is so only because the Monitor, in his semi-annual reports, through his technical assistance, and in the scope of review laid out through his assessments has effectively inserted a nebulous, amorphous, wholly subjective standard of care that cannot be reconciled with either the language of the Consent Decree or … evidentiary requirements…]." Memo on file with author.

[805] Miletich, S. (2017, September 12). Seattle Police Dispute Monitor on reform compliance. *Seattle Times*. Retrieved from https://www.seattletimes.com.

According to SPD insiders, when O'Toole took command, "SPD command staff were not entirely enthusiastic about the process – they were in denial and they resisted, fighting it every step of the way…and communicated it to the troops." O'Toole tried to spread the message, however, that "it [was] all water over the dam. The agreement had been negotiated; you can spend your time whining, but we need to send out a positive message."

Chief O'Toole announced her retirement from the SPD in early December 2017, citing health issues relating to her husband (*Seattle.pi.com*, 12/6/2017);[806] she was replaced by Deputy Chief Carmen Best, who O'Toole promoted early on in her tenure (*Seattle Times*, 12/8/2017).[807]

The experience of Chief Carmen Best.

Chief Best took office as the Interim Chief, effective January 1, 2018. She was eventually chosen as the SPD's next permanent Chief in August 2018, after a national search by Mayor Durkan. Although she was originally left out of the list of finalists by the Mayor's selection committee, community pressure resulted in her being made a finalist when another candidate dropped out and she was then chosen by Mayor Durkan to lead the SPD (*Seattle Times*, 5/26/2018, 5/30/2018, 7/9/2018 & 7/18/2018a).[808]

Upon confirmation, Best reportedly reverted back to an old way of doing business when she eliminated civilians previously chosen by Chief O'Toole from her command staff. According to one SPD insider:

> [Chief Best] reverted back to people she had known for years and could trust and reverted back to relying on sworn and not unsworn. … [she] reverted back to a more traditional mindset of sworn in-charge, with civilians not going outside their lane.

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[806] Burton, L. (2017, December 6). Seattle PD Chief O'Toole Calls it Quits *Seattlepi.com*. Retrieved from https://www.seattlepi.com/local/crime/article/Seattle-PD-Chief-O-Toole-calls-it-quits-12403970.php.

[807] Green, S. (2017, December 8). Deputy Chief 'all in,' *Seattle Times*. Retrieved from https://www.seattletimes.com.

[808] Miletich, S., (2018, May 26). 3 on list for Seattle Police Chief. *Seattle Times*; Miletich, S. & Beekman, D. (2018, May 30). Durkan defends omitting Best from Short List for SPD Chief. *Seattle Times*; Miletich, S. (2018, July 9). Reversal: Best leads field for Top Cop. Seattle Times; Miletich, S. & Beekman, D. (2018, July 18). Best, once rejected, now Mayor's pick for Top Cop. *Seattle Times*. Retrieved from https://www.seattletimes.com.

By July 15, 2019, when controversy was swirling as a result of Judge Robart's decision to find the City partially out-of-compliance with the Consent Decree and members of City Council were calling for the re-negotiation of the police union contract, Chief Best was using familiar terminology, consistent with the SPD command staff of old:

> We really need the support of our public officials and our public for the officers…we need them to stand up for the work that the officers, the men and women have done for this organization. We are losing good people, and we know that it's because they feel like they are not supported by public officials and we need to have that done. (*K5 News*, 7/15/2019)[809]

This message was a long way off from the message delivered by then-SPOG President Ron Smith when, during Chief O'Toole's tenure he reportedly said that "officers who have a problem with the politics in Seattle had the option to 'leave and go to a place that serves your worldview'" (*Seattle Times*, 4/16/2015).

Chief Best was best known for her strong abilities in reaching out to the community. Research participants with knowledge of her work in the department noted that even before Chief O'Toole promoted Best to Assistant Chief, she was well known as a "fixer," a police supervisor who could communicate effectively with community and present the SPD in the best possible light. Amongst community member study participants, it was widely believed that but for community pressure put on the Mayor, Best would have been passed over for promotion to Chief, in favor of an outside candidate.[810]

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[809] K5 News (2019, July 15). Seattle City Council 'disappointed' in mayor's approach to police reform. *K5 News*. Retrieved from https://www.king5.com/video/news/local/seattle-city-council-disappointed-in-mayors-approach-to-police-reform/281-74bb7be0-ce36-405e-98d1-41cbc011e793.

[810] Interestingly, in his final report, Monitor Merrick Bobb, while effusive about the work of Chief O'Toole in the implementation effort, made only passing remarks regarding Chief Best, praising her personality and community support as well as her reason for resigning, but making no other observations regarding her tenure: "Following Kathy was Chief Carmen Best, Seattle's first African American Chief, a warm, engaging person with a charming public presence and the enthusiastic support of the Black community and its leaders. Following efforts to cut the SPD budget and her pay, she recently resigned." Perhaps most telling, however, was the Monitor's conclusion that, at the time of Best's resignation, the SPD was "at its nadir" and desperately [in] need[] of a new chief from outside the organization to put it back together" (Bobb, 2020, p. 9).

Table 7.8. Public Statements of Chief Carmen Best

Date	Statement
December 8, 2017	Commenting on Chief' O'Toole's retirement: ""We've worked side by side since the beginning and have a really good relationship. I will be sad to see her go, … She's a joy to be around, and I've learned so much from her … I do feel like the protégé who is ready [to lead] …" On her selection as Interim Chief: "Reform doesn't end ... It's an iterative process, it's continuous, … Everything is about relationships. It's important we treat people right, we engage with the communities we serve and build relationships with them. It doesn't even feel like work… Just the other day, we did 'Coffee with a Cop' in Columbia City and Alki. We're in uniform, answering questions, talking to the community. I felt like I was making a difference. It was like, I'd almost do this for free, … I feel absolutely ready to lead a major organization, … I'm all in" (*Seattle Times*, 12/8/2017).
May 26, 2018	After being advised she did not make the final list for permanent Chief: "I wish the candidates the best — each of them should know how fortunate they will be to lead officers who have a commitment to public safety and reform" (*Seattle Times*, 5/26/2018).
July 18, 2018	After being nominated by Mayor Durkan to serve as permanent Chief: "We will move ahead with a culture of continuous improvement and innovation" (*Seattle Times*, 7/18/2018a).
March 5, 2019	Responding to union officials claim that consent decree reforms were "hindering police work:" "We have been in full and effective compliance with the Consent Decree since January 2018, and have been moving forward with sustainment ever since…" (*Seattle Times*, 3/5/2019).[811]
May 22, 2019	Responding to Judge Robart's order finding the City "partially out-of-compliance" with the Consent Decree: "The Court's ruling ... affirms both that the reforms put in place under the Consent Decree have truly taken root in our operations and that the Department has embraced a culture of continuous improvement and innovation … I appreciate the Court highlighting an issue around which there is much discussion nationally. As the practice of modern policing continues to rapidly evolve to meet increasingly complex demands, it is equally important that the systems by which we are held accountable keep pace in a manner that ensures full transparency and due process for all" (*Seattle Times*, 5/22/2019).[812]

[811] Miletich, S. (2019, March 5). Reforms cited as hindering police work. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[812] Miletich, S. & Carter, M. (2019, May 22). Judge: Seattle Police Discipline Falls Short. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 15, 2019	Responding to City Council criticism of SPD: "I don't need another survey or another exit interview to know that one of the issues is that we really need the support of our public officials and our public for the officers… we need them to stand up for the work that the officers, the men and women have done for this organization. We are losing good people, and we know that it's because they feel like they are not supported by public officials and we need to have that done" (*K5 News*, 7/15/2019; *Seattle Times*, 7/16/2019).[813] Asked about the Consent Decree and possibly reopening contract negotiations: "We're going to do all that's required of us." (*Seattle Times*, 7/16/2019).
January 14, 2020	Regarding negotiation of new SPOG contract: "All of these issues will be brought to the table as some point … I'd love to give you a definitive answer if I had one." Regarding the City falling out of consent decree compliance: "Not everything went as we wanted … But we really are striving to make sure that we are continuously improving and innovating" (*Seattle Times*, 1/15/2020).[814]
June 2, 2020	Speaking to a crowd of protestors, with Mayor Durkan, "I stand with you, … I really stand with you. I understand the hurt and the anger that everyone feels, especially after the death of George Floyd … As a Black woman, I feel the same pain you feel and just because I wear the uniform, that doesn't change that" (*Seattle Times*, 6/2/2020).[815]

[813] Green, S. (2019, July 16). Violence stretched police thin, Chief Says. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[814] Lambert, K. (2020, January 15). Police chief says accountability will be addressed. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[815] Takahama, E., Beekman, D., Greenstone, S. & Roberts, P. (2020, June 2). Durkan Promises to meet with Seattle protest organizers – "The plan has to come from community voices," *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 14, 2020	Commenting on protests regarding the murder of George Floyd: "I know standing there watching and listening that we're going to change in policing. We have to. It has to be a movement that involves everybody, … And we need to reimagine and re-figure out, if you will, how we're going to move forward as a country and as an organization to make things better for everybody. It's incredibly difficult, but with every challenge, there's opportunity. There's opportunity to move forward and bring people together and get positive change. I absolutely believe that." "I absolutely believe in accountability. But I think it's- we've moved away from using the word reform. We were under a consent decree and the Seattle Police Department for almost a decade. We followed every rule and everything that was asked of us to do, yet here we are—that's what the Consent Decree is. And essentially, they laid out a roadmap and a game plan for us to follow while they reviewed us with a federal monitor. But what I- what I believe, especially after I was at a march yesterday, or the day before yesterday with Black Lives Matter, and I was looking at the 60,000 people that were there, signs saying, you know, defund the police, stop police brutality, you know, no qualified immunity. And there were thousands of people carrying those particular signs. And I just realized it was a moment, an epiphany, that this is a pivotal moment in history. We are going to move in a different direction and policing will never be the same as it was before" (*Face the Nation*, 6/14/2020).[816]

From the time of her appointment, through the time of her retirement, Best consistently argued that the SPD was in full compliance with the Consent Decree and, sometimes complained at the apparent lack of public support from City Council and community members critical of the SPD. In this sense, at least until the George Floyd protests, Best communicated more like the "inside" Chiefs who preceded Chief O'Toole than like Chief O'Toole the "outside" reformer.

7.4.4. The Perspective of the Court-Appointed Monitor

Prior to being appointed as the court-appointed Monitor for Seattle, Merrick Bobb was considered by some to be "the Godfather" of civilian oversight of law enforcement. His work on the *Christopher Commission* for the LAPD and the Koltz Commission for the LA County Sheriff parlayed him an appointment in 1993 as the "Special Counsel" for the LA County Sheriff. In that capacity he was the nation's first municipally appointed police monitor, writing semi-annual reports on issues and concerns regarding the largest Sheriff's Department in the United States until 2014, when his program was finally

[816] Brennan, M. (2020, June 4). Transcript: Chief Carmen Best, *Face the Nation*. Retrieved from https://www.cbsnews.com/news/transcript-chief-carmen-best-on-face-the-nation-june-14-2020/.

replaced by a new Los Angeles County Office of the Inspector General. As the President of the Police Assessment Resource Center (PARC), Bobb and his consultants worked on police accountability projects in more than 14 jurisdictions throughout the United States.[817]

However, as previously noted, Bobb's appointment was controversial and made in opposition to the wishes of the SPD and the Mayor with his tenure being controversial as well. Bobb had strong supporters and detractors among the study participants. Supporters strongly believed that, without Bobb's rigorous demands and strong personality, the SPD would never have been able to achieve reform. Detractors, which included some participants who would otherwise have been expected to support Bobb, believed his style to have been overbearing and uncompromising and actually hindered or delayed reform efforts. There was also a strong sense among some participants that Bobb was "milking the system" and overcharging the City for his services. As with other prior monitors, as noted by the 2013 PERF symposium, Bobb was also alleged to have had a "conflict of interest" in that he had a financial interest in "keeping the case going" (see, PERF, 2013, p. 2).

Amongst criticisms of the Monitor's job, were concerns that the Monitor was too forceful about what he wanted to happen and wasn't necessarily strategic in his approach – as described by one participant: "he would go through obstacles, not around them, which was not necessarily the best approach for Seattle." Some participants involved in the implementation effort noted that the Monitor's aggressive approach put the DOJ in a mediation role which "fundamentally shifted the dynamics of the reform process." It was also suggested by some participants that the Monitor, like the Judge was "sometimes driven by anecdote, rather than data." These same participants maintained that sometimes both the DOJ and the City would be "in a chorus…telling him to stay in his lane."

It was also suggested that the Monitor was never able to develop any deep or strong ties to the community, and in particular, that his relationship with the CPC could

[817] See, PARC website, located at https://www.parc.info. PARC's website lists projects conducted in the cities of Cleveland, Denver, Farmington NM, Eugene OR, King County WA, Los Angeles, Milwaukee, New Orleans, Pasadena, Portland, Seattle, Walkill NY, the University of California at Los Angeles, as well and numerous other projects throughout the country.

have been improved. And, in fact, there was substantial criticism by the CPC of both the Monitor and Judge Robart for what was perceived as a paternalistic approach to the community. A few members of the CPC suggested that they, having brought the DOJ to Seattle, were more qualified to bring reform to the SPD than the Court and the Monitor, who were perceived to be outsiders with no real understanding of the needs and expectations of the Seattle community.[818]

Perhaps the most passionate criticism of Bobb's work was expressed by the two top civilians appointed by Chief O'Toole to be the Chief Operating Officer and the Chief Legal Officer of the SPD. In an August 1, 2017 memo they alleged that "the Monitor, … [had] effectively inserted a nebulous, amorphous, wholly subjective standard of care that cannot be reconciled with either the language of the Consent Decree or … evidentiary requirements…" And, as a result, they believed it to be virtually impossible for the SPD to achieve compliance other than based on the Monitor's personal, subjective interpretation of the totality of the evidence.

Even so, the Monitor's reports tended to be well-balanced, and while sometimes critical of the SPD, were also sometimes effusive in his praise. The Monitor's public statements also tell a story of implementation efforts over the period of consent decree implementation:

Table 7.9. Public Statements of Monitor Merrick Bobb

Date	Statement
October 31, 2012	Commenting on his appointment as Monitor: "The stakes are very large … "[People will] hopefully see[] that I am a fair, honest and credible source of information… I do not hesitate to disagree if I must and I call them as I see them" (*Seattle Times*, 10/31/2012).
November 28, 2012	Commenting on his first-year budget of $880,000: "I think it's fair and reasonable in all respects" (*Seattle Times*, 11/29/2012).

[818] One example of conflict in this regard, was the Monitor and Court's support for body-worn cameras, which the CPC initially opposed on privacy grounds. Eventually, however, even the CPC appears to have come around to the need for a body-worn camera system.

Date	Statement
January 17, 2013	Email to City Budget Office: "… we decline in the future to go through the humiliating, time-consuming, and obstructionist process we went through this morning where we were required to justify each pillowcase in the Seattle apartment, a toolkit to put together furniture bought at IKEA, or a $5.99 corkscrew, among other trivialities, … Although we are happy to answer legitimate inquiries, we cannot abide being treated as if we were suspects being grilled about theft from the city, …We are professionals and expect to be treated as such. … I'm not certain that we can currently say we are getting cooperation from the city regarding the Monitoring or movement toward full and effective implementation of the Consent Decree" (*My Northwest*, 2/21/2013).
February 21, 2013	"We each took a tone we later regretted, followed by mutual apologies, …" "Bobb said his team has taken a 'careful and prudent approach to how Seattle taxpayer money is spent,' and called the conflict a 'small dust-up'" (*My Northwest*, 2/21/2013).[819]
March 11, 2013	Commenting on negotiations over First Year Monitoring Plan: "People of goodwill worked to bring about a rapprochement," … Connie Rice, who is a dear friend of mine and a friend of the mayor's. The willingness to talk developed on both sides. We talked, the mayor approved the Monitoring plan, and we're off and running" (*Seattle Times*, 3/12/2013).[820]
March 12, 2013	"Bobb told the court that the department has been cooperative and that he and his team have had gotten almost everything they've asked for. 'We enjoy good access'" (*Seattle Times*, 3/13/2013a).
March 13, 2013	"What the department needs to do is fully and effectively comply with all the requirements in the Consent Decree, … That includes not only changing use of force policy. It also means dealing with discriminatory policing. … If you have the resources and the will, that speeds things up, … When those have come together, then some of these consent decrees have wrapped up in five years or less" (*Q13 News*, 3/13/2013).[821]

[819] According to one study participant, the incident never really "blew over." Instead, the Monitor subsequently met with the Mayor and changed what was originally a collaborative tone to a more confrontational one. Reportedly the Monitor told the Mayor, "'you've taken a couple of cracks at me and that has not worked,' … so he was then in full on - I'm the boss mode. … We knew then that there would be no future collaboration …that's the message he conveyed."

[820] Miletich, S. (2013, March 12). Outsider eases feud at City Hall. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[821] Cihon, B. (2013, March 13). Merrick Bobb talks major SPD reform. *Q13 News*. Retrieved from https://q13fox.com/2013/03/13/merrick-bob-talks-major-spd-reform-disagreement-with-mcginn/

Date	Statement
May 7, 2013	"In a briefing on his first official report, which he issued April 26, Merrick Bobb said the absence of an explanation from the top has spawned 'urban myths' and 'scary stories' within the department regarding the scope of the agreement" (*Seattle Times*, 5/8/2013). Regarding issues of SPD officers not turning on their video systems: "We've had some discussions with the SPD about the in-car video situation, … It troubled us that there were eight officers present at a particular incident and not one of the cameras was on, even though there was sufficient time to, for some of the officers to turn on their cameras" (*Seattle Times*, 5/9/2013).[822] Commenting on state of SPD's Early Intervention System to City Council Committee: "It's a mess, [and it undermines the city's ability to do] robust risk management" (*Seattle Times*, 5/10/2013).[823]
April 3, 2014	Speaking to the court about the status of implementation: "Merrick Bobb … said he agreed that a 'new spirit of cooperation' had been forged with the city, but added that it's still unclear whether the Police Department is on track to comply with the court requirements." "He said there was still a question whether old fights within the department could be put aside in favor of dealing with the 'deep and serious problems' cited by Robart." "Bobb noted the Police Department was about 20 years behind major law-enforcement agencies in tracking, managing and analyzing officer performance" (*Seattle Times*, 4/4/2014).
July 16, 2014	Statement to City Council regarding officer complaints that new SPD use-of-force policies created a "chilling" work environment: "I think it is more a myth than reality that officers are being chilled." "Over time, Bobb said, officers should find that the policies are not as disruptive as they fear" "Chief O'Toole is a very quick study, very sensitive to these issues, understands what's going on and has a plan," (*Seattle Times*, 7/17/2014).[824]
June 23, 2015	Email to Chair of City Council's Public Safety Committee: "You have asked me in my capacity as monitor to provide you with my views of possible legislation concerning the Community Police Commission, … Given the progress of the SPD in the last six months, as detailed in our most recent semiannual report, we are moving forward toward a time when it will be right to consider what form of civilian oversight is best for Seattle in the future, … I respectfully would appreciate an opportunity to explore these matters with the Department of Justice and city prior to any legislation being considered or acted upon" (*Seattle Times*, 6/25/2015).[825]

[822] Miletich, S. (2013, May 9). Cameras. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[823] Op Ed. (2013, May 10). Integrate SPD Data. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[824] Miletich, S. (2014, July 17). Federal Monitor says O'Toole 'a very quick study' as Chief. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[825] Beekman, D. (2015, June 25). Monitor asks Harrell to hold up on police legislation. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
December 16, 2015	*Seattle Times* summary of Bobb email to CPC: "Bobb stressed that he had been a 'zealous advocate' of civilian oversight of law enforcement for 25 years…. He added that he and Robart both believed 'marked improvement' in the relationship between Seattle police and diverse communities formed 'the bedrock upon which and full and effective compliance with the Consent Decree will be built' … Bobb pledged to listen to the CPC before fashioning an accountability plan. He also noted the CPC, early on, had been given friend-of-the court status that allowed it to provide its views and put its stamp on each significant policy under the reform effort. 'Any concern that CPC will not have similar influence on structural reform for greater accountability is incorrect,' he wrote. But Bobb wrote that he was only an agent of the court, and that it was Robart who 'must address your desire for a greater role'" (*Seattle Times*, 12/21/2015).
August 1, 2016	Letter to Judge Robart summarized by *Seattle Times*: "The federal monitor overseeing Seattle police reforms is recommending that allegations of officer misconduct be reviewed by civilians rather than sworn officers, a dramatic proposal that would fundamentally alter how internal investigations have been handled throughout the department's history. … In his letter, Bobb lists a number of measures Robart could require in the legislation, ranging from civilian-controlled internal investigations to the appointment of a civilian inspector general with broad oversight powers. … Included would be subpoena power for the Police Department's internal-investigation unit, the Office of Professional Accountability (OPA), allowing it to compel witnesses outside the department to produce evidence or testimony. … In his letter, Bobb noted when the Consent Decree ends 'the continued existence of civilian oversight will be the responsibility of the City'" (*Seattle Times*, 8/4/2016).[826]
August 3, 2016	"Bobb, in an interview Wednesday, said the CPC's letter suggests he and Robart are foreclosing community-based oversight of the department. 'That's far from the case,' said Bobb, calling such oversight a 'bedrock' principle" (*Seattle Times*, 8/4/2016).
November 21, 2016	Statement to *Seattle Times* regarding the potential impact of the Presidential election: "I don't expect the change of administration will have a material impact on the full implementation of the Consent Decree" (*Seattle Times*, 11/21/2016).
March 30, 2017	Commenting on SPD practice of allowing officers to watch body-worn camera video footage before writing reports: "In short, officers may get an inappropriate opportunity to 'get their story straight' before reporting to the department precisely what occurred in a force incident…" (*Seattle Times*, 3/30/2017).[827]

[826] Miletich, S. (2016, August 4). Federal police monitor wants – misconduct reviews by civilians. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[827] Miletich, S. (2017, March 30). No body cameras for cops. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
September 8, 2017	Commenting on what was required for "full and effective compliance:" "One cannot unscramble an egg or turn a cake back to its original ingredients, … Thus, the nub of the question is whether various Consent Decree and court-ordered reforms have been 'baked in' and are resulting consistently and predictably in constitutional policing" (*Seattle Times*, 9/9/2017).[828]
February 28, 2019	Commenting on the importance of accountability and police discipline on compliance: "Those issues are of such sufficient moment that one cannot judge the status of sustainment without them," (*Seattle Times*, 3/1/2019).[829]
September 8, 2020	At the time of his resignation from the position of Seattle Monitor: "The SPD is at its nadir…It desperately needs a new chief from outside the organization to put it back together. It needs leadership." "The consent decree will not end until the 'bizarre and arcane' discipline and accountability systems are fixed. This will perforce necessitate statesmanship and compromise by the police unions to restore proper management prerogatives." "I will not miss the endless jockeying and some runaway egos, … The mayor, city council, city attorney, [Community Police Commission], and other community groups and organizations must really try to work together and not at cross purposes." "[The SPD] can get back to the place where Kathy O'Toole left it and Carmen Best took over. Many of the same excellent people are still there. A wise chief of police will gather them up; empower them; bring in new good people, sworn and civilian, from around the country to leadership positions, … and get the job done" (Bobb, 2020; *Seattle Times*, 9/9/2020).[830]

Up until his resignation as Monitor in 2020, Bobb's public comments generally matched his semi-annual and assessment reports (See Section 7.3.2, *supra*). It was only upon his resignation from his position that Monitor Bobb made some of his most critical comments, after specifically noting that he was no longer speaking as a representative of the federal court (Bobb, 2020, p. 1).[831]

[828] Miletich, S. (2017, September 9). Seattle Police have yet to comply with some of the key requirements. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[829] Miletich, S. (2019, March 1). Monitor cautions Seattle police contract may jeopardize federal compliance. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[830] Carter, M. (2020, September 9). Seattle Police monitor resigns, says PD at 'nadir', calls for outside chief. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[831] In his "final" report, Bobb specifically comment that: "Because I am no longer Monitor, I can speak my mind more freely…I write this document solely to reflect my own opinions. I no longer speak as monitor, and nothing I say should imply Judge Robart's agreeing or disagreeing with me" (Bobb, 2020, n. 1).

Monitor Bobb's final report suggested that the SPD, like other police agencies under consent decrees in the past, had backslid over the course of the sustainment period, and under the tenure of Chief Best. And his conclusions appeared to be collaborated both by a number of SPD insiders as well as the SPD's apparent poor performance during the George Floyd protests. That said, the monitor and other study participants as well agreed that the Consent Decree reform process had created a stronger foundation upon which a strong, outside, reform-minded chief could put the SPD back on track. The question at this time is, whether Mayor Durkan's successor will go in that direction, or rely on local "talent" instead.

7.5. Consent Decree Implementation – The View from the Front Lines

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"When the elephants fight, it's the grass that suffers"
African Proverb

While the implementation timeline as seen by court orders, monitor findings and media accounts provides an excellent sense of how the Seattle Consent Decree implementation process progressed, the perspectives provided by those personally involved in the implementation of these externally mandated reforms are an important component in understanding the successes, the challenges and the failures as they relate to reform implementation and sustainability. This chapter discusses the many issues and concerns raised by members of the monitoring team, city officials, staff, federal government and police stakeholders who were personally involved in trying to implement the reforms during this almost decade-long process.

This section explains where resistance to the Consent Decree originated as well as both critical and supportive commentary on the overall process. The section includes stakeholder discussions of their viewpoints on the DOJ and its investigation, the monitor and his work in support of consent decree implementation, what compliance should and did look like, the costs and benefits of the reform effort and the challenges associated with police culture and ensuring police accountability. Once again, these research study participant comments highlight the rocky road that was the reform effort and how the use of police use-of-force theory could be used to better pave the road to successful reform.

7.5.1. Implementation through the eyes of the Stakeholders

Disappointment and disillusionment prevailed among SPD and municipal government stakeholders early on in the Seattle Consent Decree process while federal attorneys appeared to have anticipated a "quick win" based on Seattle's progressive politics and substantial wealth when compared to other cities that had been previously subject to federal intervention.

On the municipal government and police side, there was complete shock and surprise – first, there was the expectation was that the City would receive no more than a technical assistance letter, as opposed to a Consent Decree;[832] and second, the findings – particularly the finding that 20% of SPD uses of force were unconstitutional – were completely unexpected and disputed.[833] It was widely believed amongst the SPD and City staff that the 20% number was "grossly inflated" and based on an inadequate methodology; city stakeholders were further aggrieved that the DOJ refused to share its data or its methodology outside of its published report, unless the City actually entered into litigation with the DOJ – described by more than one study participant as "a behemoth, the largest law firm in the country."

7.5.2. Seattle Police Department Voices

While there was disagreement amongst SPD employees as to whether a consent decree, with the appointment of a monitor, was really necessary to achieve change, study participants agreed that the Department had become isolated from the Seattle community and was suffering from a "good old boy" form of leadership wherein the same

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[832] As noted by one SPD insider: "We expected the investigation, but we thought we were doing a good job. We had no concern at all that they would find a pattern or practice. Agencies all across the country were consulting with SPD – we assumed that if DOJ saw everything, they would not have any concerns. So, their findings came as a complete shock when we were called in that night. It was completely out of the blue." Others, outside of the SPD provided a different perspective: "They should have known. They should have been able to read the tea leaves. The process was intended to give them a head's up, but they instead viewed it through the John Diaz lens of a free audit – they thought they could control the narrative."

[833] The investigation made the following finding: "When SPD officers use force, they do so in an unconstitutional manner nearly 20% of the time. This finding (as well as the factual findings identified below) is not based on citizen reports or complaints. Rather, it is based on a review of a randomized, stratified, and statistically valid sample of SPD's own internal use of force reports completed by officers and supervisors" (DOJ Investigation Report, p. 4).

group of officers would be rotated through the command staff regardless of whether the Chief was appointed from within the ranks or from outside the department.

On the whole, however, it was widely perceived that the overall culture of the department was not in and of itself, "broken." As mentioned by one SPD officer: "Like any other large department, we have only a small fraction of employees who engage in misconduct…"

Concerns were expressed regarding the Monitoring Team's approach to misconduct. One SPD supervisor worried that the Monitoring Team "did not have any sense of proportionality when it came to misconduct." The participant believed that the department was "nitpicking officers" and disagreed with the Monitor's assessment that the increase in internal complaints was a good thing;[834] instead, the participant opined that it was indicative of a "corrosive" new culture where "everyone is ratting each other off."

In one unique instance, a participating officer acknowledged that an internal SPD review of the files provided to the DOJ did, in fact, confirm that "20% of the cases were fundamentally problematic." At the same time, however, convincing arguments were made that the DOJ report inaccurately summarized many of the underlying incidents described in the DOJ report.[835] In fairness, however, the City Attorney's evaluation of the

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[834] In the Monitor's Fourth Systemic Assessment report, released in January 2016, he observed that "[a]bout one-third (39 percent) of OPA [Office of Professional Accountability] complaints were initiated by SPD – with an officer, supervisor, or other internal source such as OPA itself or the Force Review Board. This is a remarkable number given that, during DOJ's 2011 investigation, internal complaints were 'rare to non-existent" (Fourth Systemic Assessment, p. 21).

[835] I was unable to obtain access to a confidential memorandum that was prepared by a Deputy City Attorney evaluating the DOJ investigation report in comparison to the use-of-force reports that were provided to the DOJ. However, multiple participants described it as a probing memorandum that convincingly represented the DOJ summaries of use-of-force incidents as deficient. In addition, similar conclusions were reached by Seattle University Professor Matthew Hickman who examined Seattle Police uses of force and, in a May 20, 2012 op ed, concluded that: "DOJ is negotiating from a position based on factual errors as well as errors of omission, gross misrepresentations, apparent statistical errors, and other substantive flaws…" Hickman provided some specific examples of problematic findings in the DOJ report: "For example, the DOJ report presents a number of incidents that certainly have some shock appeal:

In one such incident (pg. 12 of the report), DOJ is critical of multiple officers involved in using force to determine whether the suspect was armed, while not adequately assessing the level of risk posed by the suspect. This incident involved a large house party at which a stabbing reportedly had occurred. DOJ omitted the fact that a bleeding victim was present at the scene who stated that he had been cut. The victim also gave a description of the suspect. DOJ also omitted that additional witnesses described the suspect, indicated that he was violent, and stated

DOJ report was never made public and the DOJ never had the opportunity to respond to its conclusions, In any event, even amongst SPD employees and staff, there was widespread recognition that the SPD was in need of reform at the time of the DOJ investigation; the only real area of contention was whether that reform needed to be externally driven and to what extent the reform actually required court intervention and the assistance of an independent monitor.

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that he was in the house. DOJ instead focused on the fact that the subject contacted in the house was inebriated, possibly passed-out, of slight build, and did not speak English as a first language. He was lying on his chest with hands concealed and would not respond to commands to show his hands to officers. DOJ contends that the suspect did not pose sufficient risk to officers to merit the force they used in order to establish that the subject was not secreting the knife.

DOJ summarizes another incident (pg. 13 of the report) in which "… an officer used his baton to pry the man's mouth open …" so that another officer could remove drugs from the suspect's mouth. The idea of someone prying open a person's mouth with a baton is surely a shocking scenario that conjures images of broken teeth and lots of blood. However, if one reads the actual use of force report, one will find that the officer very carefully and deliberately used the padded end of his baton as a bite-block so that his partner could avoid being bitten as he fished out several rocks of cocaine, evidence that the subject was trying to hide and possibly swallow. The subject was not injured and stated this fact to supervisors. To be clear, this is not an appropriate use of a baton and the officer was counseled about this. DOJ strangely offers this case as an example where "SPD officers too quickly and unreasonably resort to the use of impact weapons," although the baton was not actually used in the manner of an impact weapon.

In another incident (pg. 11 of the report), DOJ is critical of the officers involved for not making use of Crisis Intervention Team (CIT) officers in handling a suspect with mental health issues. If one reads the actual use of force report, one will find that in this very unfortunate incident, a CIT officer actually was on scene, a clear factual error on DOJ's part."

Finally, Hickman attacked the DOJ's 20% finding: "Likewise, the notion that 20 percent of uses of force are excessive or unconstitutional reflects an ignorance of the scientific literature on police use of force. I am proceeding through the approximately 1,200 cases using the two dominant methodologies reported in the field of criminal justice for estimating use of excessive force, neither of which were used or even referenced by DOJ in their investigation. One is a static approach that compares, as a ratio, the highest level of force used by police in comparison to the highest level of suspect resistance. The other is a dynamic approach that considers the sequence of events in terms of actions of the suspect versus actions of the officer, allowing some consideration of escalation along the force continuum. I don't know if DOJ was unaware or simply ignored the literature on use of force, but either case is simply inexcusable. Using these methodologies, it is highly unlikely that the distribution of force incidents would reflect a figure as high as 20 percent being labeled excessive. Based on published studies employing these methods to analyze police use of force in other cities, a more reasonable figure would be about 2 percent. In addition to these concerns, if we assume that DOJ is using a somewhat liberal definition of excessive force, we begin with the notion that the 20 percent figure is somewhat high to begin with. We add to that a strong likelihood that DOJ failed to re-weigh their much ballyhooed stratified random sample, thus giving additional weight to oversampled cases (such as baton cases) and leading to a biased estimate in the direction of excessive force. Finally, we add a margin of error to the estimate, which — based only on the content of the DOJ report — I estimate to be in the neighborhood of plus or minus 5 percent. All this is to say that the 20 percent figure is certainly inflated" (*Crosscut*, 5/20/2012).

When asked how SPD got into the position of requiring externally driven reform: one officer described a general feeling shared by many:

> How did SPD get there? Hubris; SPD officers had a fundamental misunderstanding on what Washington law was on stop and frisk and treated suspects as having the burden of proving there was no probable cause to search – there was a fundamental breakdown in understanding the law and its application to contact on the street.

With respect to the JT Williams shooting, SPD trainers were of the strongly held opinion that training deficiencies were responsible for the officer's conduct; however, other SPD officials questioned why the shooter was not prosecuted and noted that he was, in fact, fired, without any need for federal intervention.

7.5.3. City Government Voices

City government stakeholders noted that JT Williams shooting as "a tipping point…[a] discipline, policy and training issue…There was zero reason to fire on JT Williams; the fact that SPD had an officer who would do that was a tipping point."

City government stakeholders were also aware of the SPD's poor record of ensuring accountability for misconduct. One government official was particularly disgusted with the inadequacy of discipline imposed during the tenure of Chief Kerlikowske opining that officers "got puny discipline" for even serious misconduct. The official noted that the first review of Seattle Police took place as early as the 1990's and that there was a "cycle of crisis, reform, and backsliding" such that external intervention was required.

Challenges to DOJ methodology & findings.

At least part of the reason for Mayor McGinn's skepticism of the need for formal DOJ intervention was a result of the DOJ's unwillingness to disclose the methodology behind its substantive findings and the opportunity that it gave for SPD command staff to cast the DOJ's investigative conclusions into doubt.[836]

[836] A number of research participants strongly believed that the SPD was merely using the unwillingness of the DOJ to share its workpapers as an excuse to deny its findings. According to one City insider: "if the DOJ had done anything other than say 'there is nothing to see here,' we

In a May 20, 2012 op-ed piece (written while the DOJ and the City were engaged in mediation trying to negotiate a settlement agreement), Professor Hickman aggressively presented the SPD-perceived dilemma:

> How can a city negotiate with opponents whose modus operandi consists of making dramatic allegations in the public arena, refusing to explain how they arrived at their conclusions, and then threatening to sue if the city fails to immediately roll over on its back and accept a consent decree and court-appointed monitor? (*Cross Cut*, 5/20/12)

Hickman's final report, published in December 2012, purported to provide a "thorough descriptive statistical analysis of use of force incidents in Seattle," using "the same reports that were used in a recent Department of Justice investigation concerning the use of excessive force." (Abstract, p. 3). The study attempted to replicate the DOJ's finding that 20% of SPD uses of force were excessive or unconstitutional. The report found only 3.5% of the force cases reviewed could be identified as "potentially excessive" (p. 5). Professor Hickman acknowledged that identifying excessive use of force cases in policing "can be a subjective process" (p. 8).

Hickman presented his preliminary findings as follows:

> I can report that based on what I have reviewed thus far, there is no sign that DOJ is negotiating with the City in good faith. I say this because DOJ is negotiating from a position based on factual errors as well as errors of omission, gross misrepresentations, apparent statistical errors, and other substantive flaws.

A review of the cases provided to the DOJ by a lawyer in the Seattle City Attorney's Office reached similar conclusions. That memo was described by multiple study participants (although not provided to me due to its continuing confidential status), as echoing Professor Hickman's findings, particularly as it related to those cases described by the DOJ in their investigation report as being presented inaccurately and incompletely in almost every single instance. According to one SPD research participant:

> I think people in the SPD (and the city as a whole) dug in more thoroughly and strongly because the perception was that the DOJ had nothing, this is B.S., there's no data, there's no empirical evidence – it

would have had same the resistance … the findings simply offended the SPD self- image that 'we are the model.'"

> was that perception and belief that bolstered and sustained internal resistance.

The participant continued that: “If the Mayor, the City Council and the City Attorney would have been roughly on the same page and everyone was saying ‘some of these things look like early warning signs of problems’ –opportunities for change would have improved.”

Other participants disagreed, alleging that the underlying problem was that the SPD command simply disagreed with the DOJ findings and refused to acknowledge that they were not the professional and respected department that they had convinced themselves they were.

DOJ, however, took the position that if the City wanted to challenge the findings, they would need to do so through litigation, not through informal discovery. DOJ appears to have believed that the methodology-transparency issue was something the SPD made up to justify their refusal to buy-in to the DOJ’s ultimate conclusions.

SPD command staff, on the other hand, believed themselves to be a national leader in policing and for them to be told they were doing something wrong was simply unacceptable. After Mayor McGinn met with Chief Diaz, he ultimately sided with the Department and, according to study participants, the “political will” went in the wrong direction, leading the SPD to take a passive-aggressive approach to the DOJ’s externally imposed reform effort.

As described by one of the SPD study participants: “the 20% finding – it was completely spurious without evidence to support it – it was the conclusion of a retired Midwest small city chief – it was outrageous – so the beginning wasn’t great.” According to another participant: “The 20% finding set up a conflict that was not really necessary. If you’re accused of something you did not do – most human beings will push back.” According to another SPD insider,

> the command staff wouldn’t have been resistant to a more tailored and narrowly focused reform effort. No one would have resisted a more honest sort of attempt to fix an actual wrong. But since that was not how it was presented, no one wanted to play ball on the Department side.

One particularly troubling aspect of the SPD's reaction to the City showed how SPD officials inaccurately perceived the DOJ's findings and statements. While the DOJ report referred to a "broken" early intervention system (DOJ investigation report, p.22), and U.S. Attorney Durkan used the term "broken" a number of times in the statement she made when announcing the DOJ investigation, all such terms were used in reference to broken systems, not a "broken department."[837] In addition, U.S. Attorney Durkan noted that "the trust between the Seattle police department and the people of Seattle [was] broken and [in need of repair[]." In response to the use of the term "broken," as previously indicated, Chief John Diaz stated publicly: "'I want to make this clear. The department is not broken" (*Seattle Times*, 12/17/2011). Unfortunately, what SPD staff heard was more akin to a fiction that Chief Diaz was refuting, rather than the actual findings. An in fact, an SPD insider specifically commented on the use of that term: "that really hurt … did we have things we needed to do - absolutely … Many things needed to change – but we were not 'fundamentally broken.'"[838] So, unfortunately, even though the DOJ was using precise language, people in the SPD were interpreting that language in an inaccurate and imprecise way – and then responding to it in a negative manner.

Study participants from within the City, SPD and DOJ differed on whether or not Seattle could have achieved reform on their own. As was noted by the ACLU, the City had many opportunities to clean up the SPD's issues with use-of-force and accountability, but seemed unable to do so, particularly with a command staff and a police union who appear to have been able to control outside police chiefs for the last three decades.

On the DOJ side, the opportunities for success seemed well placed in Seattle; there was a police department which was dealing with ongoing community issues, a progressive electorate who could be expected to support police reform and a city with enough of a tax base to fund the reform effort. As noted by many participants on all sides of the implementation effort – at the beginning, Seattle seemed like it would be an

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[837] See statements of U.S. Attorney Jenny Durkan and Assistant Attorney General Perez, Chapter 7.2, *supra*.

[838] Even though the DOJ investigation report lauded the SPD for its willingness to cooperate and for improvements made over the course of the investigation, the message heard by command staff seems to have been purely negative: "The DOJ painted us as a really bad police department, even though we weren't."

"easy win." However, by all accounts, it was not and, in fact the Consent Decree remains solidly in place eight years after it was implemented and has seen three Mayors come and go and now three permanent Police Chiefs as well.[839]

Why was Seattle not given the opportunity post-DOJ investigation to achieve reform on its own? According to one SPD study participant:

> It appeared to be cooked from the beginning. I think the U.S. Attorney and DOJ figured that SPD had a lot of problems; we had enough vulnerability to push the City into doing something and enough resources to fix the problem – they believed it would be an 'easy win' – but it turned out not to be.

According to the Monitor, "intransigence in the Police Department during the first year of the settlement agreement, marked by efforts to defeat the agreement and objections to [the Monitor's' role]," led to delays in the development of permanent solutions to the SPD's problems (*Seattle Times*, 8/20/2014).

At least at the beginning of the implementation process, study participants described a faction of the SPD that insisted that they could hold the DOJ and the Monitoring Team to the "four corners of the Settlement Agreement;" that faction "attempted to put the Monitor in a box and tried to control the implementation effort, which turned out to be an epic strategic blunder." The DOJ was reportedly astonished by the initial reaction from the SPD – they had expected to be welcomed into the city, akin to a prior collaborative effort that took place in Las Vegas: "We put the DOJ in a position

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[839] Chief Diaz resigned April 2013, saying "it is time," shortly after the release of an independent review report which was "highly critical of SPD's planning for the May Day [2012] protests" (Carter, M. and Miletich, S. (2013, April 3). May Day report slams police, *Seattle Times*. Retrieved from https://www.seattletimes.com. He was replaced by Assistant Chief Jim Pugel, who served until shortly after Mayor Ed Murray took office and replaced him on January 9, 2014 with a retired Assistant Chief, Harry Bailey. Bailey served until the confirmation of the next permanent Chief, Kathleen O'Toole on June 23 2014. When Chief O'Toole announced her retirement on December 6, 2017, citing health issues suffered by her husband, she was replaced by Assistant Chief Carmen Best as Interim Chef. Best was eventually confirmed as the permanent Chief on August 13, 2018. On August 11, 2020, Best announced her retirement after the Seattle City Council voted to cut the police force budget by approximately $3.5 million and reduce the wages of SPD command staff. When announcing her retirement, Chief Best ironically used similar language to that used by Chief Diaz used when he retired: "This was a difficult decision for me, but when it's time, it's time," (Visser, N. (2020, August 11). Seattle police Chief abruptly retires After City Partially Defunds Department. *Huffington Post* [quoting from a letter written to SPD staff). Retrieved from https://www.huffingtonpost.ca/entry/carmen-best-retires-seattle-police_n_5f32404ac5b64cc99fdd8835?ri18n=true.

where they could not back off, because of the way that the Mayor and the Chief attacked them; it left them no room to back off."

According to one particularly well-placed person in the reform effort, however:

> DOJ did itself a disfavor by overstating their case and overstepping their bounds. It would have been better to convince the city that they needed to do the reforms. Instead, the DOJ put the city in a position where they had no choice. If the DOJ had been more transparent and reasonable, we could likely have brought the city along…

But there are those who believe that it would have been impossible for SPD to change without aggressive intervention by the DOJ: As per one participant, "the initial report that was issued was absolutely necessary and could not have been avoided to enforce reform." However, that same participant believed that once the investigation was completed, it would have been better for the City to take a collaborative approach – which was not actually done until the election of Mayor Murray.

Systemic issues of concern.

It was widely agreed that Seattle's accountability systems "were outdated and archaic." As one SPD insider commented that "the DOJ investigation was not an indictment of individual officers as much as it was an indictment of the City for failing to support its work force." Another SPD insider remarked that,

> at the end of the day, it was a management issue; with a few outliers, officers will do what you want them to do – as long as you are clear in your expectations and train them accordingly … there was no need to break down the department and rebuild it – at least at the officer level.

In addition, it was noted that before the Consent Decree, "only two to three hundred of the officers would show up for training, but management would do nothing about it."

Arguments for the Consent Decree

As previously noted, many of the participants, both inside and outside of the SPD, believed that a Consent Decree, with a court-appointed Monitor was, in fact, necessary to achieve any level of systemic reform. The following comments well-represent participant arguments in favor of the need for external intervention:

- "I am still irritated about fact that [the SPD was] doing things wrong and they knew it … the Department needed to change, but they were not going to do it on their own."

- "They believed they were a perfect police department; so, a hammer was necessary – merely saying the Chief wants this would not have achieved sustainable reform."

- "While the Department was not 'broken,' the union had too much power and management would not stand up to them. There was no capacity for how do we make deep philosophical bureaucratic change within a fairly entrenched department."

- "A consent decree was necessary. Seattle is a discursive political process. They will process everything to death. They needed to decide what they were doing and the Consent Decree helped everyone focus; success could not be achieved without it from a political standpoint; it was the only way to get everyone on a common agenda."

- "The SPD was in desperate need of updating…. with respect to clarity of policy, training and systems of review. The DOJ was correct that there were no good systems. Given how Seattle works, a consent decree was the only way that the political engine of the city was going to be able to muster the resources to change the SPD. It pushed the city to look externally for a chief and build a data system…it's what initiated systemic and sustainable change in the department."

- "At the time of the Consent Decree, the rank and file would have said we were an organization 'in crisis' – but for the Consent Decree, however nothing would have been done about it."

- "I don't think they would have gotten there without CD – they simply did not have the institutional will to get there without outside intervention."

- "A lot of the issues the SPD were facing would not have gotten the attention they needed without a consent decree… particularly with the Mayors we had, a hammer was needed."

- "Even with an overt attempt by DOJ to be more transparent; I'm not sure that would have resulted in the sort of critical self-reflection that SPD would have needed to engage in to make them open to reform."

- "The big breakthroughs that did happen could not have happened without the Consent Decree. The Consent Decree was absolutely necessary. Seattle had a humongous institutional arrogance – they loved to say they were Number 1, even when they were not."

While many of the participants who would be expected to have been supportive of the use of a consent decree and a court-appointed monitor did, in fact, make supportive comments (e.g., community members and persons generally affiliated with the DOJ reform effort), what was surprising was the number of City and SPD personnel, who might otherwise have been expected to be dismissive of externally forced reform, who did not believe that the SPD was cabable of reforming itself. Even so, many of these research participants believed that there were times, over the course of the reform effort, that either the DOJ, Judge Robart or the monitor could have used less "force" to ensure reform. This was even in the face of common public statements in support of collaboration or positive comments regarding the Department's work by the DOJ, Judge Robart and the Monitor. City-centric research participants consistently noted that even where positive comments were made, they were usually accompanied by messaging that the SPD still had "a long way to go" to complete the reform effort and the lack of objective measures to define actual compliance.

Why Seattle? And why a consent decree?

Over the course of the research into Seattle, the question was raised over and over again: "How did Seattle become the subject of a DOJ investigation and Consent Decree?" SPD participants, in particular, seemed to have a hard time fathoming why the DOJ would not be focusing on the worst departments in the country and they repeatedly failed to recognize that the DOJ might have an interest in a more tactical and nuanced approach to §14141 enforcement, particularly given its limited resources.

According to study participants with knowledge of the decision-making process, the decision to choose Seattle was complicated. The City seemed replete with crisis intervention issues, which had not yet been a focus of a consent decree and the application of the Consent Decree process to such issues presented significant opportunities. In addition, it was an opportunity for the DOJ to "fly its flag" in the Pacific Northwest for the first time. That, in conjunction with an engaged local U.S. Attorney and a loud, organized and broad-based community, gave the DOJ all the reasons it needed to take a close look at how the process might play out. As one participant commented: "Just comparing yourself to New Orleans, Detroit or the Chicago doesn't vindicate you…

just because you don't shoot people on bridges or bury bodies in the middle of the night does not mean you are okay… it's all a matter of perspective."[840]

While some participants suggested it was "just politics;" others did offer more nuanced perspectives:

- "Consent decrees happen when the police department the public wants deviates from the police department they get. The deviation factor between what Seattle wanted and what Seattle had (a woodcarver getting shot within 10 seconds of being contacted by an officer) along with very organized, articulate and savvy civil rights organizations who knew how to raise the temperature, made Seattle an excellent subject for a DOJ investigation."

- "The travesty of Seattle is that if you plotted these places on a spectrum, the scope of Seattle's problems was a lot less than other cities – Seattle is not Cleveland, Detroit, New Orleans or Albuquerque – the problems in those cities are more massive and systemic; Seattle, nonetheless, had a problem that the police department's method of policing was divorced enough from what the community wanted that the community requested DOJ intervention."

A knowledgeable outsider also observed that,

> Seattle's police accountability activists were highly organized and influential; which did not leave the DOJ with a lot of options given the data they provided – any U.S. Attorney would have had to worry about charges that he or she did not act in the face of data demanding intervention. You just can't turn a blind eye to it. Seattle was a 'house divided' which gave the DOJ both the opportunity and the responsibility to come in.

Even among those participants who did not believe a consent decree and a court-appointed monitor were required for sustainable change, there was widespread agreement that the SPD was a troubled organization:

- "We didn't get into this overnight – it was over time. We slipped down the slippery slope. We took officers' word for what happened and we were not doing any real reviews."

- "There had been a void of leadership under Chief Kerlikowske, and then you had Chief Diaz, who was not really suited for the position,

[840] At the same time, some participants were perplexed by the fact that the DOJ chose the SPD for intervention instead of the King County Sheriff: "Definitely there were people [at SPD] not doing their jobs and there were systemic issues, but King County was doing nothing about their problems; at least Seattle had some process."

a weak leader and part of the good-old-boy network, taking care of each other…"

- "Yes, we were in need of reform at the time. We had not looked at our policies for years."

While many research participants credited the Consent Decree process with any number of successes, others questioned whether change could have happened without a consent decree, specifically by using a more collaborative process. As noted by one participant: "If either party had approached it differently, Seattle may have been a perfect place for a collaborative agreement." As stated by another participant,

> the Consent Decree is a blunt instrument that takes a huge amount of money and time – if I had my druthers, we would have gone the collaborative reform route – we should have started there, set up the benchmarks and then proceeded accordingly.

One City official commented that,

> DOJ could have had everything they wanted if they had asked for voluntary compliance without the issuance of a consent decree; instead, they went the route where they had all the power – the city became powerless against the DOJ, the Monitor and the Judge. This was more about power and politics than it was about a desire to reform.

At the same time, however, other participants noted that the SPD had a history of offering to collaborate, but instead tended to use those opportunities "as a stalling tactic to wear people down."

Amongst the participants who believed a consent decree was unnecessary, the following observations were made:

- "Our problems did not cry out for the type of systemic reform that everyone howled about at the time. SPD did not require the sweeping reforms that the DOJ asserted in needed in 2012;"

- "A consent decree creates a litigious relationship – it provides an incentive for the city not to identify any problems that have not already been identified by the DOJ or the Monitor."

- "The problems of the SPD were similar to that of other large police department, but these problems did not equate to unconstitutional policing practices."

Overall, however, the arguments against the need for a consent decree and a court-appointed monitor did seem to ring hollow. Regardless of the legitimacy of the

DOJ's 20% finding or their specific conclusions on specific cases, no one has really argued that the department's accountability systems (including internal data collection, early intervention, disciplinary, force investigations and crisis intervention) were actually working at the time of the DOJ intervention. Whether the SPD may have been able to correct these systems with a more collaborative form of reform, however, is certainly an open question. Regardless, the SPD's lack of processes to adequately evaluate their own officer's conduct would certainly explain how SPD command staff could have been so surprised at the DOJ's findings – they had not looked introspectively at their work for such a long time, so they had no idea where they were failing.

On the other hand, there was a widespread belief that the Consent Decree process had gone on for far too long:[841]

- "I think the Consent Decree has held us back from progressing at this point; we are now counting widgets; why in the 3rd Quarter of 2019 are we talking about force used a year ago? If we are spending time doing an audit of force from a year ago, it's holding us back from doing what needs to be done now. We need to move on."

- "It has dragged on now for more than 8 years. At some point, everyone wonders when we will hit the necessary threshold for full compliance."

- "We went through phases – first we fought them, then we embraced them, now we are at the part where we just want to get rid of them – we just want to check the boxes and get them to leave."

[841] It should be noted, however, that interviews in support of this research were conducted prior to the murder of George Floyd and the accompanying protests that led to a widespread belief that the SPD had failed to improve as originally believed. As observed by then-outgoing Monitor Bobb in his final report, "Let me then first speak soberly about the recent demonstrations and protests. SPD's performance left many observers disappointed and crestfallen, if not disturbed profoundly by what looked like multiple instances of excessive force, as if lessons learned and techniques trained under the Consent Decree were lost, or, at least, set aside" (Bobb, 2020, p. 2). In addition, shortly after the controversies erupted relating to the policing of protests in Seattle, the City itself withdrew its motion for a finding of compliance stating that since the time the City first moved to terminate portions of the Consent Decree (U.S. v. Seattle, Document No. 611, filed 5/7/2020) "unprecedented levels of protests have occurred in the City that engaged the Seattle Police Department ("SPD") in significant crowd management actions. These actions are governed by policies implemented under the Consent Decree, including crowd management and use of force. Further, these actions will be subject to review through many of the processes put in place by the Consent Decree, including the Force Investigation Team, Force Review Board, and Office of Police Accountability. The Parties make no assumptions regarding the propriety of SPD's actions during these protests, or what the appropriate outcomes of these processes will be, but, at this time, believe additional time is necessary to ensure that termination of Paragraph 69-168 remains appropriate" (U.S. v. Seattle, Document No. 621 (filed 6/4/2020).

As identified by these participants, and as recognized by Chanin (2012), there is often a diminishing point of return for any effort. And it does certainly seem that Seattle has reached and progressed past that point of return in many of the areas covered by the Consent Decree. Even though the City and the DOJ withdrew their request to for the dismissal of portions of the Consent Decree after the much criticized SPD response to the George Floyd protests (U.S. v. Seattle, Doc. No. 621), it has to be asked why the parties could not be allowed to enter into a transitional agreement that would ensure that police accountability reform issues are addressed in the next and last stage of the federal reform effort, instead of forcing the department to continue to be governed by what is now reasonably perceived as an overreaching and historical document?

Costs

One of the greatest sticking points for Seattle research participants has always been the cost of the Consent Decree. As previously noted, the cost of the Monitoring Team, on its own, was estimated to be $800,000 in the first year of the Consent Decree alone. Even for Seattle, a relatively wealthy jurisdiction, that cost was a relatively hard pill to swallow. As noted by one City staffer:

> There are three concerns when it comes to policing; the police need to be effective, constitutional and within a budget – you have to balance these needs, and accepting unlimited federal oversight will ultimately result in your inability to police within a budget.

On the other hand, many participants spoke of the City's own failure to invest in the SPD and the fact that the costs of the Consent Decree were required to ensure current and future investment sufficient to ensure effective and Constitutional policing. In addition, participants suggested that improvements in the management of police use-of-force would lead to substantive reductions in liability, which in other cities had been identified as exceeding the administrative costs of reform.

7.5.4. SPD Resistance to the Consent Decree

Police resistance to the Consent Decree has been described as widespread at the time implementation first began. According to many participants, the Consent Decree was "a hard pill to swallow," particularly in the face of the perception that DOJ had overreached and "padded their findings." As remarked by an SPD insider: "The people in

SPD dug in more thoroughly and strongly because of the perception that the DOJ really had nothing, no data, no empirical evidence, which ended up bolstering internal resistance."

The inability of the City's politicians to agree on the court-appointed Monitor caused additional stress and resistance. Arguments between the Mayor and the SPD on the one side, and the City Attorney and the City Council on the other, over who should be appointed as Monitor became a very public feud, with the eventual pick being forced on the Mayor by Council. This made the work of the Monitor even more difficult at the beginning, as he was forced to work with Mayoral staff and SPD command who were distrustful of his every act.

In addition, it was suggested that the SPD was resistant to the idea of giving any third party, regardless of who it was, the type of full access and ability to question basic cultural norms that are the hallmarks of an effective monitor. As mentioned by one SPD officer:

> The "thin blue line" is really a "thick blue line." Although there were good cops who wanted to see reform and who were disgusted with the "old boy" approach to police management, no one could publicly admit there was any good that would come from the Consent Decree, they would have become a pariah in the department.

According to one officer involved in early implementation efforts, "command staff would show up at meetings to make sure we stayed on message – their intent was to slow things down… if you got too far-off message, you would find yourself not invited to meetings." Another officer commented that "certain of the higher echelon who fought the Consent Decree 'tooth and nail' took all the people in their sphere of influence down that rabbit hole." The same officer observed that even to this day, "we still have command staff going around saying it was 'all bullshit.'"

Over time, members of the monitoring team observed "an emerging shell within the City and SPD who understood, who saw around the corner; but there were those who were lost. Those who wanted to accomplish reform couldn't really pop up and operate until the old guard was out."

Although in the early years, the SPD was mostly described as engaging in "passive resistance," participants also described attempts to actively deceive the DOJ

and the Monitor. One participant described the workplace situation as “awful,” noting that “there was so much change and turmoil, it was too much, nothing was ever consistent.” The same participant described one instance where information was provided up the chain of command that was “not what people wanted to hear,” the participant spoke of having to get the information directly to the Chief to avoid being forced to change the information by the chain-of-command.

A number of research participants broke down the implementation effort into phases. The first phase, under Chief Diaz, involved both passive and active resistance from the command staff and the police unions, although some good policy work was said to have been completed – particularly as it related to the use-of-force policy, the Crisis Intervention policy and the Bias Free Policing policy. A second phase began once Interim Chief Pugel took office, and even though under Chief Bailey resistance again “reared its ugly head,”[842] the second phase continued and was strengthened by the leadership of Chief O’Toole. That phase has been described as “involving a unique alchemy between the stakeholders, those in the trenches doing the work. We were aligned as to where we needed to go…that made it productive and easier to do what needed to be done.” However, when the policy work was mostly completed and the assessments began, “the wheels came off the bus … the Mayor resigned and Seattle politics interfered … before that, things were very productive.”

As noted by one participant, by 2014, “there was an emerging shell within the City and SPD who understood, who saw around the corner, but there were still those who were lost … a tremendous amount of this was personality driven, that’s just how Seattle works.”[843]

Within SPD, research participants described significant internal strife. Personnel who cooperated with the Monitoring Team were described as having been “summarily

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[842] According to one City insider: “During the Bailey administration, the union was basically running the 9th floor over at the SPD.”

[843] In an interesting footnote to his final report, Monitor Bobb specifically commented on SPD resistance to one member of his team: “The SPD did not believe at first that Monitoring Team lawyers could help police officers analyze force, and the SPD loudly and repeatedly moaned that the Monitoring Team’s Peter Ehrlichman was being disrespectful and abusive. Putting aside the obvious ironies inherent in police making such complaints, Peter, although not the most gentle and politic individual, nonetheless was masterful and very smart, teaching a great deal about dispassionate analysis, logic, cross examination, and respectful skepticism to all those willing to listen” (Bobb, 2020, n. 8).

executed over time." One participant suggested that but for command staff's resistance, "we could have been done in two years." In accord with the original intent of Mayor McGinn and Chief Diaz, participants described "a faction of the department that insisted 'we can hold them to the four corners of the agreement" and who attempted to "put the Monitor in a box and tried to control him," which was further described as "an epic strategic blunder." Research interviews were replete with examples of personal animosity, and the use of personal attacks to "effectively undermine the work" of those involved in the implementation efforts.

Other SPD personnel noted however, that the resistance to change the was observed was to be expected as part of any bureaucratic policing culture:

> There was resistance; there are two things cops don't like, the way things are and change… there was institutional resistance, but we just plowed forward – it's a paramilitary organization; you just have to say: "this is the way it's going to be folks."

7.5.5. Criticism of the DOJ investigation findings

As noted by one participant, "the DOJ had an excellent brand, … as such, whatever they concluded, the general public would accept as fact." However, the same could not be said of SPD officers and command staff and City employees who worked closely with them. Chafing at what they perceived to be a secret methodology with findings made by "a retired Midwest small-city Chief," SPD staff believed the findings to be "spurious" and the conclusions to be "an answer in search of a question – just a political process – an end to a means..."

Even participants who might otherwise have been expected to be supportive of the DOJ investigation had their own criticisms:

> DOJ did not conduct the investigation as well as it might…the findings were exaggerated; throwing the 20% number at the City without proving it really set them off and put them on edge and made them think that they were getting a bum deal and that the fix was in … if the conclusions had been more reasonable, perhaps the DOJ could have brought the City along … the 20% still sticks in their craw.

Amongst the rank and file, officers described the DOJ investigation report as "a slam" on themselves and fellow officers. It was suggested that the DOJ took the position they did because of "a politically weak Mayor and Chief" faced by "activist community"

that was not representative of the community-at large. SPD officers, on the whole, readily accepted the command staff's viewpoint that the DOJ was acting in an "underhanded" way, by refusing to release the process by which they reached their conclusions, thereby undermining the legitimacy of the process in its entirety.

Other participants suggested that the initial DOJ strategy was, however, a necessary one. Although it was noted that "SPD felt punched in the mouth from the findings letter, which got everything off on the 'wrong foot,'" some participants believed that a litigation strategy of putting your strongest case forward, "to make sure there is no doubt that there is something rotten in the state of Denmark" was a necessary evil, to ensure the Department would be kowtowed enough to accept the need for a Consent Decree. Other participants (including the one quoted below) suggested that the SPD would have reacted negatively, no matter what the DOJ had done:

> I think any department that has reform imposed on them will have arguments that it was not deserved and they will quibble with the data and they will fight back when they perceive their autonomy has been weakened – so even if DOJ had given them the data they would have resisted. I don't think it would have been helpful at all to give them data.

At the same time, one City-insider commented that "a consent decree is not a solution, it is a tool and like any tool it is most effective in the hands of a skilled craftsman … sometimes you need a hammer, sometimes a scalpel and sometimes a Sawzall." The insider was left to question whether the DOJ came out with its hammer too soon.

According to one member of the SPD command staff: "the DOJ report created an adversarial mood; rather than a 'we're in this together and going to do it together' message." Interestingly enough, however, when U.S. Attorney Durkan and Assistant AG Perez made their statements at the time of the release of the report (see, Chapter 6.2, *infra*), the overall message was one of support and collaboration for the work that needed to be done to ensure effective and Constitutional policing in Seattle. Even so, the actual DOJ report was perceived as unnecessarily "breaking down" the Department, before "building it back up;" and as noted by one member of SPD Command staff: "that's not a great way to improve an organization."

Even with the criticisms made by research participants, it should be noted that a *Seattle Times* investigation published three months before the DOJ investigation was completed, provided significant support for the DOJ's conclusions. On September 3,

2011, the *Seattle Times* published a front-page "special report" finding "a culture of mistrust" as "behind the woes" of the SPD, "a department that long prided itself as professional and progressive."[844]

The *Times* reported that when faced with allegations of misconduct by Seattle police officers, SPD command staff and union leaders often responded with the message that "other cities have it worse:" (*Seattle Times*, 9/3/2011).

According to the *Times*, "In retrospect, it was the Police Department's sense of self-satisfaction that blinded top commanders to festering issues." The *Times,* reported that interviews with "past and present officers and department officials, along with community and government leaders, … provide an inside view of how the failure of police officials to recognize problems effectively obscured breakdowns in training, supervision and community relations." The *Times* also found,

> a corrosive distrust [having] developed between rank-and-file officers and the command staff, marked by crippling battles over officer discipline … resulting [in] the emergence of an increasingly powerful police union that has aggressively defended its members and attacked its critics … and an 'incredibly pervasive attitude of cynicism' that took hold throughout the department.[845]

Even so, SPD Command Staff and City representatives believed that "the DOJ pulled their investigative findings out of their ass." According to one insider:

> Normally in litigation, you would get an articulation of facts from the other party – not just, 'we are going to bring the weight of the federal government against you' … they killed themselves with the 20% finding; it suggested that the SPD was one of the worst police departments in the country … when the City compared the DOJ report to the actual files, the facts were just not true … For whatever reason, the DOJ wanted Seattle in a consent decree – they saw it as an easy win … the City would

[844] "A rare civil-rights investigation of the Seattle Police Department indicates federal officials have decided it's too late for police and city leaders to address the issues on their own" (*Seattle Times*, 9/3/2011).

[845] The article included a reference to a meeting between an assistant chief and SPD Sergeants that took place earlier in 2011 relating to officer protests over the discipline of an SPD Sergeant. The assistant chief reportedly likened SPD officers "to a herd of wildebeests crossing the Serengeti – 'some just don't make it.'" The Times reported that "not long afterward, a doctored photograph was circulated among officers showing [the Chief and a Deputy Chief] posed over a dead wildebeest" (*Seattle Times*, 9/3/2011).

> be rich enough to fix any problems and the DOJ would get the credit for it.

Probably the most telling criticism of the DOJ investigation came from a research participant working for the City at the time the investigation report was released who spoke to the lack of procedural justice perceived by the SPD and the McGinn administration:

> Upon reading the DOJ investigation, the SPD intimately realized it was a political process which included falsehoods; how could you be a police officer and see this as anything other than a power play? What they saw was a DOJ modeling behavior that was inconsistent with the values portrayed by the DOJ brand. The ultimate question becomes: What are we teaching our police about justice in America if this is how DOJ handles an investigation?

7.5.6. General criticism of the process

Research participants had plenty of complaints about the DOJ during the implementation process as well. More than one participant suggested that too much authority was given to the DOJ as a result of the Consent Decree and there was a lack of collaboration as a result. In reality, however, enough participants acknowledged that the command staff under Chief Diaz were resistant and defiant to the DOJ and the Monitor and, as such, it makes little sense to suggest that the DOJ and the Monitor, under such circumstances, needed to be more collaborative than they actually were. The willingness of the DOJ and the Monitor to work collaboratively appears to have been established when, once Chiefs Pugel and O'Toole took over, collaboration appeared to be the word of the day.

The longevity of the Consent Decree was also the topic for criticism from the City. According to one SPD insider: "One of the reasons we have not done the 6th pillar of the Obama 20th Century policing plan – officer wellness – is because we are so focused on the DOJ rule-oriented and adversarial approach of the Monitoring Team." The same insider noted that when Attorney General Eric Holder (2009-2015) visited

Seattle, his approach was “adversarial” in nature; when Seattle was later visited by Attorney General Loretta Lynch (2015-2017), her words were “inspirational.”[846]

In addition, City-centric research participants were quick to criticize the Monitor and Judge Robart based on their perception that, over time, consent decree implementation became a “wide open process that would not be concluded until the Monitor and the Judge subjectively concluded that the problems are solved.”[847] Whereas, in other Cities, Monitors had attempted to quantify compliance using social science language relating to 95% levels of certainty (see, Chapter 3.1, *infra*), the Seattle Monitor used more subjective terms such as identifying “the nub of the question [as] whether various Consent Decree and Court-ordered reforms have been ‘baked in’ and are resulting consistently and predictably in constitutional policing” (Compliance Status Report, p. 2). In reality, this has been an ongoing area of debate: in general, the DOJ and affected police departments have seemed to follow the concept that a consent decree should be interpreted like a contract, with a literal interpretation of its content; whereas, community members and police reformers tend to believe that a decree should be interpreted in a more holistic manner as to better ensure sustainability of reforms.

Later on, in the process, during the tenures of Chief Pugel and O’Toole, the message from the Chief’s Office was for staff not to dwell on the DOJ investigation – one suggestion was that the DOJ had been “hoodwinked by some less than capable consultants,” but that it was “water under the bridge” and there were real problems at the SPD that needed to be solved in order to repair relationships with the community. Even so, a number of participants on the City-side noted that “the Consent Decree is all about who has ‘the power.’ SPD was powerless against the Monitor, the DOJ and the Judge … the was more about power and politics than it was about a desire to reform.”

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[846] Once again, it can be noted that during the tenure of AG Holder, there was still widespread resistance to the Consent Decree implementation being reported; by the time AG Lynch took office, the Seattle consent decree experience was looking more like “a success.”

[847] Another participant referenced the DOJ’s position in a similar way: “DOJ told us the SPD was ‘sick,’ and that they would tell the SPD how to get ‘better’ and when they are healed.”

7.5.7. Was a Consent Decree Really Necessary to Achieve the Necessary Reform?

Some participants suggested the SPD command staff would not have been resistant to a more tailored and narrowly focused reform effort. “No one would have resisted a more honest sort of attempt to fix an actual wrong. But since that was not how it was presented, no one wanted to play ball on the Department side.” There was speculation SPD command that a technical assistance letter was going to be the outcome — and suggestions amongst some participants that a such a TA letter would have been readily accepted and acted upon.

Even so, many study participants, from both inside and outside the department, felt differently; they believed that a Technical Assistance letter would not have had any chance of achieving real reform. They believe the Department would have engaged in a “slow walk” or would have announced programs that would have been painted as solutions to the use of force and bias issues, but that would not really have gone anywhere. Many comments were made about the SPD’s “good old boy culture” which always seems able to preserve the status quo.

7.5.8. Implementation Challenges

Political divisiveness has been identified as one of the primary challenges towards achieving police reform in the absence of federal intervention: “If council and the Mayor and the City Attorney would have been roughly on the same page and everyone was saying some of these things look like early warning signs of problems – there would have been greater opportunities for change.”

The City was also described as “being like a multi-headed hydra,” with the City Attorney, the Mayor, SPD, the CPC and the City Council all having different viewpoints and agendas and sometimes being “at complete odds with each other.” As one implementation insider observed: “you will not find such a level of independence between entities anywhere other than Seattle, … there are enormous dynamics between the different City agencies … it’s just not typical.” And, in fact, politics and personality conflicts were described by virtually all study participants as creating challenges in the implementation process. There were charges made by multiple participants that lawyers, on both sides. could not put their experiences as litigators at the door and caused

unnecessary conflict between the SPD, the Monitor and the DOJ. In addition, as was seen prior to the filing of the Consent Decree, the various political actors seem to have had a large variety of different agendas and motives when it came to policing issues in the City. As specifically noted by one participant: "A tremendous amount of this was personality driven – that's just how Seattle works."

In addition, some speculated that Mayor McGinn resisted reform because he may have thought the U.S. Attorney, Jenny Durkan, was "stealing the show from him." Mayor McGinn was actually defeated by Ed Murray, who ran on a platform of collaboration with DOJ. When Mayor Murray was forced to resign due to allegations of child molestation made against him, Durkan won the open election for Mayor. A number of participants (including the one quoted below) suggested that Durkan,

> was putting herself in a position to kick him (McGinn) out of office. So, he had to make whatever she was trying to do fail – if he could stop the Consent Decree in its tracks that would have stopped Durkan in hers.[848]

Participants had a lot to say about the challenges faced over the course of the implementation process. As described by one participant, and a constant refrain by others within SPD, was that "there was so much change and turmoil and there were so many bosses in a short time frame – it was too much, nothing was ever consistent."

Virtually all participants agreed that there was a significant lapse in communication between command staff and rank and file officers: "There was never adequate communication to rank and file as to what was going on." According to one SPD insider: "Mayor McGinn's initial opposition to DOJ intervention resulted in no one learning about the positives of the Consent Decree; everyone remained insulted and offended by the 20% finding which they simply believed was idiotic."

In addition to the challenges faced at the beginning of the implementation process, there were continuing challenges over time. City participants perceived the overall tone from the Court and the Monitor to be, "the SPD is making progress, but there is still a long way to go." That tone was not seen as particularly helpful in the long

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[848] Given Durkan's history with police reform in Seattle, this explanation seems unlikely. While it certainly seems likely Durkan would have recognized the potential for career or political enhancement as the result of her being a leader in the reform effort, it seems unlikely that she would have planned to move directly from her position in the DOJ into Seattle City politics, with the intent to run against McGinn.

term. A number of participants suggested that the message needed to be more positive and "a lot of good happened that positively impacted people's lives," but that message always seemed to get lost in the mix. According to one SPD insider:

> Where Seattle went wrong was all positive messaging was coopted, it was almost as though officers were being considered "a necessary evil" and the job of the department was to control their natural bad tendencies. That perception was demoralizing to officers, particularly those who come into policing to "wear the white hat."

An SPD insider suggested that "the greatest challenge was trying to get officers to understand why we needed certain policies and training, but we have not done a good job of messaging things in a way that officers understand." That insider believed that much of the blame for this failure needed to be placed on command staff: "Procedures are in place, oversight is in place, but you can't remove personalities; you may want things to be systemic, but personalities do have an impact, so command staff needs to be chosen very carefully."

A perceived failure to get input from officers on the street was seen as another challenge to implementation efforts. As mentioned by one participant: "the top-down nature of the communications has always been a flaw in the process and a challenge through implementation … it's just amazing how little new supervisors knew about the Consent Decree and the reasoning behind policy decisions."

> One other thing we did not anticipate was how much oxygen would be taken up by issues that were not addressed in the Consent Decree [e.g. Body Worn Cameras and Police Discipline and Accountability]; if it were to be done over again, it would either need to be more comprehensive, like in New Orleans, or more surgical, like in Portland … the general lesson is that when you exclude fundamental stuff, the shit will still hit the shores … nature abhors a vacuum.

While the Monitor's assessment reports themselves were relatively positive, and ultimately included language which supported the court's eventual finding of "full and effective compliance," the actual creation of those reports was described by a number of participants as "a hot mess." Some City-centric participants credited the City with rewriting extensive portions of the Monitor's reports, claiming that the initial drafts were completely inadequate. Even so, none of those conflicts were ever aired publicly and, at least, the public face of the assessment reports appeared generally positive, with the City progressing towards compliance.

Additional challenges were perceived to be the result of an aggressive approach on the part of the Monitor. A critical mass of the participants interviewed believed the Monitor was not strategic enough in his implementation approach and that his aggressiveness ended up putting the DOJ in a mediation role, "which fundamentally shifted the dynamics of the reform process." The Monitor was described by some participants as "going through obstacles, instead of around them, which was 'very not' the 'Seattle way.'" Other participants, however, strongly believed an aggressive approach to monitoring was a necessary evil, in order to overcome both active and passive resistance on the part of the SPD, particularly in the early stages of the implementation process. And it appears that at least one participant who stated that he warned the Monitor before he began his work that "the work would be contentious, alienating and polarizing, … you will become the 'pinata of the population,' to include the small cadre of people who had been involved in police accountability in Seattle for a ¼ century or more."

Another critical mass of participants complained about the length of the overall process. As noted by one City insider: "I don't feel as though the Department is getting any credit and it won't ever get out of the decree." In addition, it has been suggested that "consent decree fatigue" has caused the SPD to be

> gun shy of everything … their training people are so busy doing what the Monitor wants, they can't do anything that is innovative, even if it would increase their efficiency, they are just tapped … as long as the Monitor is there, they can't balance the use of their resources. They won't even do what could make their work easier.

According to that same participant: "There was a huge benefit to having a Monitor to get the momentum going, but the longer it drags on, the greater the risk of the pendulum swinging back."

7.5.9. Data system challenges.

One of the most difficult challenges facing the City was the need to create a data analytics platform that would allow SPD command staff to actively monitor officer use-of-force and activity. Participants tended to agree that but for the Consent Decree, the data analytics platform would never have been funded by the City and, that although the

implementation effort was expensive and painful, it could be counted on as one of the most significant accomplishments of the Consent Decree.

Participants actively involved in pushing reform forward credited Chief O'Toole's work in seeking a technology upgrade "as revolutionizing how the SPD did what they do, instead of just thinking of it as a consent decree thing … It was the right time to use this as an opportunity to take the department hugely forward." Participants also opined that the widely perceived successes attributed to crisis intervention could not have been accomplished without the creation of the data platform.

7.5.10. Force Review – A Consent Decree Success Story

At the beginning of the Monitoring process, the *Seattle Times* reported that much of the Monitor's criticisms were focused on the Firearms Review Board, which was initially responsible for reviewing police shootings prior to being replaced by the Use-of-Force Board.[849] Laster Monitor reports lauded improvements made in the SPD's administrative review of police-involved shootings (3rd Semi-annual Report, pp. 3, 55-60; 2nd Systemic Assessment: Force Review Board, 11/24/2015).

Participants also commended improvements in the review of force by the SPD; although a critical mass of participants remained unhappy about the road to implementation, believing that the Monitoring Team used more force than necessary to improve the work of the Board. The Monitor, however, had a different perspective as he noted in his concluding report (Bobb, 2020, n. 8); even so, participants almost universally recognized that the changes that resulted from Monitoring Team intervention were positive overall.

According to one SPD insider: "I initially saw the Force Review Board as unnecessary, but I have done a 180 on that." SPD participants acknowledged that the

[849] The Monitor's criticism of the SPD's Firearms Review Board, as described in a draft of the Monitor's 2nd semi-annual report, was summarized by the Seattle Times as follows: "Bobb leveled his harshest criticism at the department's Firearms Review Board (FRB), which has moved to keep the monitor 'at bay' and has barred the director of the Office of Professional Accountability, which investigates allegations of officer misconduct, from its proceedings. The FRB procedures 'do not guarantee anything close to a thorough, fair and impartial investigation,' the draft report says. 'Instead, they continue to permit the possibility of collusive, biased, or inaccurate testimony'" (*Seattle Times*, 11/16/20130).

prior system was “antiquated” and that “the reports coming up the chain of command were a mess … the review system was garbage.” One participant commented that

> the Force Review Board was originally a rubber stamp … there was a battle with the Monitoring team who was angry with the lack of progress and less than honest information being provided by command staff … it was a painful process, but once there was a change of command, it was time well spent.

The same participant noted that

> the FRB is the only entity that sits across of uses of force in the Department, looking at everything and ensuring systemic reviews of patterns and trends, equipment and training … it really has the potential to make the SPD so much better … officers are so much safer and performing better now than before.

Participants noted that one of Chief O’Toole’s first priorities was to fix the FRB:

> there was way too much officer advocacy going on at the board and 20 to 40 people in the room – that’s a crowd, not a board … it got trimmed down to 6 board members and the support staff and chair and became much more manageable.

As an example of good work on the part of the Board, it was noted that the board “kept finding cases of officers using batons in disturbing ways.” The Board ended up making a recommendation to command staff that officers stop carrying a baton as their sole less than lethal option. As noted by one participant: “It was validating to see a concern identified during the DOJ investigation addressed by the FRB and implemented by the Department as part of a holistic review process.”

However, sustainability remains a significant issue of concern. As observed by an SPD insider,

> the force review process is a strong system with a dedicated leader at the top; even so, currently, FRB recommendations are just background noise because no one at the command level is taking these things in, triaging them and putting them into a strategic plan. The system is now there, what is missing is a command staff with a strategic vision and the ability to implement that vision. Now, they just tend to be reactionary.

7.5.11. Crisis Intervention - Another Consent Decree Success Story?

While the SPD's new Crisis Intervention Training was recognized by participants as a success story, there were some participants who believed the SPD would have gotten there even without the Consent Decree. Some participants suggested that "the pump was already primed" for a successful program. As observed by one participant: "homeless issues and mental health issues were coming to a head regardless." One reason for the believing the CIT program's success was not necessarily attributable to the Consent Decree was that the CIT program is voluntary and self-selecting; contrary to other aspects of the Consent Decree. However, it was also almost universally recognized that without the data platform created as a result of the Consent Decree, the SPD would have been unable to count the uses-of-force used against people in crisis. Stakeholders acknowledged that before the creation of a data platform, the SPD "had no clue how much force they were using against people in crisis." With the platform in place, the SPD was able to collect and share data with mental health providers and "prevent police involvement in the first place."

According to insiders, the CIT program took off quickly and was primarily facilitated by the DOJ. An engaged SPD Commander was crediting with helping to write the necessary policies, push the training and collect the data. The effort was described as "truly collaborative" with the SPD working together with the mental health community and the courts resulting in dramatic decrease in uses of force against people in crisis. And while at least one participant suggested that the CIT program succeeded "in spite of the Consent Decree," participants believed the Department is now a national leader in this area, commenting that "SPD now has the ability to put out a report that no one else can…"

As recognized by one person close to the implementation process: "from my perspective, the CIT program was the absolute gem that evolved from the Seattle police reform effort."

7.5.12. Department Leadership

When speaking to how the SPD got to the point of federal intervention, it was often stated that the problems went back as far as Chief Kerlikowske's original attempt

to take an aggressive stance on discipline. After receiving a "vote of no confidence" from the rank-and-file, Chief Kerlikowske became weak on discipline and was engaged more nationally than locally. According to one SPD insider:

> We didn't get into this overnight – it was over time, we went down the slippery slope, … there had been a void of leadership under Chief Kerlikowske and then he was replaced by Chief Diaz who was not suited for the position and who allowed a 'good old boy network' who took care of each other."[850]

Interim Chief Pugel was described by some participants as "a good soldier" who would work to implement the reforms desired by the Mayor.[851] Other participants suggested, however, that since Mayor McGinn never actually embraced the reform effort, it was "hard to get traction with Pugel … even so, there was some good groundwork being laid by the minions at the time."

Regardless of participant opinions of Chief Pugel, his termination by Mayor Murray, and his replacement by interim Chief Bailey, was widely reviled. As described by one SPD participant, Bailey's selection was perceived as "a political pay-off to the union." Another participant observed that: "not until the appointment of Chief O'Toole was there 'no daylight' between the Mayor and the Chief." In fact, the ultimate selection of Chief O'Toole appeared to bring the reform effort back to the table at all levels of the organization. As mentioned by the one participant, with support from many other participants: "we needed a 'cleaner;' someone to come in, clean up, make enemies and then retire – we needed someone 'not of this culture,' a real change agent."

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[850] One city official observed that the SPD Command staff at the time of Chief Kerlikowske's retirement in 2009 was commonly referred to as "the high fiving white guys."

[851] At the same time, the cultural resistance faced by Pugel appeared to have been significant as described by a participant actively involved in the implementation effort: "When Pugel came in – the top staff at the SPD were still 'good old boys.' It was a pretty tight generational group of white males who thought they were on the forefront of being an open progressive department, but were not. They were professionally in-bred, with no outside influences in their command staff – so the SPD had stagnated in keeping up with progressive policies and practices. They all grew up in same 'family,' so there was not a lot of challenging or questioning of each other. Pugel tried to reposition the SPD but struggled to do so – everything he knew was how SPD did things. He had buy-in from some parts of the community, but other parts were suspicious. Unfortunately, his whole power base was still within the structure of the SPD – he could not really be an agent of change." Another participant suggested that "although Pugel did appear to have a sensitivity and feel for reform, at the end of the day he was not going to cut loose his best friends, the people he grew up with in the Department, some who didn't have a reform bone in their bodies. He simply could not see that it was in the best interest of the Department to clean house."

Even so, there was criticism of Chief O'Toole's approach. According to one SPD command officer:

> Chief O'Toole was all about centralizing authority; she felt that would be a better way to control what was happening, but all it really did was to further neuter the Lieutenants and Captains who were ultimately getting it from all sides.

In addition, it was noted that Chief O'Toole was raised in an East Coast policing environment, where demoted Assistant Chiefs and reassigned command officers are able to retire with free medical coverage. In the SPD, however, even when demoted or reassigned, command officers stayed in the Department waiting for their medical coverage to vest.

> She tried to get captains to retire by putting them in spots where they had no responsibility, but they would not leave … so, they were creating all these new jobs for Captains and it became a bit of a circus.[852]

Looking back at Chief O'Toole's tenure reveals her to have been a great tactician. After establishing strong relationships amongst the Monitor and his team and the DOJ, she was able to solidify the support of SPD command staff and rank and file officers when on September 8, 2017, she sent an email to all SPD officers, attaching a 47-page memo authored by her Chief Legal Officer and Chief Operating Officer (both civilians), arguing that the SPD should be found in full compliance with the Consent Decree (*Seattle Times*, 9/30/2017).[853] According to one high level SPD insider: "The release of the memo was an emotional boost – it was the ultimate push towards compliance."

Even so, there were participants who suggested that there was not necessarily a "cause and effect" as a result of Chief O'Toole's appointment. They suggested that

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[852] With respect to the reassignment and demotion of members of command staff throughout the process, one SPD outsider observer, with strong connections within the department observed that: "There were people in the higher echelons who were shills for the Police Guild, foot draggers – it was good that those people were removed from their leadership positions. But some good people got swept up in that too – which was ultimately a serious loss for the department." However, other participants suggested that all of the replacements made by Chief O'Toole were absolutely necessary. As noted by one SPD officer: "It was 100% good that all the chiefs were replaced, they led us down that rabbit hole."

[853] Miletich, S. (2017, September 30). Seattle says police in compliance. *Seattle Times*. Retrieved from https://www.seattletimes.com.

"change was happening anyway." Although virtually all participants noted that she was well liked and "the right person for the job at the right time."

Although Chief O'Toole's replacement, Carmen Best, the first African-American female to lead the SPD, was described by the Monitor as "warm, engaging, good-humored, and pleasant to work with" (*Seattle Times*, 8/11/2020),[854] most participant expressed concern over what was described as almost a "return to normalcy" over the course of her tenure. Civilians promoted to leadership positions by Chief O'Toole were subsequently demoted or reassigned by Chief Best. As observed by one participant, but with the agreement of others:

> the current Chief's strength is community engagement – but that is not enough to sustain the reforms … the next Chief has to come from the outside and be immersed in the work of PERF (the Police Executive Research Forum),[855] IACP (the International Association of Chiefs of Police),[856] and the Major City Chiefs [Association].[857]

Another participant observed that Chief Best

> grew up in the SPD; she grew up and advanced and got to where she is through a variety of Chiefs and Assistant Chiefs and Deputy Chiefs that weren't the greatest; she never worked outside of the SPD and did not have the overall vision that Chief O'Toole obtained through her variety of service.

The general consensus amongst participants, with the exception of a number of very passionate community members, was that although Chief Best wanted to "do the right thing on reforms," the culture of SPD was too entrenched and required external experience and pressure to overcome its long-term resistance to change.[858]

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[854] Kamb, L. & Carter, M. (2020, August 11). Faded dream: Carmen Best's career aspirations to be Seattle's top cop soured over a few short months. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[855] https://www.policeforum.org/.

[856] https://www.theiacp.org/.

[857] https://www.majorcitieschiefs.com/.

[858] As of 2020, participants described a resurgence of resistance within the new SPD command staff: "Within the current administration, [higher level command staff] is undermining many of us – we have a Deputy Chief who is 'old school' and has not embraced the reforms in his heart. He tends to be trying to be 'one of the guys,' which is not his role and is not helpful. When command staff undermines a system that is in place, it can negatively impact sustainability."

During Chief Best's tenure, participants noted that "the systems are there" for managing the SPD beyond the Consent Decree, but as noted by one former high-ranking official:

> what is missing is a command staff with a strategic vision and the ability to implement that vision … whereas under Chief O'Toole, there was a strategic plan; now, there's just a constant diversion of resources and the appearance of a command staff suffering from Attention-Deficit-Disorder.

Another City insider commented that under Chief O'Toole "there was usually unanimity between her and her people; under Chief Best it seems more fractured."

7.5.13. Opinions about the Monitor and the Monitoring Team

Given the selection process, the question could be asked whether the Monitor and the Monitoring Team were set up for failure and to what extent they needed to be evaluated, at least at the beginning of the implementation, through the use of some sort of grading curve. Regardless, Merrick Bobb, the Monitor, clearly had a large personality which loomed over the implementation process. Bobb had strong supporters and strong detractors, according to both media reports and research participants. And, in the end, it became impossible to predict where those supporters and detractors would come from, as they bridged the gap between community, police, city leadership and active participants in the reform effort.

According to his detractors, the Monitor's big personality and strongly held personal opinions were sometimes an impediment to the implementation effort.[859] "There were meetings where the Monitor would slam his hands on the table and insist on "his way or the highway," which according to participants was considered contrary to the "Seattle Way" which has even been defined as a term on "Wikepedia."[860] According to participants, other members of the Monitoring Team and DOJ would then have to go

[859] More than one participant described the Monitor's "style" as sometimes "imperious."

[860] "The 'Seattle process' or 'Seattle way' is a term stemming from the political procedure in Seattle and King County, and to a lesser extent other cities and the Washington state government. The term has no strict definition but refers to the pervasively slow process of dialogue, deliberation, participation, and municipal introspection before making any decision and the time it takes to enact any policy." Seattle process - Wikipedia, https://en.wikipedia.org/wiki/Seattle_process.

back behind the scenes, sometimes without the knowledge or authorization of the Monitor, and try to gain compliance through a more collaborative and cooperative process.

Within the City, the resistance to the Monitor as a result of the selection process never went away. According to one SPD insider: “The Monitor was chosen by the City Attorney, it was a fraud from the get-go; his philosophy was rooted in 1990’s police reform, with no collaboration and a lack of data-based introspection.”

Other participants suggested that if the Monitor appeared to be “imperious” or “a my-way-or-the-highway type of guy,” it was only after “you backed him into a corner.” One SPD participant observed that

> Merrick was easy to talk to as long as he believed you were smart enough to talk about a topic and you were candid … if you were not candid, that would be a fatal flaw and would turn him into a wall … he was eerily good at figuring out when someone was trying to pull something over on him.

While some participants criticized the Monitor for bullying people into compliance, others argued strongly that he well understood the need to “bring people along” in any reform effort. At the same time, some of his supporters noted that “you could reach a pretty good place with the Monitor in terms of collaboration, but you have to couch it in a certain way, and be diplomatic and strategic in how you dealt with him.”

In addition, the Monitor had his supporters amongst high level command staff at the SPD. According to one high level participant: “I had some very spirited conversations with Merrick … we developed a mutual respect and fondness, it is amazing the adversity he has overcome … while I would get frustrated or annoyed at times, the conversations were very productive.”

Perhaps most interestingly, much of the feedback received about the Monitor spoke to his personality and how that impacted people’s perceptions of his work. Ironically, the same participants have agreed that individual personalities within SPD and City government were largely responsible for much of the chaos that impacted the City’s response to the DOJ investigation and challenges in implementing police reform overall.

For many City participants, there were real concerns regarding the cost of monitoring and the inherent conflict-of-interest for persons involved in the monitoring effort:

> There's a real conflict motive in monitoring – it's a decent paycheck and the Monitor has lost some credibility here – it feels like it's a gravy train – even though he is sometimes positive, there is still the feeling that he wants to keep a toehold in the Department.

And that perspective appeared to be further exacerbated by City staff perception as to the way the Monitor framed the road to compliance: "The way the Monitor framed 'initial compliance' was how the Consent Decree defined 'final compliance.'" Under these circumstances, City and SPD staff constantly questioned the motives of the monitor and the compensation he received for doing his work.

When it came to the Monitoring Team, once again, there were mixed reviews. Some SPD members found the team, on the whole, to "be very reasonable and wanting to know how to make changes to help the department be better." Other participants expressed concern about the competency of the team. Some participants (using similar arguments used in attacking the DOJ investigation) asserted that the SPD "had zero reason to believe that the Monitor's experts had the education, experience or training to even conduct the evaluations." And, in fact, a number of participants claimed that the assessments written by the Monitoring Team required extensive edits and that draft reports never found the city to be in compliance until after the drafts were edited by the DOJ.

Participants provided some very specific criticism as it related to SPD training reform. One SPD staffer with knowledge of the training reform efforts had strong criticism of the Monitoring Team's work in this area:

> They had their team and they had a couple of 'experts' and they came in and opined on the state of SPD training and what it should look like – we had just overhauled our field training – we were using an FTO model from San Jose which was an innovation in 1968, we spent a lot of time and effort refining it, modernizing it, we hired an educational consultant who spoke about knowledge acquisition, etc.; we spent about two years doing that; we had a focus group with employee representation from across the organization – we used a stratified group of knowledge experts – we did a thorough job of it. Then, this retired guy from California came in and rolled back the clock to 1968. The

> Monitoring Team said it was "a job well done" – we said "you guys are clowns."

More than one SPD participant believed that the Monitoring Team refused to view any of the SPD Lieutenants and Captains as "credible managers," but instead viewed them "as part of the problem" and asserted that "it was personality driven, not competency driven." However, as stated previously, other participants argued that the Monitoring Team evaluated the worth of those SPD command officers according to their willingness to embrace reform and work collaboratively toward a positive result.

Overall, Monitor Bobb clearly took an aggressive approach to his work. It is arguable that without his intervention, the Wearable Camera System and a working data platform may not have come into fruition. And, in fact, given the resistance that the SPD initially had to reform efforts, by all appearances an aggressive Monitor was necessary in order to push the reform effort forward. At the same time, the Monitor would likely have achieved greater success had he come up with more objective criteria for measuring compliance; even though his more holistic approach does appear to be in accord with my own recommendations for future success in the application of Section 14141 enforcement (See, Section 9.1, *infra*). One continuinig concern, however, was the assertion by some very credible research participants that the amount of money paid to the Monitor was excessive (both in terms of hourly rates and excessive hours), that the Monitor was incentivized to continue his activities due to a profit motive,[861] and my own observation that no public accounting of the Monitoring Team charges has been published since 2017. The Monitor's final report, however, outlining the challenges he faced and the successes he achieved, was quite compelling and consistent with many of the observations of this project's research participants.

[861] It is can be extremely difficult to evaluate this type of argument as regulators are often accused of "trying to justify their own existence." As noted by former Denver Independent Monitor Nicholas Mitchell: "You just kind of have to take that in stride because every regulated entity usually makes that claim" (Denverite (2021, February 4). Denver's former law enforcement watchdog talks thinning out jails, slaying dragons and the future of DPD. *Denverite.com.* Retrieved from An exit interview with Denver's former police and jailing watchdog Nick Mitchell - Denverite, the Denver site!

7.5.14. Compliance

The issue of whether and when the City achieved compliance has been another issue of controversy. According to the Monitor's first timeline, published on November 30, 2012, the City was expected to come into compliance with the Consent Decree by August 2015. In fact, the Monitor's first systemic evaluation report (out of ten) was not even published until September 2015 (See, 1st Systemic Assessment: Force Investigation & Reporting, 9/24/2015). As previously noted, SPD Command under Chief O'Toole, asserted that the SPD was in compliance in a memo dated August 1, 2017 (five years after the Consent Decree was entered). Five months later, on January 10, 2018, the Court found the City in "initial compliance," even though the Monitor had expressed "concerns" about compliance levels over the course of his ten assessments. By the end of the same year, however, the Court issued an "Order to Show Cause Whether the Court Should Find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree" based on a questionable new contract with the police union and questions and concerns regarding police accountability overall. The City was found partially out-of-compliance by the Court on May 21, 2019, but one year later the City and the DOJ filed a stipulated order to dismiss key components of the decree.[862] That motion was later withdrawn by the City after the protests associated with the death of George Floyd in June 2020.

Interviews for this project were conducted during the first quarter of 2020, prior to the City filing its motion to dismiss portions of the Consent Decree. At the time of the interviews, City participants asserted that "we've accomplished everything we can achieve under the Consent Decree … it's the community that will continue to hold our feet to the fire." City participants strongly believed that the court's decision to find the city partially out-of-compliance, was a decision that was outside the Consent Decree "contract," but indicated no intent to appeal the Court's decision.

[862] The Monitor, at least publicly, was silent on this stipulated request, with his last status report having been filed with the court on September 8, 2017 (U.S. v. Seattle, Document No 416) and with him not having appeared at the May 15, 2019 court hearing finding the City partially out-of-compliance with the Consent Decree (See, Court Video, Part 10, located at: https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle).

Other City participants suggested that the Consent Decree timeline had run its course:

> There is an optimum time as to when changes take place and then there needs to be some positive reinforcement, rather than just the hammering of the negative … the longer this drags on, the greater the risk of the pendulum swinging back.

7.5.15. The Value (and Challenges) of Collaboration

Participants were specifically asked about their thoughts regarding the value and challenges associated with attempting "collaborative reform" as opposed to more top-down and externally forced reform efforts. Once again, significant differences of opinion emerged, with some participants believing that too much force was used on Seattle and that a more collaborative approach would have been more successful and other participants believing that Seattle required a great deal of external force before any change could actually occur.

One civilian member of SPD believed that the Las Vegas collaborative reform effort, in response to questionable police shootings was a proactive approach which could have worked well in Seattle.[863] This was even though this same participant was quite supportive of the monitoring team efforts and acknowledged the challenges faced with a resistant and reactionary SPD command staff. Another SPD insider, also supportive of the DOJ reform effort, suggested that

> if there is a way to keep the jurisdiction at the table so you can go in and reassess and look at the level of engagement, it would avoid our current situation where we are in a "check the boxes" mode.

As noted by another participant, who had the opportunity to view the process from a more global perspective opined that "consent decrees happen with the police department the public wants deviates from the police department the public gets." That participant believed that the Consent Decree was necessary and that collaborative reform would not have been effective:

> Seattle needed something that was going to solve the collective action problem. Seattle is a discursive political process. They will process

[863] Regarding prior USDOJ collaborative reform efforts, including in Las Vegas, see, USDOJ, 2017b, p. 50; Cole, et al, 2017; Collins, et al, 2017.

> everything to death. They needed to decide what they were doing – and the Consent Decree helped everyone to focus – reform could not have been achieved without the Consent Decree from a political standpoint – we could not otherwise have gotten everyone on a common agenda.

Even this participant acknowledged, however, that

> there may have been room for something more holistic … where problems are caused by deficient policies, or training, there may be other solutions that could be done more quickly and at less cost – maybe a grant would have been of more assistance.

At the same time, however, it was recognized that the process did become more collaborative once there was a change in the City administration and there was more consistency in the messaging to officers from the Mayor and the Chief's Office. According to one officer, "it felt like we were being punished at the beginning, but it became much better once it became more collaborative."

Looking at the DOJ's initial litigation strategy, which involved an effort to force a consent decree on an otherwise unwilling City administration, it was observed that "the DOJ put its strongest case forward" and adhered to a litigation and communication strategy intended to ensure compliance. Based on past history, it was clear that the DOJ did not think a technical assistance letter would be sufficient and that more was required. As a result, however, there were some City participants who felt that even though they were not opposed to reform, they were "struggling to find a voice in the process;" something that was difficult given the DOJ's strongly held positions and the strength of the DOJ brand among generally progressive Seattle voters.

Even so, within the SPD, there was some agreement with the DOJ's position. As noted by one member of the SPD command staff:

> If Seattle had an organizational culture that was willing to be collaborative, we would not have gotten a consent decree. The Chief was not willing to take a flight to D.C., like the Las Vegas Sheriff, to ask 'what do you want me to do?' We had a command staff who would just not listen to any criticism. People who were Assistant Chiefs could not be told that they were not as good as they thought they were. Chief Kerlikowske had created a story about how good we were and that became an impenetrable wall.

This was not the only participant to have suggested that some proactive work by the Mayor or the Chief could have resulted in a technical assistance letter and more of a

"wait-and-see" attitude from the DOJ: "The City had a chance at one point to go the technical assistance route – it was never fully fleshed out, but they did not go along with that option, so the DOJ hit them with the Consent Decree."

One high-level City official noted that at the time of the DOJ investigation, police command staff and the Mayor's office were "adamantly opposed to even the investigation." That official suggested that

> even an overt act by the DOJ to be more transparent would not have resulted in the sort of critical self-reflection that SPD would have needed to engage in to make them more open to reform … If either side had approached it differently, Seattle would have been a perfect place for a collaborative agreement.

The official continued that: "If you had political leadership recognizing the need for and willing to pay for change; the right chief and commanders in place; and some cooperation from the Guild, it could have done it collaboratively. But those are three big ifs." Another City official believed that "a more cooperative approach on the part of the City toward the DOJ would have ended up with a more reasonable solution other than a consent decree."

Other participants suggested that the aggressive nature of the DOJ's initial approach also had a negative impact on rank-and-file officers, believing that "the union could have been brought along if DOJ had acted more collaboratively."

As noted by an SPD leader, "the only way change works is if people buy-in. You don't accomplish that by sticking needles in people's eyes." The same participant suggested that,

> sometimes the DOJ and the Monitoring Team thought that the process had to be adversarial to get things done – but I think when it becomes adversarial, it interferes. While you may need some professional tension to end up with the best result – it's all about relationships and authenticity at the end of the day.

Of course, the problem is that it goes both ways. If one stakeholder is unwilling to work collaboratively and cooperatively toward a common purpose, it is hard to criticize the other stakeholder for taking a more aggressive approach. And, in fact, that is the very theory used to underly police use-of-force. The argument appears to suggest,

however, that the DOJ and the Monitoring Team may have been better able to de-escalate any confrontations coming from positions of power.

And, in fact, there were Seattle City participants who claim that, at the beginning, the SPD was "bending over backwards to be cooperative." They claim they were telling the DOJ "you don't have to pull the trigger on a consent decree, we will do whatever you think is necessary," but that then-U.S. Attorney Durkan was convinced that the only way to "hard bake in" reforms was through a consent decree. These participants suggested that any SPD resistance was the result of a lack of collaboration on the part of the DOJ, "so, we basically gave up and stopped trying to comply with the Consent Decree and just did what the DOJ wanted us to do."

In retrospect, it is impossible to predict whether a less aggressive initial approach by the DOJ would have succeeded or not. In reality, however, credible research participants strongly suspected that the SPD was in need of a major jolt to replace its old guard with a new guard that would be more responsive to community concerns and a less insular approach to policing.

7.5.16. Opinions Regarding the "CPC" Experiment

The Seattle consent decree, with the creation of a Community Police Commission (CPC) has been used as an example of community engagement going above and beyond prior consent decree experiences. The DOJ, in their 2017 report evaluating 20 years of §14141 litigation highlighted those portions of the Seattle decree that involved community engagement, to include the "establish[ment of] a Community Police Commission with diverse membership and broad authority to review and provide input on police reform and to receive and incorporate community feedback" (DOJ, 2017b, p. 29).

The CPC concept, as it relates to consent decree litigation, was an attempt to bridge the gap between the traditional litigation landscape and community engagement.[864] In fact, however, the CPC involvement in the implementation process

[864] Whose idea it was to create the CPC and include it in the Memorandum of Agreement accompanying the Consent Decree, became an issue during Mayor McGinn's reelection campaign in 2013. While campaigning, McGinn reportedly claimed credit for "fighting" for the inclusion of the CPC in the MOA. This led to a highly unusual response from the DOJ (in the form

became a challenge for the City, the DOJ and the Monitor, with the CPC eventually attempt to intervene in the litigation as a party, and subsequently taking advantage of being granted the right to submit amicus briefs to the court, often in opposition to positions taken by either the City, the DOJ and/or the Monitor.[865]

According to McGinn administration insiders, the creation of the CPC was about giving the then-Minority Executive Director's Coalition, part of McGinn's political constituency, a stake in the implementation of police reform in Seattle. The creation of a CPC including a number of MEDC members would provide an opportunity for community stakeholders to hold the DOJ, the Monitor and the Judge to task. These actions were in support of the following concern: "how did we end up in a situation where disenfranchised communities find themselves at the wrong end of bias and we have decided that three well-off White men are the ones who will have the power to address that?" [866] As such, the CPC was specifically intended to exist to "try to counteract the power that was given to those men."

Conflicts between the CPC, the SPD, the DOJ and the Monitor have been well publicized,[867] and study participants had much to say about the CPC and to what extent its existence actually engaged community in the reform process.

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of a letter to the CPC from U.S. Attorney Durkan and the Chief of the Special Litigation Section of the DOJ in Washington), contradicting McGinn's claim and asserting that the DOJ had formally proposed a "Community Monitoring Board," more than a month before the settlement was finally signed. (Brunner, J. (2013, October 23). DOJ says it didn't fight Community Police Panel. *Seattle Times*. Retrieved from https://www.seattletimes.com).

[865] See, Table 7.17, infra, for list of court filings made on behalf of the CPC over the course of the Consent Decree litigation.

[866] Referring to City Attorney Holmes, Monitor Bobb and Judge Robart.

[867] Seattle Times (8/22/2013) ["The Community Police Commission (CPC) is asking the federal judge overseeing reforms in the Seattle Police Department to postpone implementing a sweeping new use-of-force policy because the community and the department's rank-and-file haven't had enough time to review it];" *Seattle Times* (12/12/2013); Miletich, S. & Beekman, D. (2015, June 10). Mayor at Odds with Civilian Panel Over Its Role in Shaping Police Policy. Seattle Times; The Stranger (6/3/2015); Seattle Times (7/7/2015); *The Stranger* (9/24/2015*); Seattle Times* (9/24/2015); Miletich, S. (2018, October 18). Council urged to reject police contract. *Seattle Times.* Retrieved from https://www.seattletimes.com. ["In a major setback for Seattle Mayor Jenny Durkan, the city's Community Police Commission unanimously voted Wednesday to urge the City Council to reject the city's proposed contract with Seattle's largest police union"]; Miletich, S. (2019, February 21). Panel challenges SPD Labor Deal. *Seattle Times*; Carter, M. (2019, March 8). Seattle Responds to Police Commission's Concerns in Court. Seattle Times; Miletich, S., August 9, 2019, s, Citizen Panel Rejects Durkan Plan to Address SPD Accountability Flaws. *Seattle Times*; *Seattle Times* (9/21/2019); Miletich, S. (2020, July 7). Panel: City hasn't met

Participants acknowledged that Seattle was the first time the DOJ and a local jurisdiction decided to include the creation of a citizen panel in a consent decree. But given the particularities and dynamics of Seattle, and the people chosen by Mayor McGinn to be on the CPC, it was quickly recognized that a purely advisory committee "was not going to pass muster." One particularly prescient research participant commented that

> while the community must be given a voice, once the 'cat's out of the bag' you can't put it back in … it surprised me that no one quite realized that dynamic. I was surprised and chagrined that others were shocked by the subsequent actions and positions taken by the CPC.

One of the most significant challenges for the CPC was highlighted by the question of "who speaks for the community?" That is a particularly difficult question when faced with a diverse community and, in fact, the CPC was specifically challenged by then-U.S. Attorney Durkan who, at one point, lectured them that: "you don't own the community… and you are not the only people getting community input" (*Seattle Times*, 12/12/2013). Another participant opined that,

> although the CPC has been very effective in a lot of ways, it has never been "the voice of the community," it has been driven by its commissioners who are activists or people in the field… they are representatives of the community, but they don't necessarily represent the community. It has morphed into a completely independent body.

From the perspective of those working on consent decree implementation, it was recognized that while "on paper" the CPC seemed to be a workable program, in reality, attempting to limit such a group to only making recommendations, some (or even many) of which would not be followed, turned out to be a recipe for frustration and conflict.

According to research participants, there ended up being much frustration on the part of the SPD and the City, who would spend months negotiating with the CPC with ultimately the CPC coming back and saying: "it's not good enough – we are going to tell community and the court we are dissatisfied." The final dynamic included the Monitor

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judge's request for police-accountability remedies. *Seattle Times* ["A citizen watchdog panel on Monday accused the city of Seattle of dodging a judge's request for proposals to fix police-accountability flaws, saying the city's response suggests it doesn't appreciate the need for reforms that will bring it back into full compliance with federal mandates"].

who was reportedly “put off by some initial banal interactions and was not interested in having additional cooks in the kitchen.”

Participants tended to agree that all the various stakeholders appeared to perceive themselves as the experts in the areas under discussion and, as such, disagreements were not easily resolved. The dynamics were, apparently, not improved by the publicly stated beliefs of some CPC commissioners that the Monitor and the Judge were members of a “police reform industrial complex” who were unconcerned with and could not be trusted to keep the interests of the community in mind.

Within the City, participants believed that the CPC did an excellent job of “using raw political power to the maximum advantage, but for their own purposes.” Another participant referred to the CPC members as “bareknuckle street brawlers.” As noted by one participant, “there were a lot of sophisticated politically savvy people on the CPC, and some who saw their position as a way to amplify their political power.” Other participants referred to the CPC as “very leftist” and including “lots of damaged people who could not get over past issues with the police.” One high level City Official commented that “the CPC did not like externally imposed reform; they wanted to be a police commission like Los Angeles or Minneapolis and were being led towards wanting to hire the Chief.”

Even so, many research participants perceived the CPC to be generally ineffective. Some blame was attributed to Mayor McGinn, who reportedly “put strong but biased advocates on the CPC, which sent a bad message to the police.” Within the SPD, the CPC has sometimes been referred to as “a joke.” And a number of SPD participants questioned the CPC’s “value added” and suggested that “they don’t have a stick, they’re just noise.”

At the same time, it was universally recognized that the CPC has “put in untold thousands of hours of uncompensated work … and got smarter as they went along.” However, with the election of Mayor Murray and then Mayor Durkan, a number of the most vocal commissioners were not reappointed and research participants openly questioned what impact new commissioners would have on the CPC in its future iterations.

7.5.17. Thoughts about the Costs and Benefits Associated with Externally Driven Reform

A primary argument against externally driven reform, as repeatedly expressed by Mayor McGinn, was the concern that local resources would be depleted from other important City functions without giving due consideration to the totality of the city's needs.[868] According to one SPD insider: "the Monitoring Team had a laundry list of stuff they wanted and it was breathtakingly expensive." That insider questioned whether "it was really true that we had to spend $10 million a year on our training programs in order to be effective?"

A high-level official at SPD commented that in order to fund consent decree compliance,

> we had to do a lot of financial gymnastics to which the City turned a 'blind eye' … Everyone, including DOJ wanted to de-emphasize how much it was costing … We eventually got there, and it did force money to be given to the Department, but we got there in a disingenuous way.

Another high-level official in the O'Toole administration described the process somewhat differently:

> A lack of resources did not impact implementation at all. We didn't have a blank check, so we had to be innovative. We had to show the city's budget director that we were trying to be responsible managers. No one was really managing before – we had to get overtime handled and convince that we were not using our funding irresponsibly – you have to look at yourself in the mirror before start asking for more funds. We got grant money to assist us with our community policing micro plans and we volunteered to be the Guinea pigs with tech companies to implement technology. We had a great foundation to fund some officer safety and equipment initiatives. The most expensive thing was technology, but we had good people creating RFP's and forcing vendors to sharpen their pencils – we held their feet to the fire. Having the Consent Decree helped to get the funding, but we were able to emphasized other funding opportunities.

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[868] Miletich, S. & Carter, M. (2012, May 11). $5 million cost to Fed's Plan Mayor Says. *Seattle Times*. Retrieved from https://www.seattletimes.com. ["Raising the specter of painful cuts to parks, fire protection and human services, Mayor Mike McGinn said Thursday he has tentatively set aside $5 million a year to pay for the U.S. Justice Department's proposed plan to reform the Seattle Police Department"]; *Seattle Times*, 5/11/2012.

These two perspectives, shared by officials who would have been expected to provide a consistent message helps to demonstrate the complexity of the environment in which the reform effort took place. Each of these participants appeared to hold honest, but different, opinions on how the reform effort was financed even though they appeared to be on the same side with respect to the need for reform and the importance of financing those reforms.

The irony of SPD complaining about the cost of reform, was not missed by one City official who opined that: "If they had just spent the money to reform the SPD at the outset, it would have been much less than the cost of the Consent Decree and would have saved the extra cost of the Monitoring Team and the process."

One participant noted the ultimate benefit of externally driven reform to the City and the SPD: "The consent decree was a motivator towards change – it was the 'sword of Damocles' hanging over their heads."

7.5.18. Consent Decree Successes and Failures

Successes

Research participants were generally in agreement on the areas where the Consent Decree saw success:

- "One of the favorable outcomes of the Consent Decree was it really formalized out training process overall and injected some objectivity into the development of training, which had been previously driven by particular training Captains or Bureau Chiefs."

- Although there was substantial criticism within the SPD about the length of the new use-of-force policy and how quickly the new policy was implemented, most participants believed that it was quite effective in changing the way the Department approached force.

- Although some participants suggested that the SPD was well on its way with respect to improving its crisis intervention training and response, it was widely agreed that the CIT program improved dramatically during the implementation period. One City official noted that: "Crisis intervention, alone, that was worth the price of admission…"

- While some SPD participants objected to how the Monitoring Team went about addressing deficiencies in the review of force, participants widely agreed that great strides have been made by the

Department in its investigations and reviews of use-of-force incidents. Participants generally agreed that prior to the Consent Decree, "the review process was garbage" and that "officers are so much safer and better at using force now." A number of participants credited the new Use-of-Force Board as being "a crowning achievement," and with not just exposing individual cases and instances of excessive or out-of-policy uses of force, but also identifying deficiencies in training, policy, and supervision that "led to systemic changes that are there to stay." Even so, there is a strong contingent of SPD officers who believe that as a result of the Consent Decree, the disciplinary system has been overused and that officers are sometimes held to too high a standard when it comes to force incidents. In addition, concerns were expressed as to the sustainability of this reform based on a lack of vision from the current command staff.

- The City now has a working data platform. All participants tended to agree that without the Consent Decree, long-needed data systems would not have been funded. A number of participants noted that the Crisis Intervention System is reliant on the upgraded data platform and believe that without this work, the SPD would never have been successful in the implementation of its crisis intervention program.

- Many participants were supportive of the creation of the new Inspector General's Office and the current Inspector General received significant support. Those same participants tended to also note that civilian oversight (in the form of the OPA and the CPC), in general, received stronger support as a result of the Consent Decree.

- Although the Consent Decree did not specifically require the SPD to obtain Body Worn Cameras (BWC) for its officers, the Monitor, and subsequently the Court, strongly pushed for the purchase and implementation of the BWC system. Participants generally agreed that the system is now functioning effectively and is a strong factor in favor of ensuring accountability and resolving community complaints. As noted by more than one participant, "the addition of Body Worn Cameras to the conversation was nothing less than revolutionary."

- Most participants agreed that supervision of officers has improved, and credited the Consent Decree with eliminating the use of "acting" Sergeants and moving Sergeants into the same shifts as the officers they supervise; which had been considered a significant weakness in prior efforts to ensure officers received the supervision and support they needed. However, some SPD insiders noted that Sergeants, in fear of being criticized for failing to conduct competent line investigations, have taken to forwarding everything to the OPA resulting in "a lost generation of Sergeants who are not critically evaluating their subordinates." In addition, supervisors continue to complain about excessive amounts of paperwork that has to be completed to generate use of force investigation reports: "That

> means the Sergeant is not out supervising or teaching, only grading."

However, participants were in wide disagreement over the extent to which consent decree implementation actually impacted SPD culture. One civilian oversight of law enforcement practitioner made a particularly dramatic and unexpected observation, suggesting that post-consent decree implementation, "officers are more willing to admit when they have done something wrong – not just defend, defend, defend."

Failures

Perhaps the most dramatic finding of this research was the realization of just how traumatic the implementation process was to most, if not all, of the participants "working in the trenches." A significant majority of participants described emotions one would expect from a person suffering from post-traumatic stress syndrome. Many participants expressed feelings of "relief" at the conclusions of interviews, noting how cathartic it was to discuss their experiences. The levels of stress experienced by stakeholders throughout the City, the SPD, the Monitoring Team and the DOJ appears to have been palpable.

Participants expressed dismay over what appeared to be a lack of objective standards to assess the actual status of reforms and when those reforms would actually be completed. As expressed by one participant: "There was no clear, articulable conception… it was all over the place … not even the Court articulated a clear vision of how he would determine compliance." Another perspective that was heard quite frequently involved the tone from the Monitor and the Court: "it was always that SPD was making progress, but there was still a way to go." Participants suggested that message contributed to a type of "consent decree fatigue" that was not conducive to long-term, sustainable reform.

Participants consistently expressed dismay at the failure to send a positive message to the rank and file and ensure that they were aware of the positives of the reform process. As suggested by one SPD officer: "change management and the lack of support [internally] for the process was the biggest failure."

Another SPD officer suggested that the Monitor's oft-told message that better documentation of incidents would actually help officers would never be accepted by line

officers. He suggested that "there was no reward for officers for 'accountability' and fundamentally that is where it failed." The officer also suggested that by the point that the Monitor began his formal assessments, he "started backpedaling and rewarding the department with positive assessment reports that we did not deserve" and which allowed the Department to start arguing it was in compliance. The officer also noted that the creation of Administrative Lieutenant positions that the Monitor supported, to enhance the efficiency of force reviews, simply diffused frontline Sergeant responsibilities and has resulted in continuing supervision failures on the part of the line Sergeants. More than one participant suggested that "the biggest problem at SPD continues to be supervisory failures to manage officer behavior."

Multiple participants observed that the failure of the Consent Decree to address issues of accountability ended up being a fatal flaw. The result was that "the Consent Decree used up all the capacity" and accountability became "the bastard step-child" of reform.

Multiple participants also noted that neither of the two police unions (SPOG or SPMA) was ever fully brought into the reform process.

And even though many timelines were missed, a number of participants noted that too much change, over too short a period of time led to animosity on the part of the rank and file and was "like cold water in your face… the reformers forgot that it needs to be a two-part process, reform, then creation… somehow the creation part just got left out."

7.5.19. Organizational Change

Participants had quite a lot to say about the SPD and its capacity to change as an organization:

- As noted by one SPD participant: "every department has a different culture and different traumas that have been dealt with in different ways … organizations are like people, they are just as dependent on experiences, on their DNA and their future actions are hard to predict." This participant believed that the only way to reform the SPD was to bring in a Chief who could be a "change agent…able to come in, make enemies and then retire." Other participants agreed with that vision, noting that "at the end of the day, there was recognition that the SPD command staff had reached a level where

they were petrified, they had to be cleaned out at the leadership level; you needed to shake things up."

- In order to reform the SPD, one participant involved in implementation observed that it was necessary to "move from personality to process." It was remarked that was a particular challenge given the history of SPD leadership and Seattle politics.

- Another participant argued that "bottom line: if you do not bring the police with you, the attempt at reform will absolutely fail."

- "There was no need to break down the department and rebuild it…you don't build a great team by punishing players and making themselves feel bad about themselves; you can frame it otherwise." The participant believed that while the SPD had "definitely moved to a better place," the reform effort "did not do a great job on change management."

- Even so, participants in the reform effort believed that SPD "rank and file have come a long way, perhaps even unconsciously…it's rare to get someone to embrace something they don't like, but it's a mask that eats into the skin, once you have done something right for years, it's hard to going back to doing it wrong; it becomes part of your reality."

- One SPD participant had a particularly bleak outlook on the ability of the organization to change: "If you are going to do a massive change, you better do it fast before resistance can build. If you allow the opposition to coalesce under a shared narrative that will oppose you to the end, you will lose the people who were willing to support change." This participant believed that there was resistance among command staff that outlasted Chief O'Toole and which empowered the rank and file to wait out the reforms. This participant commented that "the Monitor believed that in order to change behavior, you have to get buy-in, but the organizational management literature shows it's much easier to just change behavior and let the hearts and minds follow… and there was no possibility of winning the hearts and minds in the SPD."

- "Morale slips and there is an opportunity for backsliding as far as Department culture goes, the longer the Consent Decree goes on. There is an optimum time as to when change takes place and then there needs to be some positive reinforcement, rather than just the hammering of the negative."

- One SPD insider suggested that "in order to connect and invest in the Department, you need to go to roll calls – but we weren't able to do that – internal communications were flawed, therefore, internal change management was flawed."

- "In order to change, the SPD needed a sense of urgency, they needed someone who recognized the department would be better in the end as a result of this effort and who was willing to emphasize

the positives. We tried to create a culture of innovation that went beyond the parameters of the Consent Decree…"

One generally agreed-upon aspect of SPD culture, however, was that the SPD command staff would never have changed nor would have been able to change their perspective without federal intervention. And while participants, as indicated above, disagreed on various aspects of how well change was implemented, virtually all agreed that it was necessary. In the end, it is clear that without some form of federal intervention, whether it had been more holistic than legalistic, the SPD would still be providing a level of policing that would propel it from crisis to crisis even more so than it does today.

7.5.20. Organizational Change & Trauma

As previously noted, the trauma experienced by those involved in the change process was palpable:

- "I knew it was going to be awful going into the department and try to implement a consent decree that no one wanted – I knew it would be difficult but I underestimated how much."
- "Very few people emerged from the process feeling elevated or satisfied by it."
- "It was so over the top…"
- "It's hard to get across how tense and stressful it was: 'the DOJ wars…'
- "It had quite the emotional impact…"
- "I suffered a lot over this. I have had to come to grips with it and am a lot calmer than I was before. It's not histrionic to say this did destroy some people psychologically."
- "A lot of people got stepped on during the process."
- "It was cathartic to participate in [this] interview. The work was extraordinarily difficult and exhausting."

In fact, a number of participants noted that they believed the process had destroyed or derailed their careers.

Once again, it is difficult to adjudge the extent to which the benefits of how the federal intervention was implemented may have outweighed the negative impacts associated with outside mandated change. In the end, however, the consensus appears to be that the SPD is a better organization than it was prior to the federal intervention effort and that any personal costs associated with that effort were outweighed by the organizational benefits enjoined by the entire Seattle community.

7.5.21. The Challenges Associated with "Police Culture"

Identifying the "culture" of the SPD is, as one would expect, a difficult endeavor. Once again, the answer you get is dependent on the person you ask. SPD leaders both publicly and privately have opined that the SPD culture promotes service and is devoid of any acceptance of corruption. Community activists saw a culture of "thuggery" and a willingness on the part of officers "to protect their own." The DOJ investigation itself noted that internal complaints against officers were virtually non-existent at the time of the investigation. So, what was the "culture" of the SPD and how did it assist or detract from implementation efforts?

- According to one SPD insider: "The October 2009 assassination of SPD Officer Tim Brenton was a traumatic event for the department. The reaction as a department was to 'bunker down,' to protect their own and that is still there. They are making good changes, tracking uses-of-force and implementing crisis intervention techniques, but the culture has not changed; line staff hasn't changed as to their feelings on how to treat people. The inability to critically self-analyze – it's a continuing problem for the department."

- Other SPD members disagree: "The culture of supervision has certainly changed. Before the Consent Decree, our Sergeants tended to take care of their guys, who would really have to 'go off the reservation' to lose their support. We have been reminded that supervision is actually a responsibility, not just an increase in pay."

- According to a former SPD officer, however: "The culture of the SPD and how to protect itself was set in the era of traditional corruption and continues to this day…"

- An SPD command officer suggested that: "SPD culture has always been very good at reporting serious misconduct, but there has been a tolerance for rudeness and sloppiness and it has certainly been debatable as to what is excessive force. The consent decree changed that culture to a certain extent; it feels like we are overreporting, which is killing morale and demoralizing the department."

- According to a participant involved in the implementation of reform: "The norms and culture have shifted, even if not acknowledged by the SPD. Things that were acceptable six years ago are not acceptable now…"

- According to one SPD civilian: "The police culture is toxic. I don't think we affected the culture. They remain incredibly sensitive to any criticism or even the suggestion that there is a need to improve."

- One department overseer suggested that "culture impacted the Consent Decree and the Consent Decree impacted the culture. The SPD had some brutal cops, but not a brutal culture – what you saw was the result of very poor use-of-force training that emphasized street fighting to pre-emptively end force before it began."

In attempting to determine to what extent Seattle's police culture may have been impacted by the Consent Decree, it is interesting to compare the 2010 "Mexican piss" case, wherein an officer used a racial slur in front of other officers, none of whom reported the offensive comment to supervisors, to an incident that took place in 2020, wherein an officer was ultimately fired for referring to an African-American arrestee as "Kunta Kinte" in front of other officers. The comment was not made publicly, and the comment was reported by the witnessing officers without any outside influence.[869] The difference in SPD officer response to similar offensive racially-inspired comments seems to suggest improvements in SPD's overall culture of accountability over the past ten years.

7.5.22. On "Depolicing"

As discussed in Chapter 4.6, an ongoing debate relating to the efficacy of externally-driven reform relates to charges that officers will have a reduced tendency to engage in proactive policing activities that may, otherwise, benefit the community (Rushin & Edwards, 2017; Chanin & Sheets, 2018; Devi & Fryer, 2020).

Also as previously indicated, in his 9th Systemic Assessment, the Monitor examined and addressed ongoing allegations of "de-policing" as it related to the implementation of the Consent Decree and found no evidence of de-policing (9th Systemic Assessment, Use of Force, pp. 59-60). Even in the face of those facts,

[869] Kamb, L. (2021, January 17). Seattle Police Chief fires officer for racist remark after fellow officers report him. Seattle Times. The Times also reported that SPOG had declined to appeal the officer's termination.

however, as with other departments that faced consent decrees, SPD officers participating in this research claimed that the implementation of the Consent Decree in Seattle resulted in police being less effective and less willing to enforce the law:

- "I sense that officers are more timid and unwilling to get involved in any issues. It's more of a group response now – no cop is going to enter into a use-of-force situation without the backup, but that causes budget issues, and causes a loss of efficiency. And then there's all the report writing….so police do less…"

- "There was the position, 'you want compliance, we'll give you strict compliance' … Officers were choosing not to engage in a way that may have put them in a position to use force and don't know how to engage without using force, so they're just not engaging at all."

- "I believe it happened; I've seen the numbers and they were drastically reduced…I do not know if lasted or how long it lasted."

- "the Consent Decree caused chaos and confusion and caused de-policing."

- "The Monitor asserted no de-policing, but his reports were not based on evidence or facts and no one wanted [to hear anything to the contrary]."

- "There were some officers who were just afraid to contact people; proactivity equated with a complaint…"

In a *Seattle Times* article, published in May 2014, three years before the Monitor's Ninth Systemic Report, it was reported that the SPD officers who were challenging the new use-of-force policy in federal court, alleged that the new use of force policies had

> created 'hesitation and paralysis' among officers, stripping them of their constitutional and legal right to make reasonable, split-second judgments in the line of duty … As a result, officers are afraid to do their job for fear of being second-guessed over burdensome, complicated and voluminous policies.

The suit further alleged that "[a]side from evidence that officers are hesitating and/or failing to use appropriate and lawfully justified force to address threats safely and effectively, there is evidence of a dramatic decrease in proactive police work to investigate and stop crime" (*Seattle Times*, 5/29/2014).

The article further referenced an SPD report that "revealed steep drops in the enforcement of lower-level crimes, traffic offenses and infractions in recent years as

officers shave displayed less willingness to seek out illegal activities" (*Seattle Times*, 5/29/2014). However, on June 2, 2014, the CPC issued a press release about that same report, which had been presented by an SPD analyst on May 14, 2014, stating that:

> [t]he presentation, a Power Point showing raw data on traffic and pedestrian citations and misdemeanor charges filed in Seattle Municipal Court from 2005-2013, has been erroneously referred to as a 'report,' and cited as concrete evidence of so-called de-policing. It was neither.

Instead, the CPC reported that: "[t]he May 14 presentation … was a first step in the department's efforts to review data with the CPC to identify areas in which alternative approaches might reduce enforcement disparities without compromising public safety." The CPC concluded by noting that the presentation could be interpreted, in a positive way, as indicative of improvements in policing as a result of the Consent Decree:

> In the view of the CPC, the data presented on May 14 do not present any clear evidence of so-called "de-policing." While some of the trends could reflect decreased productivity, that is not clear, and in fact, the lower levels of citation and arrest in some areas may likely reflect the Department moving in directions that DOJ, the CPC and many other community leaders have long called for: de-escalation of minor incidents, crisis intervention training for engaging mentally ill individuals, and community-based diversion of many quality of life-type offenses. Additionally, the CPC believes it is quite likely that some if not many of these developments are cause for commendation of the department. (CPC Press Release, June 2, 2014) [870]

As previously noted in Section 4.6 and 7.3.2, no objective proof of depolicing was identified as a result of the Seattle DOJ investigation and intervention. Instead, it appears likely that any depolicing that may have taken place would be attributable to underlying issues of police accountability and public scrutiny not specifically related to the federal reform effort.

7.5.23. The Challenge of Managing Police Accountability

As noted by a number of participants, the Consent Decree's failure to specifically include requirements regarding police discipline and accountability, led to a concurrent reform track, which ultimately resulted in the City Council, at the urging of the CPC, to

[870] Retrieved from https://www.seattle.gov/Documents/Departments/CommunityPoliceCommission/CPC%20Press%20Release_Data%20Presentation%206-2-14.pdf.

pass an "Accountability Ordinance,"[871] which was later scaled back by the contract entered into between the Seattle Police Officer's Guild and the City. As previously noted, it was that contract that, in part, ultimately led to the City being found "partially out-of-compliance" with the Consent Decree.[872]

Both the City and the DOJ opposed the "out-of-compliance" finding, which was, however, supported by the CPC and the Monitor.[873]

A minority opinion among research participants, but one that resonates given the implementation history in Seattle, is that joining the police union as a party to the Consent Decree and, thereby putting contract negotiations within the purview of the federal court, could have potentially led to an earlier resolution of the accountability issues. Although court hearings would likely have become more combative and challenging, overall, it seems likely that Judge Robart would have been able to manage the process effectively.

Participants noted, however, that, once again, politics interfered. By this point in time, Mayor Durkan and City Attorney Holmes were solidly behind the SPD and the police unions, arguing that the City was in compliance and the union contract did not divert from the Consent Decree. The CPC, members of the City Council, and the Seattle Oversight mechanisms (the Inspector General and the OPA Director), however, believed that the ultimate contract negated important parts of the Accountability Ordinance. To

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[871] Ordinance No. 125315, passed June 1, 2017, located at: http://www.seattle.gov/Documents/Departments/OPA/Legislation/2017AccountabilityOrdinance_052217.pdf.

[872] U.S. v. Seattle, Document 562, filed May 21, 2019.

[873] Although the Monitor's February 2019 "Sustainment Plan Update Report" did not specifically support an out-of-compliance finding, research participants acknowledged that the Monitor and the Judge were in full agreement that discipline and accountability issues needed to be considered as integral parts of consent decree compliance. As noted by one participant, "If there's no accountability, the Consent Decree is made a nullity. What is the point of a consent decree if you don't have discipline and accountability?" In his report, however, the Monitor left it up to the Judge to determine whether or not the SPD was in compliance: "It is important to note that crucial issues around discipline, accountability, the collective bargaining agreement, and accountability legislation, all bearing upon the sustainment of compliance, are currently pending before Judge Robart. Those issues are of such sufficient moment that one cannot judge the status of sustainment without them. Thus the Monitoring Team does not draw any conclusions at this stage whether the SPD remains or does not remain in compliance in whole or in part. Whatever the case may be, the SPD performs well in many areas" (Sustainment Plan Update Report, p. 2).

add confusion, the DOJ took the side of the City and the Monitor was aligned with CPC, vocal City Council members and Seattle civilian oversight. While the Judge ultimately took the side against the union contract, to this day the contract remains in effect, with Mayor Durkan only promising to make changes in the disciplinary and appeal processes "top priorities," but not until the contract negotiations for 2021 (*Seattle Times*, 8/17/2019a).

And while many research participants pointed to the discipline system as "broken" from the perspective of holding officers accountable for misconduct, other participants referred to the system as being broken from another perspective. According to one civilian oversight practitioner:

> While the Monitor's efforts have been largely systemic, officer accountability has been the focus, leading to an increase in the number of officers being investigated by OPS – at one point 60% of the department was under investigation – that is evidence of a broken system.

With the CPC charged in the Memorandum of Understanding with reviewing the structure of Seattle's Accountability System,[874] and no other mention of accountability or discipline in the Consent Decree, some participants believed the DOJ and the City put the issue of accountability "at the kid's table," thus assuring that it would be a continuing problem for the SPD and the Seattle community.

7.6. Seattle Consent Decree Implementation – Political Voices

As noted by virtually all participants and as made obvious by news coverage of the Consent Decree, City politics was not just largely responsible for SPD's ability to maintain its own form of policing, even against community opposition, but was also an integral part of both the successes and challenges faced by those pushing forward the reform effort. The three Seattle Mayors whose tenure have covered the implementation period approached the DOJ reform effort in sometimes diametrically opposed ways, and with varying degrees of success given the positions taken by the City Attorney and members of the City Council. As explained by more than one participant, the City could

[874] U.S. v. Seattle, Memorandum of Understanding, July 27 ,2012, pp. 4-5

be described as “a multi-headed hydra” when it came to the different political agendas of the different politicians. This section highlights the comments and positions of this diverse group of very public stakeholders.

7.6.1. The Seattle Consent Decree Mayors

Consent decree experiences varied according to the Mayoral administration in place and the state of implementation.

Mayor Michael McGinn.

The incoming mayoral administration of Michael McGinn did not expect police reform to be at the top of his agenda when he took office on January 1, 2010. McGinn, known as a community activist and a former State Chair of the Sierra Club, ran his campaign largely on a transit platform opposing the construction of a tunnel to replace the aging Alaskan Way Viaduct, an elevated freeway that ran along the Seattle waterfront. McGinn ran as a political outsider with the support of groups described as “environmentalists, biking advocates, musicians, advocates for the poor, nightclub owners and younger voters (*Puget Sound Business Journal*, 8/8/2010).”[875] He replaced Mayor Greg Nichols, who had previously served two four-year terms in office and who lost to McGinn and another candidate in the primary election.[876]

Upon taking office, Mayor McGinn faced the need to find a permanent replacement for Chief Gil Kerlikowske, who had served as Chief from July 2000 through March 2009, when he was named as the “Drug Czar” by the Obama Administration. Former Mayor Nichols had chosen to replace Kerlikowske with a long-time SPD command officer, Assistant Chief John Diaz, who was then serving as interim Chief. On May 12, 2010, McGinn’s search committee proposed Diaz and two Northern Californian Chiefs as finalists for the position. Prior to McGinn’s ultimate decision, the SPD had not

[875] Lamm, G. & Wilhelm, S. (2010, August). The New Guard: Outsiders gain clout at Seattle City Hall*. Puget Sound Business Journal*. Retrieved from Outsiders gain clout at Seattle City Hall - Puget Sound Business Journal (bizjournals.com).

[876] See, Nickels biography, located at: http://self.gutenberg.org/articles/eng/Greg_Nickels.

had a permanent Chief selected from within its ranks in more than 30 years (*Seattle Times*, 5/12/2010).[877]

McGinn ultimately selected Diaz to serve as his permanent Chief and Diaz was confirmed by City Council and sworn in as Chief on August 16, 2010 (*Seattle Times,* 8/16/2010).[878] Unfortunately for Chief Diaz, he had only two weeks to sit on his laurels before the shooting of native woodcarver John T. Williams would put police reform on the front burner of the McGinn administration's political agenda.

According to study participants, McGinn believed that Diaz was "a believer of incremental change from within." However, when faced with the DOJ investigation findings in December 2011, Chief Diaz reacted like a true SPD insider when he reacted with "skepticism" at the DOJ's findings. In the face of a statement by Assistant Attorney General Perez (who was in charge of the DOJ's Civil Rights Division) that the SPD's accountability structure and policy and training systems were "broken," Diaz responded within hours of the release of the DOJ investigation report with a strong response: "I want to make this clear … the Department is not broken" (*Seattle Times*, 12/17/2011).

Mayor McGinn later described his resistance to DOJ intervention as not a resistance to reform, but a resistance to "rolling over" and accepting DOJ's prescription for reform. Both McGinn and Diaz, reportedly, were not willing to give up on the idea of self-initiated reforms, which, ultimately led to conflict with the DOJ during the negotiation of the Consent Decree and ultimately, was likely the downfall of the McGinn administration.[879]

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[877] Miletich, S. (2010, May 12). Diaz picked as finalist for Seattle police chief - 2 Californians On List - McGinn must submit choice to City Council, which then will vote on confirmation. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[878] Seattle Times (2010, August 16). Now comes hard part - McGinn selects Diaz to lead police; Much to do to make Seattle a safer city. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[879] Many study participants criticized the response of Mayor McGinn and Chief Diaz, concluding that because of their opposition, there was a lack of "adequate communication" to the rank and file. According to participants, the opposition of McGinn and Diaz resulted in officers not learning about the potential positive ramifications of the Consent Decree: "instead, they focused on the 20% finding which was perceived as having been the conclusion of some 'idiot' at DOJ who made that finding without cause."

While negotiating the Consent Decree, Chief Diaz and the Mayor's Office put forward a *20/20 plan*, which was described by an SPD blog on March 29, 2012 as follows:

> Rather than waiting for the DOJ to deliver a list of demands in the form of a legally enforceable consent decree, the police department has drawn up a far-reaching list of 20 reforms to police practices, policies, and procedures to be put in place over the next 20 months.
>
> A number of high-profile incidents over the last few years have done a great deal of damage to the public's trust of SPD. That has to be earned back through transparency, by improving public perception and bringing the police department into the 21st century.
>
> That's why the 20/20 plan's extensive overhaul is all about smarter, more efficient, more accessible, and equitable policing.
>
> "I'm committed to a police force that protects public safety, fights crime and treats every individual with dignity and respect," Mayor McGinn said Thursday.
>
> Under the 20/20 plan, officers will receive training emphasizing things like communication skills, as well as de-escalation training so they're better prepared for tough interactions out on the street, whether they're dealing with a hostile crowd of protesters or individuals with mental illness and substance abuse issues.
>
> The department will also take a data-driven and technology-based approach to public safety, allowing the department to better monitor, respond to, and proactively address crime before neighbors feel unsafe in their own homes.
>
> Technical innovation will also allow the department to better track officers' use of force, to make sure officers are properly using the authority the public has entrusted them with, and it will make public records and data even more accessible to the public.
>
> The department is also making efforts to become more accessible to Seattle residents, both by giving officers more opportunities to meet and interact with neighbors in the precincts they patrol, and by engaging with the public on social media like Facebook and Twitter. Seattle deserves to be able to see and understand how and why the police department operates the way it does.
>
> To make sure the community supports these reform efforts, the department has engaged with the Minority Executive Director's Coalition (MEDC),

> which made 90 recommendations to SPD, many of which were incorporated into the 20/20 plan.[880]

In the blog, Mayor McGinn was quoted as saying, "Don't let a good crisis go to waste, that's how we're viewing this." Mayor McGinn was also quoted as "noting that the threat of a federal lawsuit and consent decree has 'lent a sense of urgency' to the department's reform efforts: 'There's opportunity in here, and we're looking to seize that.'"

Although publicly, the DOJ was not specifically critical of the 20/20 plan,[881] study participants noted that by all appearances, the plan was nothing more than an attempt by Diaz and McGinn to get out from under a consent decree with a court-appointed monitor, who McGinn and Diaz had publicly referred to as a potential "shadow-Chief" or "shadow-Mayor."

And, according to study participants, McGinn and Diaz publicly proposed the plan without consulting with or providing prior notification to either the elected City Attorney or members of the City Council. In fact, the plan was announced almost immediately after attempts to reach consensus between the Mayor and other Seattle elected officials on the City's response to the DOJ investigation had failed.

Also, according to study participants, although Diaz himself did not attempt to thwart reform, there was certainly "malicious compliance" from elsewhere within the SPD command staff. Study participants identified the lack of ownership over the Consent Decree by Diaz (and by extension, McGinn) as providing SPD command staff with the "cover" they needed to passively and quietly resist reforms in every way possible. Even so, as indicated in the Seattle Monitor's semi-annual reports, significant policy work was developed during the first two years of the implementation process; although virtually all participants agree that much more could have been achieved had Department command staff bought into the reforms from day-one.

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[880] Retrieved from https://spdblotter.seattle.gov/2012/03/29/spd-2020-a-vision-for-the-future/#:~:text=Under%20the%2020%2F20%20plan%2C%20officers%20will%20receive%20training,individuals%20with%20mental%20illness%20and%20substance%20abuse%20issues.

[881] The Seattle Times reported the DOJ's response to the 20/20 plan as follows: "[U.S. Attorney] Durkan declined to say whether she believed the mayor's plan to roll out the 20 police-reform and anti-crime initiatives in 20 months would satisfy the issues raised by the investigation. 'I think what I'm most encouraged about, though, is that I saw the mayor and the chief of police side-by-side saying they support reforms,' she said" (*Seattle Times*, 3/31/2012).

Arguably, it was only when Ed Murray defeated Mayor McGinn at the polls in 2013 and a new permanent Chief was appointed in 2014 did the SPD fully engage the reform effort.

Mayor McGinn's experience – the political background.

Study participants noted that McGinn came into office with "major opposition." The City Council had previously voted unanimously in favor of a replacement tunnel for the Alaska Viaduct freeway, which McGinn publicly opposed. The McGinn administration was, reportedly, perceived as consisting of "outsiders." Members of the administration today believe that if McGinn had been "a member of the [Seattle Democratic] club," "things would have gone down different" and believe that "Jenny Durkan would never have gone after someone in the democratic establishment."

Interestingly, the Seattle DOJ investigation was one of the first to include the local U.S. Attorney in a §14141 reform effort. A positive impact of such inclusion is the opportunity for more local involvement in the review of a department and the implementation of reform, based on a better understanding of local history, culture, politics and potential obstacles. Unfortunately, however, there is also the potential for the police and local politicians to perceive the local U.S. Attorney as a political threat and to imply bad motives to that person and their office. Local U.S. Attorneys are appointed by the federal government-of-the day and are expected to resign upon the election of a new Presidential administration; as such, in most cases, their longevity is limited, and is some cases, former U.S. Attorneys may have political aspirations in local government. As was proven in the case of Seattle, when former U.S. Attorney Durkan announced her plans to run for Mayor, in July 2017 (*MyNorthwest.com*, 7/3/2017).[882]

If, in fact, the DOJ investigation was used as a political tool, it would have been a brilliant move – as it appeared to ultimately isolate the McGinn administration from part of its base – progressive white liberals who wanted the stain of a DOJ investigation to go away.

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[882] MyNorthwest Staff (2017, July 3). Jenny Durkan: From running for Rainier to running for Seattle mayor. *Mynorthwest.com*. Retrieved from Jenny Durkan: From running for Rainier to running for Seattle mayor (mynorthwest.com). That all being said, there is no way to know what, if any, political aspirations then-U.S. Attorney Durkan may have had when the DOJ first announced its intent to investigate the SPD.

In the end, one has to ask why the incoming McGinn administration appeared so supportive of the SPD and so resistant to the DOJ? The answer appears to be in the populist nature of McGinn and his administration. While there is no question that McGinn supporters would be generally supportive of police reform, it was the issue of externally driven police reform, as opposed to community-driven reform, that appears to have been the sticking point. In addition, McGinn had recently chosen Diaz to lead the police department; it would not have been particularly politic to fire Seattle's first Latino Chief and replace him with an outsider. Further, McGinn had an incentive to try to work with his Chief, who he believed was dedicated to incremental, long-term police reform. According to McGinn himself, it was important for him to give community a voice in the process and he was inherently suspicious of not just DOJ motivations but of their ability to come up with affordable and sustainable reform options.[883]

McGinn and the DOJ.

McGinn's position on the DOJ's investigative findings was certainly influenced by SPD command staff. And, by all accounts, the meeting between the DOJ and the City to discuss the DOJ's findings went very poorly. The meeting was almost impromptu, at least as perceived by SPD command staff and City leadership, who were "invited" to meet with DOJ leaders and team members the night before the press conference announcing the DOJ's findings. While the DOJ may very well have been seeking to avoid any "leaking" of their report to the media by not providing the SPD with a draft report or an advanced copy, the result was SPD command staff feeling "ambushed" by aggressive and critical findings that tore at the very core of the command staff's professionalism and their ability to manage their own Department.

At the meeting, where both the Chief and the Mayor were present, the conversation quickly denigrated to demands for the data supporting the conclusions that the SPD command staff claimed to be shocking and insulting. Those data demands were quickly followed by DOJ refusals to "go into the weeds" and clear instructions from the DOJ that such information would only be provided during discovery proceedings if the case were to go to litigation. The meeting, by all accounts, got "heated," with the

[883] See, Transcript of May 11, 2015 podcast (Lisa Daugaard conversation with former Mayor Michael McGinn), on file with author. Retrieved from http://www.mikemcginn.co/podcast-2/2015/5/11/lisa-daugaard-deputy-director-of-public-defender-association.

Mayor representing that the City "want[ed] to fix these things too," but needed to see the underlying data and reportedly advising that: "[w]e want to understand what has gone wrong, so we can fix it." SPD command staff claimed that the report was prepared without any consultation, with DOJ referring to prior conversations between DOJ experts and the SPD and with both sides disagreeing as to the content of those prior conversations.

Eventually, Durkan asked to speak with the Mayor privately. Study participants who were later briefed on the meeting, described Durkan as implicitly threatening the Mayor with the potential consequences of getting into a fight with the DOJ and the potential political ramifications of the embarrassment that would be sustained by the SPD from revelations that would be made public in court. The Mayor, reportedly, had a visceral personal reaction wondering why there could not be a collaborative conversation and opposed to the idea that DOJ would be given the power to take over and dictate police reform in Seattle. This was likely the genesis for the Mayor's later-stated belief that the DOJ was intent on putting into place a "shadow Mayor" or "shadow Chief" in the form of a court-appointed Monitor.

Mayor Murray reportedly walked out of the meeting feeling personally bullied and insulted by what was perceived as a disrespect for the City's intentions and the solutions the City and his newish administration had to offer. As noted by one City insider:

> So, this was not an atmosphere of good faith and collaboration. They were not interested in giving us any data and they published an inaccurate report. The Mayor was threatened by Durkan and told 'not to fight us.' So, the real impact internally was with respect to concerns regarding procedural justice. Are we working together or is this an adversarial relationship where we really don't have a voice? It felt like it was the latter. In the end, we were really just struggling to have a voice in the process.

At the same time, both the DOJ and the McGinn administration were fully aware of the challenges faced in forcing reform on the SPD command staff which had been referred to as "a Game of Thrones type of police leadership." Due to Civil Service rules, Assistant Chiefs could only be demoted and not fired; upon being demoted, they would simply wait for the next administration to be repromoted. SPD leadership was referred to it as being "like crabs in a bucket – while some are going up, others are coming down."

Even so, Mayor McGinn had faith in Chief Diaz, who he believed was "acting like a team player," leading reform efforts and conducting "great outreach."

Ultimately, McGinn chose to aggressively negotiate the Settlement Agreement. His position, as reported by study participants, was that if he was going to lose re-election over any conflict with the DOJ, at least he would get an agreement that achieved his goals. In other words, he did not intend to "roll-over" in negotiations and intended to insist that any reforms be generated from within the city. As such, McGinn did not want the Monitor writing Department policy, but wanted new policies to be generated within the SPD and then reviewed by the Monitor for compliance.

Overall, McGinn's reaction to the DOJ investigation appears to have been impacted by a number of factors: an interest in supporting his choice for police chief, reports from the City Attorney's Office that the DOJ investigation was faulty,[884] a preference for local and community control over policing, and a sense of a lack of procedural due process in the whole affair.

According to one member of the McGinn administration, regardless of any other appearances,

> there was no resistance to reform, there was resistance to rolling over and accepting their [DOJ's] prescription for reform … We hadn't given up the idea of self-initiated reforms; at the same time, we could not telescope that we would accept a Consent Decree under any circumstances – that would have given the DOJ all of the power in the negotiations.[885]

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[884] As has been previously mentioned, Mayor McGinn was presented with a confidential memo, prepared by a member of the City Attorney's Office, that reportedly identified numerous mitigating facts that were excluded from the DOJ report and established that the DOJ report overstated case-specific problems identified over the course of the investigation. "Literally, [a Deputy City Attorney] took the DOJ report and added in the facts that were left out."

[885] As reported in the *Seattle Times*, in June 2012, Mayor McGinn, went to Washington D.C. to meet with the Head of the DOJ's Civil Rights Division, in an attempt to establish a more collaborative approach to the negotiations. This meeting was scheduled after the City had received "two sternly worded letters … in May [from the Chief of the DOJ's Special Litigation Section] questioning the city's willingness to negotiate in good faith." (Miletich, S. & Carter, M. (2012, June 12). McGinn, federal officials to discuss police changes - Source: Mayor to meet with DOJ's civil-rights chief Deadline near for consent decree between parties. *Seattle Times*. Retrieved from https://www.seattletimes.com.

According to study participants, McGinn went to Washington D.C. after conferring with other Mayors whose cities had been the subject of DOJ pattern or practice findings. In addition to

Another perspective, however, was that in Seattle, there was a savvy police department that ingratiated itself with the new Mayor and convinced him that they could improve themselves without any outside help. The *20/20 plan*, proffered by the SPD and embraced by the Mayor, was, according to SPD insiders, really no more than "a repackaging of things already on the books – a grab bag that the Mayor could use to convince himself that he was effectively in charge."

McGinn Administration Experiences - Lesson learned.

One potential lesson learned from the negotiation process was the negative ramifications of the short-term litigation strategies used by both the DOJ and the City at the early stages of the process. The DOJ, by refusing to share its data or methodology with the City, likely set back any real collaboration with the City by one to two years;[886] from the City side, the City's counter-offer to the DOJ did not include any provisions relating to biased-policing – based in large part on the fact that the DOJ investigation did not find a provable pattern or practice of biased policing on the part of the SPD. As described by City research participants, City litigators had opined that the DOJ was overreaching wanting to include such provisions in the original proposal and would lose in court if attempting to force such provisions on the City. In reality, however, once the City's position was leaked to the media, which was probably inevitable, McGinn's constituency was "appalled" and McGinn had to re-engage with the DOJ on that issue (See, *Seattle Times*, 5/18/2012).[887]

Given McGinn's sense of populism, it is arguable that with the receipt of a Technical Assistance Letter, accompanied by the threat of a future Consent Decree, McGinn and Diaz could have achieved some semblance of reform. It is certainly questionable, however, as to whether that more limited "use-of-force option" by the DOJ

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meeting with Assistant Attorney General Thomas Perez, McGinn also met with at least one other high-level DOJ official; at each meeting, he reportedly argued that the DOJ appeared to be treating Seattle and his democratic mayoral administration no different than it was treating more notorious jurisdictions, such as the Maricopa County Sheriff's Department, led by conservative Sheriff, Joe Arpaio.

[886] Although it is also possible to argue that no real collaboration would have been forthcoming even if the DOJ had shared its data and methodology – in fact, it may be just as likely that SPD command staff would have used that information to simply attack the DOJ investigation report and further resist any externally driven reforms proposed by the DOJ.

[887] Miletich, S. & Carter, M. (2012, May 18). City's reply to DOJ omits issue of bias in policing - Response concentrates on excessive force Some community groups upset; others back strategy. *Seattle Times*. Retrieved from https://www.seattletimes.com.

would have actually resulted in the type of reforms that were actually achieved by the Consent Decree, given the culture of complacency that existed within the SPD command staff that was unlikely to change without some form of external pressure.

The decision to go straight to a litigation-based strategy, however, was certainly in conflict with a community-based concept of police reform that might very well have been supported by a critical mass of Seattle voters. And the decision resulted in the following blunt assessment of the overall reform process by one participant within the McGinn administration:

> How did we end up being in a situation where disenfranchised communities are finding themselves at the wrong end of bias and we have decided that three well off-White men [referring to Monitor Bobb, Judge Robart & City Attorney Holmes] are the ones that will have the power to address that?

Table 7.10. Public Statements by Mayor McGinn

Date	Statement
December 22, 2011	In a "strongly worded" letter to Chief Diaz after the DOJ investigation report was released: "This process of change cannot wait … We have heard from the public and now the federal government that more must be done … We agree. Let us be very clear: we are committed to reform." In an interview with the *Seattle Times*, "We're committed to making reforms here, but we need to work through with DOJ about what those reforms look like, … There's not a recommendation that we say, 'we can't do that,' or 'you're wrong there.' There are some we've done already; there's some we started; and there are some we're working toward … My objective is to have a highly professional police force that treats everyone with dignity and respect, and I think that's a goal that is shared by a vast majority of officers" (*Seattle Times*, 12/22/2011).
February 3, 2012	Statement by McGinn spokesman: "We are working to define the public engagement process…" (*Seattle Times*, 2/3/2012).
March 30, 2012	"The 20 proposed initiatives are aimed at supporting a just and effective police force, … The changes we are proposing are intended to be lasting and sustainable ... whether or not they are included in a consent decree, ..." (*Seattle Times*, 3/30/2012).
March 31, 2012	"We will negotiate in good faith…" (*Seattle Times*, 3/31/2012).
May 10, 2012	Speaking to *Seattle Times* editorial board regarding the City's *20/20 plan*: "This is where we've put a stake in the ground marking what we know we can do…" (*Seattle Times,* 5/10/2012).

Date	Statement
May 12, 2012	"We fully cooperated with the Department of Justice during their eight-month investigation, … We offered our assistance during the three-and-a-half months they took to prepare their proposal. And we will respond within the six-week timeline we have said we needed for review … As the U.S. attorney said on *KUOW* today, the city has an agreement with the U.S. Attorney's Office to not discuss negotiations in the press as we work in good faith toward a mutually acceptable agreement to support a just and effective police force" (*Seattle Times*, 5/12/2012).
May 15, 2012	"[A consent decree] is not a sticking point for us … We are prepared to spend money – but not in a way that compromises public safety … [referring to the potential for 'a shadow mayor']" (*Seattle Times*, 5/15/2012).
May 17, 2012	Statement by McGinn spokesman: "We shared our response with the Department of Justice today. It included a consent decree and a monitor. Our hope is to continue to work in good faith toward a mutually acceptable agreement that supports a just and effective police force" (*Seattle Times*, 5/17/2012).[888]
June 13, 2012	According to the Seattle Times: "McGinn said he sought the meeting with Perez because he already was on the East Coast and believed it would be "helpful if we got to know each other" (*Seattle Times*, 6/13/2012).[889]
June 22, 2012	"Even without the mediator, progress is being made …" "McGinn said Thursday that … his discussion with Perez got the Justice Department back to negotiations and engaged in intense talks" (*Seattle Times*, 6/22/2012).
July 18, 2012	Responding to criticism from City Attorney: "It's my job to work with Mr. Holmes, and I will" (*Seattle Times*, 7/18/2012).[890]
July 27, 2012	According to the *Seattle Times*, "At Friday's news conference, McGinn explained that three goals guided him throughout the negotiations: effective police reform, enhanced public safety and staying within Seattle's budget" (*Seattle Times*, 7/29/2012a).
October 23, 2012	Statement issued by McGinn spokesman, shortly after City Council voted to back Merrick Bobb for Monitor: "We know from the experience of other cities that reform efforts are successful when the police force buys in to the effort. Our office and others expressed concerns that Mr. Bobb would not be seen as an impartial monitor … We are disappointed that the Council did not listen to those concerns and that our reform efforts may prove more difficult as a result of their vote, … We believe that their vote was a mistake, but respect that this is now the City's position. Going forward, the mayor will roll up his sleeves and continue to work with all stakeholders to implement reform in our police force" (*Seattle Times*, 10/23/2012).

[888] Carter, M. & Miletich, S. (2012, May 17). Seattle awaits reaction to its proposed police fixes. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[889] Miletich, S. & Song, K. (2012, June 13). Seattle, U.S. leaders meet on 2 coasts in search of police fix. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[890] Carter, M. & Miletich, S. (2012, July 18). McGinn says Seattle can avoid a DOJ lawsuit. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
February 27, 2013	According to the *Seattle* Times: "In a strongly worded email, McGinn's legal counsel, Carl Marquardt, accused [elected City Attorney] Holmes of an ethical breach of the attorney-client privilege as the city works to comply with a settlement agreement with the Department of Justice to curb excessive force and biased policing: 'Executive branch departments are entitled to have legal representatives who respect confidentiality and represent their interests…'" (*Seattle Times*, 2/27/2013).
March 5, 2013	According to the *Seattle Times*, "Declaring that 'a lawyer shall abide by a client's decisions,' McGinn directed Holmes on Tuesday to obtain his written authorization before approving the Monitor's far-reaching proposals. In a memo to Holmes, McGinn cited what he called his role as the city's chief executive officer and chief law-enforcement officer" (*Seattle Times*, 3/6/2013).[891]
March 6, 2013	As reported by the *Seattle Times*: "In an interview on *KIRO* radio Wednesday morning, McGinn said he was sorry the fighting had escalated and signaled his intent to call a meeting with Holmes, Police Chief John Diaz and Merrick Bobb, the independent monitor tracking the reforms, in a joint effort to reach a binding accord. 'I really regret that we're at this position publicly,' McGinn said. 'I really have to say that. It's not where I think either of us want to be'" (*Seattle Times*, 3/7/2013b).[892]
March 9, 2013	According to the *Seattle Times*: "McGinn's office said in a statement that, after a 'good conversation' with Bobb, McGinn accepted the plan based on a 'mutual understanding that the plan is a living document' that can be amended. The parties also will work together on timelines for adopting the reforms detailed in the settlement agreement, the statement said. McGinn and Bobb further agreed to hold regular meetings in an effort to 'better align the work of the City and the Monitor on reform, which the City Attorney will also attend'" (*Seattle Times*, 3/9/2013).
August 2013	In an interview with the *West Seattle Herald* [as reported by the *Seattle Times*]: "This [the CPC] is something I got into the agreement and isn't something the DOJ initially wanted. I had to fight for it" (*Seattle Times*, 10/23/2013).
October 24, 2013	In a written statement to the *Seattle Times*: "I personally believe that excessive use of force and bias have been real and serous issues for a long time, and reflected systemic issues…" (*Seattle Times*, 10/24/2013).[893]

[891] Miletich, S. (2013, March 6). Officials' fight over police escalates. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[892] Miletich, S. (2013, March 7). Attempt [by Mayor to stem public battle with City Attorney]. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[893] Miletich, S. (2013, October 24). McGinn, Murray agree SPD engaged in excessive force. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
October 25, 2013	According to the *Seattle Times*: "In response to criticism from Justice Department officials, McGinn released a mostly conciliatory letter acknowledging the DOJ always had favored some form of community involvement in negotiating reforms of the Seattle Police Department. McGinn wrote that he was 'somewhat surprised that DOJ is weighing in on these issues now' — referring to the pre-election timing of the letter criticizing him, which was signed this week by U.S. Attorney Jenny Durkan and another top DOJ official" (*Seattle Times*, 10/25/2013).[894]
December 18, 2013	"[Departing Mayor McGinn] commenting on judicial approval of use-of-force policies, 'We are glad to see that the Monitor, SPD and DOJ have achieved this milestone, and that they involved the Community Police Commission'" (*Seattle Times*, 12/18/2013).

As indicated by the quotes contained in Table 7.10, Mayor McGinn's statements were consistent with what has been reported by research participants as his honestly held state of mind – that he should have been given the opportunity by the DOJ to pursue a reform effort from within the SPD and that the DOJ should not have formally intervened until after he had the chance to succeed or fail. Further, Mayor McGinn appeared to philosophically disagree with the idea of a top-down reform effort, instead preferring to see reform generally pursued by the community itself and, more specifically, by and through the CPC.

Mayor Ed Murray.

Unlike Mayor McGinn, when Mayor Ed Murray came into office on January 1, 2014, after defeating McGinn at the polls, he had the benefit of knowing that at least one of the reasons for his electoral victory was a desire on the part of the electorate to achieve police reform as per the agenda set forth by the DOJ. Murray had run on a platform of collaboration with the DOJ and was elected with the endorsement of at least five members of the City Council. While McGinn appeared to relish being perceived as a political "outsider," Murray was perceived as more willing to work with the democratic and business establishments of the City. (*Seattle Times*, 9/19/2013).[895] Although both

[894] Brunner, J. (2013, October 25). McGinn seeks to set record straight re: DOJ-CPC. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[895] Brunner, J. (2013, September 19). Council's Jean Godden backs Murray in mayoral race. *Seattle Times*. ["Jean Godden on Wednesday became the fifth Seattle City Council member to endorse state Sen. Ed Murray's mayoral campaign, giving Murray the support of a majority of the nine-member council"]. Retrieved from https://www.seattletimes.com.

were identified as “die-hard progressives,” Murray and McGinn were on opposite sides of the “tunnel debate” with McGinn opposing the tunnel and Murray having been the primary Senate sponsor of a bill financing the tunnel project while he was the chairman of the Senate Transportation Committee.[896]

As described by the October 13, 2013 *Seattle Times* endorsement of Murray, although both candidates were progressive democrats, in the end, Murray appeared more likely to be able to successfully accomplish the tasks at hand:

> The two candidates for Seattle mayor are both die-hard progressives. They identify many of the same challenges ahead as the city reaches back to economic vitality. They even share some policy platforms.
>
> But the choice becomes clear on their widely different approaches to governing. State Sen. Ed Murray offers a return of pragmatic, effective leadership to City Hall.
>
> He has campaigned as the mayor who would lower the bridges after four years of a “fortress Seattle” mindset. This means the city embracing, rather than turning its back on the Port of Seattle and the jobs-rich maritime and industrial core; *collaborating with federal police monitors*; working more closely with Seattle Public Schools to bridge the achievement gap; and repairing frayed relations with Olympia, where Seattle has a critical wish list of legislative changes.
>
> Murray’s career highlight — an 18-year campaign to change the hearts and minds of colleagues in the Legislature about same-sex marriage — demonstrates the skill and temperament to do it. His experience and message have been a magnet for impressively diverse supporters — from big labor unions to the chamber of commerce, from rank-and-file police to ardent advocates for the homeless.
>
> Mayor Mike McGinn, as he often says, did learn on the job. But he remains at heart a grass-roots activist rather than a statesman, adept at finding and driving wedge issues for narrow political gain — even where they do not exist. It is telling that five City Council members who worked closely with McGinn now support Murray, the first time a council majority has opposed the sitting mayor in recent history.
>
> On core issues, Murray would be more effective. *His administration would be far more likely to draw star-caliber, reform-minded candidates for the chief of police job; given that chance in 2010, McGinn whiffed. A strong chief is critical to repair the Seattle Police Department’s reputation and to*

[896] See, Lindblom, M. (2018, November 19). Almost There. *Seattle Times*. [“Seattle’s waterfront Alaskan Way Viaduct, in service since 1953, will be replaced this winter by a four-lane Highway 99 tunnel between Sodo and South Lake Union”]. Retrieved from https://www.seattletimes.com.

quickly advance the reforms mandated by the city's consent decree with the U.S. Department of Justice.

To improve transportation and transit, Murray emphasizes a regional approach, including mending relations with state legislative leaders whom McGinn ripped in opposing the Highway 99 tunnel. Murray, a transportation budget-writer in the House and Senate, strikes the right balance between maintenance, which has suffered, and critical investments in mass transit, roads and freight mobility, which flow from state and regional partnerships.

Murray has support from business leaders, but he needs to be reminded that taxes fund government. A $15-an-hour minimum wage, which he supports, comes at a cost. But he is more trustworthy than McGinn, who recently mocked Murray's support from Amazon.com. What kind of a leader mocks a major part of the engine of his city's economic recovery?

As the economy begins to hum again, the next mayor has a chance to plumb the deeper and difficult chasms of Seattle — including making housing more affordable and narrowing education outcomes that break on color lines. Murray, a legislative dealmaker for nearly two decades, offers pragmatic leadership. McGinn, a progressive ideologue, has sown division.

Come Nov. 5, Seattle voters should lower the bridges and elect Ed Murray mayor (*Seattle Times*, 10/13/2013, *emphasis added*).

One of Mayor Murray's first acts was to fire the then-interim Chief of Police, Jim Pugal, a former SPD Assistant Chief and appoint a retired Assistant Chief, Harry Bailey, as interim Chief. Murray immediately announced a national search for a new Chief: he reportedly advised Pugel that if he wanted to apply for Chief, he would need to resign as interim Chief (*Seattle Times,* 1/9/2014).[897]

Mayor Murray faced his first police accountability challenge in February, when Chief Bailey, who reportedly had close relationships with the police union, overturned discipline that Pugel previously refused to change. The overturning of the discipline was poorly received by the Seattle media and resulted in significant public criticism. The decisions further resulted in a March 2, 2014, *Seattle Times* Op Ed piece, entitled: "Make police discipline coherent, transparent," where the editorial board identifying the current police accountability system as "a joke that invites artful word play that can be used to string out and stall disciplinary proceedings seemingly forever" and arguing that

[897] Miletich, S. (2014, January 9). Seattle mayor ousts Pugel, picks new interim police chief. *Seattle Times*. Retrieved from https://www.seattletimes.com. Murry was reportedly advised that if a currently serving interim Chief was a candidate for the position of permanent Chief, it would be harder to obtain qualified applicants from the outside.

"[t]he link between the consequences of marginalizing local checks and balances and the resulting need for federal intervention seems even more clear with this latest debacle (*Seattle Times*, 3/2/2014)."[898]

In May 2014, the Mayor was faced with a civil lawsuit, filed by more than one hundred SPD officers, challenging the new use-of-force policy implemented effective January 1, 2014 as a result of the Consent Decree. Murray's response to the lawsuit was described as "terse" by the *Seattle Times*:

> the Seattle Police Department is under a federally-mandated court order, in part because of a disturbing pattern of unnecessary use of force and other forms of unconstitutional policing, … The police department will comply with that court order. The City of Seattle will not fight the Civil Rights Division of the U.S. Department of Justice. This is not the 1960s." (*Seattle Times,* 5/28/2014)

Murray's challenges with police reform began to end within six months of his inauguration when his national search for a new permanent chief resulted in the appointment of former Boston Police Commissioner, Kathleen O'Toole, a well-known and highly respected progressive police leader. With the appointment of Chief O'Toole as the new Chief of Police in June 2014, Mayor Murray solidified his place in the history of the implementation of the Consent Decree by ensuring that, for the first time since the signing of the Settlement Agreement, there was clear direction from both the Mayor and the Chief that Consent Decree compliance was a primary goal for the SPD. By August, 2014, Monitor Bobb was telling Judge Robart that "Seattle's new mayor, Ed Murray, along with O'Toole, City Attorney Pete Holmes and federal attorneys, [were] working together, leading to wholesale changes in the past month that bode well for success" (*Seattle Times*, 8/20/2014).

Murray was able to work closely with the City Council on issues important to consent decree implementation. Shortly before Chief O'Toole's appointment, the City Council passed a new ordinance which would allow O'Toole to appoint assistant and deputy Chiefs from outside the Department – a key part of eliminating the insular nature of the SPD's command staff. When the Seattle Police Management Association (SPMA), the union representing Seattle police captains and lieutenants grieved the ordinance,

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[898] Seattle Times (2014, March 2). Make police discipline coherent, transparent. *Seattle Times*. Retrieved from https://www.seattletimes.com.

claiming it was subject to mandatory bargaining, the President of the Council, Tim Burgess, came to the ordinance's defense with a statement extremely critical of the SPD and supportive of the reform effort:

> The new chief faces huge issues, … The culture of the police department is stagnant. Basic management systems and protocols are lacking. Management accountability and core business practices are not well defined. Data systems are severely lacking. There are significant questions about use of resources and deployment of officers. The new chief will need very experienced and seasoned managers to create and sustain the change we want. (*Seattle Times*, 6/4/14)

Table 7.11. Public Statements by Mayor Murray

Date	Statement
October 24, 2013	Then-candidate for Mayor: "As I have said numerous times throughout this campaign, I agree with the DOJ that use of force was a problem at SPD … Unfortunately, the current mayor chose to fight the DOJ, and to fight the City Council, fight the City Attorney, and even fought the appointment of a nationally respected monitor…" (*Seattle Times*, 10/24/2013).
November 21, 2013	Statement by then-Mayor-elect Murray: "During the campaign I talked about how public safety will be job one for my administration. Broadly speaking, this means restoring the morale of (the) police force, making critical reforms to our police force and, ultimately, building confidence in our police force across our many diverse communities" (*Seattle Times*, 11/21/2013).[899]
January 18, 2014	Commenting on Judge Robart's approval of the new SPD anti-bias policy: "The perception of racial bias in policing doesn't just corrode the community's trust in the police force, it erodes the morale of our officers, … Addressing this very real issue is among the most serious and urgent reforms the Police Department must undertake in the consent-decree process…" (*Seattle Times*, 1/18/2014).
March 19, 2014	In a letter to City Council regarding the SPD disciplinary review process: "[It is too slow, very confusing and without the transparency, checks and balances and certainty officers and complainants alike deserve" (*Seattle Times*, 3/20/2014).[900]
April 1, 2014	In a letter responding to DOJ criticism against the SPD for failing to create adequate plans to implement the Consent Decree: "I cannot stress how appreciative I am of the DOJ's recognition of the efforts we have made in the three months since taking office, … Nevertheless, as you rightly point out, there is much work to be done and we are committed to getting it done" (*Seattle Times*, 4/2/2014).
April 3, 2014	"I agree with the judge that reform is moving at a glacial pace. … I have no disagreement, … It's now my problem" (*Seattle Times*, 4/4/2014).

[899] Miletich, S. (2013, November 21). Consultant to advise mayor. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[900] Miletich, S. (2014, March 20). SPD misconduct findings won't be reinstated for 6. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
August 22, 2014	Commenting on SPD officer suit to block implementation of new SPD use-of-force policies: "This is not the 1960's…" (*Seattle Times*, 8/22/2014).[901]
August 29, 2014	"Speaking as chief law-enforcement officer of this city, the policy of this city is compliance with the federal court order. Officers may have their own private opinions about the court order, but noncompliance from employees of this city's police department is not an option" (*Seattle Times*, 8/29/2014).
October 20, 2014	Commenting on dismissal of the SPD officer law-suit against implementation of new use-of-force policies: "[the] dismissal of the suit today confirms that SPD's use-of-force policy is both practical and constitutional, … Today we move forward with police reform and move past internal divisions over policy. The City and the officers who filed the suit share the same objectives: safety for the public, and safe working conditions for the officers who provide for the public's safety. We can achieve both" (*Seattle Times*, 10/21/2014).
November 12, 2014	According to the *Seattle Times*: "At a City Hall news conference, Murray unveiled his long-awaited plan to address revelations in February that his then-interim police chief, Harry Bailey, had overturned misconduct findings against seven officers who had appealed their discipline. The ensuing furor exposed a lack of oversight and an appeals process some say is fraught with potential manipulation. 'All told, these improvements represent a significant shift towards transparency and greater clarity for the discipline and appeals system, a system that until now, as I have said before, has been mired in fog of Byzantine procedures,' Murray said" (*Seattle Times*, 11/13/2014).[902]
November 24, 2014	"Seattle is not Ferguson … But, of course, Seattle is far from perfect" (*Seattle Times*, 11/26/2014).[903]
December 16, 2014	Commenting on Monitor's 4th semi-annual report: "We are making good headway and I am committed to keeping police reform moving forward" (*Seattle Times*, 12/16/2014).
June 10, 2015	Responding to CPC criticism over accountability legislation: "I wish I hadn't given a timeline, because it's far more complex than I realized, …We're seeing the Monitor and the federal court acknowledge that the police department is moving forward, … We haven't seen that so much from the CPC ... and so that creates a certain tension … It's important that we don't turn over ... responsibility that belongs to the mayor, the council or the chief of police to the Community Police Commission, … Because if something goes wrong, it's me and the chief and the council who will be held accountable" (*Seattle Times*, 6/10/2015).
June 16, 2015	Referring to the city's efforts to work with the Monitor and the DOJ: "I think the collaborative process is paying off…" (*Seattle Times*, 6/16/2015).

[901] Miletich, S. (2014, August 22). City, federal monitor move to dismiss officers' suit. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[902] Miletich, S. (2014, November 13). Mayor offers to fix system that governs cop discipline. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[903] Seattle Times staff (2014, November 25). Seattle can teach Ferguson a lesson. *Seattle Times. Retrieved from https://www.seattletimes.com.*

Date	Statement
June 24, 2015	"The CPC believes we're moving too slow and, as you can see from the Monitor's letter, some parties to the Consent Decree believe we're moving too fast, and we've been trying to manage that, … It was very helpful for the Monitor to say publicly what we've been hearing privately for some time … My obligation is to the U.S. Department of Justice and the federal court and if I have to part ways with the CPC on some issues to agree with the Justice Department and the court then that's what will happen, … The wheels are back on, but I suspect the wheels will fall off several more times … I absolutely believe there will be tension between the council and me" (*Seattle Times*, 6/25/2015).
June 30, 2015	Commenting on court hearing where Judge Robart criticized a plan to expand the powers of the CPC: "The direction today from Judge Robart was clear: any reforms must align with the Consent Decree and be approved by the Court. As planned, I will be working with the Department of Justice, Federal Monitor, CPC, labor unions and City Attorney to achieve meaningful reforms to our civilian oversight system and improve accountability … [the judge] affirmed that the Seattle Police Department, under the leadership of Chief O'Toole, is making significant progress on police reform, rebuilding community trust and becoming a national model for urban policing" (*Seattle Times*, 7/1/2015).
September 7, 2015	In response to an SPD report indicating a reduction in the amount of force used against the mentally ill: "Police officers are often the first to encounter those needing addiction or mental-health services, … We must continue to invest in the best training for our officers, as well as improved access to human services, to further improve outcomes for the most vulnerable" (*Seattle Times*, 9/7/2015).
November 25, 2015	Statement in response to Monitor's "praise" of SPD's Use-of-Force Board, Murray thanked Chief O'Toole and noted that Monitor Bobb "recognizes a renewed culture of accountability at the Seattle Police Department" (*Seattle Times*, 11/25/2015).
January 10, 2016	"Across the nation, communities are looking to Seattle and the reforms we've made regarding training, transparency and accountability, … While we still have much more work to do, it's a strong statement that the administration is recognizing Seattle's leadership on this national priority during the president's final State of the Union" (*Seattle Times*, 1/10/2016).
January 20, 2016	According to the *Seattle Times*: "O'Toole and Seattle Mayor Ed Murray spoke about the city's police-reform work last week at a standing-room only gathering at the U.S. Conference of Mayors in Washington, D.C. 'My point was it has to start at the top,' Murray said afterward, citing his hiring of O'Toole in 2014 and her reshaping of the command structure" (*Seattle Times, 1/28/2016*).
July 8, 2016	Commenting on his "struggles" with the Seattle police union: "I don't get to choose what a union posts. I get to choose the chief of police, and that shows you the kind of leadership and communication I expect from the police department" (*The Stranger*, 7/8/2016).[904]

[904] Herz, A. (2016, July 8). Mayor on Police Union and Reform, It's a Struggle. *The Stranger*. Retrieved from https://www.thestranger.com.

Date	Statement
February 1, 2017	Commenting on the sending of police accountability legislation to the City Council: "Michael Brown, Eric Garner, Tamir Rice, Eric Harris, Walter Scott and Freddie Gray, … And there's another very important name that needs to be mentioned today: John T. Williams … All of this is tragic and all of this is real, but there's a positive and inspiring story that we're telling today," (*Seattle Times*, 2/2/2017).[905]
April 4, 2017	Commenting on the Trump administration's decision to review federal consent decrees: "Our progress under the Consent Decree cannot be undone by empty bureaucratic threats. Our police department is well into the process of reform and will continue this work. We are too far along for President Trump to pull us away from justice" (*Seattle Times*, 4/7/2017a).
July 17, 2017	Commenting on the issuance of an executive order directing the SPD to equip patrol officers with body cameras: "We have gone around and around and around trying to reach an agreement … We're not there yet…" (*Seattle Times*, 7/17/2017).
July 18, 2017	"Judge Robart made it clear today that ensuring constitutional policing needs to be Seattle's top priority, … Five years ago, when the previous administration was dragging its feet on meaningful reform, the relationship between police and Seattle's communities of color was fractured. While we still have work to do, we have made significant progress since 2010, which the Court confirmed today." (*Seattle Times*, 7/19/2017b).
January 11, 2018	Former Mayor Murray statement on full compliance, [thanking the] "women and men of the Seattle Police Department who have created a national model for reform" (*Seattle Times*, 1/11/2018).

Consistent with Mayor Murray's platform to cooperate with the DOJ, and once he had hired Chief O'Toole to lead the way to reform, Murray's public comments were solidly in favor of DOJ-led reform efforts, as well as the public comments and orders made by Judge Robart. As reported by research participants, this was the first time there was "no daylight" between the Chief and the Mayor as to where the reform effort needed to go.

Mayor Jenny Durkan.

U.S. Attorney Durkan found herself in an historically unique position on the date she was inaugurated as the Mayor of Seattle – she is and has been the only federal prosecutor to sit on both sides of the aisle during a §14141 litigation; first, as one of the

[905] Beekman, D. (2017, February 2). Mayor's Bill. *Seattle Times*. Retrieved from https://www.seattletimes.com.

lead plaintiffs, seeking a Consent Decree against a City, and then subsequently, as the Chief Executive of that same City, all while the Consent Decree continued its course.

After her role changed, her publicly stated positions segued over to a position supporting the termination of the Consent Decree at the earliest opportunity. The key issue facing Durkan ended up being the ongoing contract negotiations between the City and SPD officers who had been working without a contract for years. Ironically, it was the contracts that the Durkan administration negotiated with the Seattle police unions that eventually led to the City to being found partially out-of-compliance with the Consent Decree.

Durkan was sworn in on November 28, 2017. Less than six weeks later, the City was found to be in "full and effective compliance" with the Consent Decree. As such, it was the clear expectation of the Durkan administration that all she would need to do is lead the SPD through its "sustainment period." Even though Judge Robart described the sustainment period as "the most difficult portion of the Consent Decree to fulfill," there was a clear expectation on the part of the City, the SPD and the DOJ (and perhaps, the Monitor), that by January 2019, the City and the SPD would be free of its Consent Decree obligations and that Mayor Durkan would be in a position to declare that the reforms that she began as the U.S. Attorney were now "hard baked" and sustainable.

However, that expectation was not to become a reality. And, in fact, when the Monitor resigned from his position in September 2020, he referred to the SPD as being "at its nadir" with a "desperate[] need[] [for] a new chief from outside the organization to put it back together" (*Seattle Times*, 9/9/2020).

Durkan's public statements, after being sworn in as Mayor, show an administration trying to walk a careful balance between continuing her support for police reform and also supporting the Department that now answered to her (while, also, downplaying concerns regarding allegations of lack of SPD consent decree compliance). At the same time, however, Mayor Durkan strongly supported the contract that was eventually negotiated with the police unions and attempted to seriously downplay any conflicts with the previously passed Accountability Ordinance as well as the findings of Judge Robart that the contracts were, in fact, in conflict with the Consent Decree:

Table 7.12. Public Statements of Mayor Jenny Durkan

Date	Statement
January 11, 2018	Commenting on the Judge's recent order finding the City in "full and effective compliance" with the Consent Decree: "This is a very significant and good day for the city of Seattle, for the Police Department and for the community … The next two years are going to be critical … we know we're not done …" (*Seattle Times*, 1/11/2018) Referring to the resignation of Chief O'Toole effective December 31, 2017 (*Seattle Times*, 12/8/2017): "It will be critical we hire someone who can be the leader we need in this community to champion the reform process" (*Seattle Times*, 1/11/2018).
January 14, 2018	"The training wheels are off…" (*Seattle Times*, 1/14/2018).[906]
July 9, 2018	"A Seattle Police Department official on Monday disputed recent claims by the police union's vice president that officers are leaving in larger numbers because of unhappiness about the city's politics" (*Seattle Times*, 7/10/2018).[907]
July 18, 2018	Statement from Mayor's Office regarding police contract negotiations: "[The Mayor] believes it is in everyone's interest to get a contract in place, … [The Mayor] agrees with SPOG that progress has been made, and remains hopeful a deal can be reached" (*Seattle Times*, 7/18/2018b).[908]
November 6, 2018	In-Court statement regarding the contract negotiated between the City and SPOG: "We believe that every one of the parts of the tentative agreement not only meets the Consent Decree but also moves forward significant reforms under the accountability ordinance" (*The Stranger*, 11/6/2018).
December 3, 2018	"We look forward to addressing the Court's order, demonstrating that SPD remains in full and effective compliance with the federal Consent Decree that I signed as the United States Attorney" (*Seattle Times*, 12/4/2018).[909]

[906] Seattle Times Editorial Board (2018, January 14). A Laudable Victory towards Police Reform. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[907] Miletich, S. (2018, July 10). Police Official Disputes Officer Exodus Claims. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[908] Miletich, S., July 18, 2018, Progress Made in Collective Bargaining Agreement, *Seattle Times*. Retrieved from https://www.seattletimes.com.

[909] Miletich, S. (2018, December 4). Judge orders City, DOJ to explain rehiring of fired cop. Seattle Times. Retrieved from https://www.seattletimes.com.

Date	Statement
December 11, 2018	Reacting to a Court Order for the City to produce information regarding the disciplinary process:[910] "I think he [the Judge] is just being thoughtful." "Mayor Jenny Durkan said Tuesday she wasn't alarmed, and she is confident the city has a strong police-accountability system and has made adequate changes to the appeals process to satisfy Robart's questions" (*Seattle Times*, 12/12/2018).[911]
December 18, 2018	"Judge Robart continues to take a thoughtful and thorough approach as he evaluates Seattle's progress toward meaningful, lasting reform, and we will continue to be ready to address any additional requests or concerns Judge Robart may have" (*Seattle Times*, 12/19/2018).[912]
February 28, 2019	Responding to Monitor concerns that the Seattle police contract could jeopardize consent decree compliance: "The Seattle Police Department continues to make significant progress on reforms … and I trust Judge Robart will continue his thoughtful and thorough approach as he evaluates Seattle's progress toward lasting reform" (*Seattle Times*, 3/1/2019).
March 5, 2019	Responding to complaints from the police union that consent decree reforms were "hindering police work" and negatively impacting on police recruitment and retention: "[the SPD] continues to make significant progress on reforms across all measures while making our city safer… We've seen the progress firsthand of culture change and how officers respond to crisis, which has been reaffirmed by the Department of Justice and the (court-appointed) Monitor, … None of these gains would have been possible without the dedicated work of our police officers" (*Seattle Times*, 3/5/2019).
May 15, 2019	Responding to Court's oral finding of partial non-compliance: "Overall, I am very, very heartened by the judge's ruling today." "Durkan … assert[ed] the media was doing a disservice by focusing on a few concerns rather than the hard work of officers in complying with the thrust of the Consent Decree" (*Seattle Times*, 5/15/2019).

[910] U.S. v. Seattle, Document No. 507: As part of a December 10, 2018 order setting a briefing schedule on the Court's December 3, 2018, "Order to Show Cause Whether the Court Should Find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree," the Court required the city to provide: "(1) Copies of all briefings filed before the Disciplinary Review Board ("DRB") that overturned former Chief of Police Kathleen O'Toole's decision to terminate Seattle Police Department ("SPD") Officer Adley Sheperd; (2) The written decision(s) of any and all arbitrators on the DRB panel that overturned Chief O'Toole's decision to terminate Officer Sheperd; (3) A list, chart, or other document that details how the City's collective bargaining agreement ("CBA") with the Seattle Police Officer's Guild ("SPOG") alters any provisions of the Accountability Ordinance, see Seattle City Ordinance No. 125315; and (4) A list, chart, or other document that details how the SPD disciplinary system and appeals process under the CBA differs from the SPD disciplinary system and appeals process that existed at the time this action was initiated on July 27, 2012."

[911] Miletich, S. (2018, December 12). More Info. *Seattle Times* ["A federal judge on Tuesday ordered the city of Seattle to produce broad information on the Police Department's disciplinary procedures in the wake of an arbitrator's decision to reinstate a Seattle police officer fired for punching a handcuffed woman."]

[912] Miletich, S. (2018, December 19). Seattle Defends Police Reforms to Federal Judge after cop reinstated. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
May 22, 2019	"The Judge has ordered an assessment of the present accountability regime, … Given the reforms and the changes made to the entire accountability system ... an assessment of the accountability regime, how it compares to other models across the nation, functions as a system and its impact on officers, policing and community confidence can only benefit our city… It is notable that the judge did not strike down the Collective Bargaining Agreement, or any specific provision in the CBA. Together with the Department of Justice, we are evaluating the Court's order regarding the accountability regime and its relationship to the Consent Decree. But regardless of the next legal steps, we have made clear that we will continuously assess and improve as a Department" (*Seattle Times*, 5/22/2019).
June 26, 2019	Statement from Mayor's Office: "In the coming weeks, the City will be working to define the full scope of work and methodology to propose to the Court by working with community and accountability partners." As reported by the *Seattle Times*: "After last week's complaints from the community groups, the mayor's office issued a statement saying the city remains in full and effective compliance with every area 'required' by the Consent Decree — a reference to the city's successful completion of 10 formal assessments" (*Seattle Times*, 6/26/2019).[913]
July 13, 2019	Letter sent to "concerned community groups:" "I believe our work on the Court-ordered methodology will realize our shared goals of robust community participation and ensure the SPD remains in full and effective compliance with the goals of the Consent Decree" (*Seattle Times*, 7/13/2019).[914]

[913] Miletich, S. (2019, June 26). Panel for police reform created. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[914] Miletich, S. (2019, July 13). Judge gives Seattle more time to deal with any deficiencies in police reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 15, 2019	Statement from Mayor's Office, responding to an open letter from three members of Council requesting the Mayor re-negotiate the contract with SPOG: "Mayor Durkan, who led the Department of Justice investigation into SPD, has spent decades working on police reform and pushing for additional accountability. Mayor Durkan believes the City is responsible for constitutional policing, ensuring a police accountability system that builds trust, protecting public safety and upholding the rights of workers. She is grateful to the men and women of the Seattle Police Department who show up every day to make the city a better place, keep us safe, and show how good policing is effective policy. The Court ordered the parties, with the assistance of the Monitor and the CPC, to develop a methodology for assessing the 'accountability regime.' Since May, the City has been working to respond to the Court's order. There have been multiple meetings with the Community Police Commission. In addition, the national experts hired to assist in doing the assessment ordered by the Court are meeting with the Community Police Commission and other stakeholders this week. In addition, they are working to meet with and seek input from the City Council in Executive Session and will have a public meeting with community. The City Council has been briefed twice by the City Attorney, and the Mayor, at her monthly meeting with Councilmember González, offered to meet on the Consent Decree. The City will not propose any potential next steps without the input of the Monitor, community, and our accountability partners, and without the review and approval of Judge Robart. We have a binding Collective Bargaining Agreement and also are obligated to respect state law governing labor relations. That process is underway, and the Court must approve this plan. After this process is complete, the City can work with the DOJ, SPD, the Monitor, City Council, community, and accountability partners to move forward on next steps and will then seek the Court's approval. The City looks forward to the opportunity to engage with the community to receive input on the development of our methodology for assessing the accountability regime. We also look forward to engaging with the broader community as we respond to the Court's order and ultimately, have the Consent Decree fully lifted." (*Seattle City Council Insight*, 7/15/2019).[915]
August 9, 2019	Written Statement to *Seattle Times* responding to CPC's "rejection" of City's Accountability Plan: "We look forward to reviewing the written feedback from all parties including the CPC. The City will continue listening and looking at how we can best incorporate feedback from community members and accountability partners into the methodology that will be proposed for the Court's approval" (*Seattle Times*, 8/10/2019).[916]

[915] Retrieved from https://sccinsight.com/2019/07/15/the-war-of-words-over-police-accountability-heats-up-in-city-hall/.

[916] Miletich, S. (2019, August 9). Citizen Panel rejects Durkan plan to address SPD accountability flaws. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
August 16, 2019	"Durkan spokesperson Stephanie Formas said Friday that the mayor and Police Chief Carmen Best are 'wholly committed to true community-based policing, and a department that is accountable, effective and continuously improving.' The mayor has helped push significant reforms, including many aspects of the police-accountability ordinance, Formas said. Included was the guild's acceptance of body cameras on officers and the creation of an independent inspector general, with broad oversight powers and unfettered access to the department. 'Far from having 'fatigue,' both she and Chief Best understand that reform is never done, Formas said" (*Seattle Times,* 8/17/2019a).
August 16, 2019	Joint written statement by City Attorney Holmes & Mayor Durkan regarding a court's decision overturning an arbitrator's finding in favor of reinstating an officer previously fired by Chief O'Toole for excessive force: "Judge McHale rightly recognized the arbitrator's order for Mr. Shepherd's reinstatement violated the public policy against excessive use of force in policing, … SPD should not be forced to employ an officer whose view of reasonable and necessary force is so immutable and so contrary to SPD's policies and values" (*Seattle Times*, 8/17/2019b).[917]
September 11, 2019	Statement regarding plan to recruit and retain officers: "As Seattle grows, we must make sure we are recruiting, hiring and retaining the most experienced officers who can provide public safety and are committed to lasting reform" (*Seattle Times*, 9/11/2019).[918]
September 21, 2019	Mayoral staff statement responding to CPC accusations of Mayoral interference with panel: "As we expected, we reached a mutual agreement that resolved any initial misunderstanding about our past communications and collaboration, … We have deep respect for the CPC's critical role in the accountability regime and their strong independence. The Mayor looks forward to our continued engagement on a wide range of policing issues" (*Seattle Times*, 9/21/2019).
October 16, 2019	Joint Statement from Mayor and City Attorney regarding Court's authorization for city to hire experts to conduct a "full, data-driven examination" of police accountability practices in other jurisdictions: "We are grateful that the Court agrees that this process could help further reform, … These national experts will help the parties to not only address the Court's concerns, but further strengthen a culture of continuous reform and improvement, inform the parties of potential other best practices, and inform collective bargaining." "Durkan and City Attorney Pete Holmes said they were 'pleased' the court authorized the city's plan. They noted that Robart found the city to be 'on track' to be discharged in a few months from other requirements of the Consent Decree, like those related to use of force, crisis intervention and de-escalation" (*Seattle Times*, 10/16/2019).[919]

[917] Kamb, L. (2019, August 17). Judge overturns ruling reinstating Seattle Officer. Seattle Times. Retrieved from https://www.seattletimes.com.

[918] Beekman, D. & Miletich, S. (2019, September 11). Plan to recruit, retain police officers. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[919] Miletich, S. (2019, October 16). City can consult experts on police policy. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 2, 2020	Addressing a crowd of protestors after the murder of George Floyd: "The chief and I and others will work on a plan, but the plan has to come from community voices, … That is going to be a process of honesty and healing, it will bring out anger and disillusionment, there will be disagreement and agreement … It will only be successful if we can find some mutual love and common humanity, … I know that has to be earned. That kind of trust isn't here today, or you wouldn't be in the streets marching … We have come too far in this city on police reform and we cannot shirk from an honest and transparent or review of any police actions." (*Seattle Times*, 6/2/2020).
June 3, 2020	"Seattle Mayor Jenny Durkan said in a Seattle City Club interview Wednesday that she agreed with the decision to withdraw the city's request [to terminate portions of the Consent Decree]. She had supported the motion last month and since then. But she said Wednesday, 'We need to take a pause … With what's going on right now, we need to engage more people …There's a huge amount of distrust in the community, we've got to get better at de-escalating that'" (*Seattle Times*, 6/3/2020).[920]

7.6.2. The City Attorney's Perspective

Seattle, unlike most other cities, has an elected City Attorney, which arguably makes the office more accountable to the public, but also comes with its own set of practical and ethical problems, particularly when the Mayor and the City Attorney are either political adversaries or have divergent philosophical ideals regarding the nature of their roles.[921] City Attorney Pete Holmes took office on January 1, 2010, the same date as Mayor McGinn. Prior to being elected City Attorney, Holmes had served an original member of the Office of Professional Accountability Review Board (referred to as "SPD's first civilian oversight body") and served as its chair from 2003 to 2008.[922]

[920] Miletich, S., Beekman, D. & Hellmann, M. (2020, June 3). City will withdraw request that could lift federal oversight. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[921] In a letter to the City Council, dated October 22, 2019, Holmes wrote that "the City Attorney acts in the best interests of all citizens when counseling and zealously defending fellow public servants in the good-faith exercise of our duties" (Seattle Times Staff. (2009, November 5). City Attorney Holmes Starts with a Clean Slate. *Seattle Times*. Retrieved from Seattle City Attorney Holmes starts with a clean slate | The Seattle Times.

However, the role of an elected City Attorney becomes more complex when the City Attorney believes that "the best interest of all citizens" is contrary to the policies or actions taken by the elected Mayor.

[922] See, http://www.seattle.gov/cityattorney/about-us/about-pete-holmes.

Holmes defeated the incumbent City Attorney, who was endorsed by the police union, by a wide margin in the November 2019 election running on a platform of "public safety, and transparency and accountability in city government." [923]

It would be hard to describe the relationship between Mayor McGinn and City Attorney Holmes, as it related to the DOJ investigation and consent decree negotiations and implementation, as anything other than aggressive and confrontational. The first public evidence of conflict in this area arose in March, 2012, only a few months after the publication of the DOJ's findings. On March 29, 2012, the *Seattle Times* reported that: "[a] 'collaborative effort' between the mayor, city attorney and City Council to create a unified response to a U.S. Department of Justice investigation into the use of force by Seattle police [had] unraveled." The *Times* published portions of a letter to the Mayor from three City Council members who were critical of the Mayor's failure to collaborate with the City Council and his opposition to the DOJ's insistence of court oversight over any future Settlement Agreement. The *Times* reported that McGinn and Holmes had "previously clashed on a variety of issues" and that the letters signatories could "be seen as potential McGinn rivals in the 2013 mayoral race" (*Seattle Times*, 3/29/2012).

By July, 2012, an internal feud between McGinn and Holmes was publicly disclosed when the City Attorney sent a 6-page letter to McGinn,[924] described by the *Times* as "sharply worded" and critical of McGinn's strategy in negotiating with the DOJ. Excerpts published by the *Times* included the following remarks:

- Holmes wrote that the city had "relied too heavily" on the SPD in responding to the DOJ report;
- "A troubling victim narrative has emerged at SPD, in which DOJ is cast as a 'bully' seeking to impose a 'shadow chief' at an unverified and speculative cost."

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[923] McNerthney, C. (2009, November 2). Carr concedes city attorney race to Holmes *Seattlepi.com*. Retrieved from https://www.seattlepi.com.

[924] According to study participants associated with Mayor McGinn's Office, this letter was hand delivered to the Mayor's office shortly before formal mediation was to begin between the City and the DOJ. Although the letter was stamped "Attorney-Client privileged," it was copied to so many people, there was little question that it would be leaked to the media. The Mayor's Office reportedly felt "sandbagged by the letter;" when the Mayor confronted Holmes about that perception, Holmes reportedly replied: "Now you know how it feels," reportedly referring to the Mayor's prior release of his "20/20" plan without notice to the City Attorney or Council.

- According to the *Times,* Holmes believed that "the city has engaged in a narrow legal theory to rebut the Justice Department; missed key opportunities to shape and agreement; and rejected two proposed monitors who would oversee a court-ordered consent decree;"

- Holmes criticized the Mayor's *20/20* reform plan as "lack[ing] both substance and accountability;"

- Holmes wrote that the city was at a "critical juncture" and that if the mediation were not successful the city would "face costly, burdensome, and risky litigation with the federal government."

- Holmes wrote that the city had an "unprecedented opportunity" to negotiate an agreement "greatly benefiting the City for generations to come … [b]ut the clock is running out on this reform opportunity…"

- Holmes was critical of the Mayor's rejection of Monitor candidate Merrick Bobb and criticized the Mayor for a "delay strategy" that likely resulted in the withdrawal of a candidate who had previously overseen the reform of the Cincinnati Police Department;

- Holmes further criticized McGinn for relying on a narrow legal theory that suggested no city liability unless an official policy led to constitutional violations. Holmes suggested that standard "lowers our sights" and had resulted in "underestim[ations] [of] the City's legal exposure in adversarial litigation with the DOJ."

- Holmes wrote that "[i]t is important that we not interpret DOJ's retreating deadlines as evidence of bluffing, or conclude that DOJ cannot prevail in Court."

- Holmes argued that would be "critical to include measures designed to curb discriminatory policing and improve SPD's accountability mechanism … in the Monitored consent decree;"

- Holmes pushed McGinn to act as "Commander in Chief…Civilian control of SPD is the Seattle Way. And times like these required strong leadership and control of SPD" (*Seattle Times*, 7/17/2012).

At the time of Holmes' letter, however, according to study participants, the Mayor's Office believed Holmes was engaging in conversations with the DOJ that were undermining the Mayor and SPD's negotiating positions. Holmes, reportedly, would refuse to provide McGinn's Office with information regarding private conversations he was having with the DOJ and, instead, accused McGinn of trying to "micromanage" the negotiations.

While McGinn did, in fact, continue on his course of negotiating the Settlement Agreement without any formal collaboration with the City Council (as recommended by

City Attorney Holmes) and a Settlement Agreement was announced on July 29, 2012 (*Seattle Times,* 7/29/2012b),[925] further conflict between the City Attorney and City Council members on one side and Mayor McGinn on the other, broke out regarding the selection of the court-appointed Monitor. On October 17, 2012, Holmes and "four influential City Council Members" released a "blistering statement" relating to McGinn's opposition to the selection of Merrick Bobb as Monitor. The statement accused the Mayor of,

> contribut[ing] confusion, doubt and mistrust, especially among our rank and file police officers who we believe are fully ready to embrace high-quality and professional improvements of the Police Department. … Unfortunately, the Mayor's statements today reveal a continuation of the obstruction and stall tactics we have seen from the beginning.

The statement "chastised" Mayor McGinn for "undermin[ing] the candidate selection process" and making false statements regarding Bobb's reputation (*Seattle Times*, 10/18/2012).

Ultimately, the Mayor was forced to bow to the will of the City Council who voted 8 to 1 in favor of submitting Bobb's name, along with the DOJ, to the court for appointment as Monitor (*Seattle Times*, 10/23/2012). Given that the Settlement Agreement called for "the Parties" to "jointly select a Monitor,"[926] the City Council ultimately had the authority to make the final choice.[927]

By February, 2013, the City Attorney and the Mayor were, once again, publicly clashing over the police reform process. This time, it was the Mayor's counsel, accusing Holmes of undermining the SPD in its negotiations with the Monitor over the First Year Monitoring Plan:

> In a strongly worded email, McGinn's legal counsel, Carl Marquardt, accused Holmes of an ethical breach of the attorney-client privilege as the city works to comply with a settlement agreement with the Department of

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[925] Seven, R. (2012, July 29). Seattle, DOJ OK plan to reform police force. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[926] U.S. v. Seattle, Document No. 3-1, para. 169.

[927] According to study participants, Mayor McGinn's negotiators failed to pre-plan for a conflict between Council and the Mayor on this issue; had they predicted a conflict, they would have negotiated with the DOJ for the Mayor to make the selection on behalf of the City.

> Justice to curb excessive force and biased policing. (*Seattle Times*, 2/27/2013)

McGinn and Holmes disagreed on the role of the City Attorney in the process. Whereas Holmes believed that "as the independently elected City Attorney with supervisory control over litigation [I can] …communicate with the Monitor and the Department of Justice with the goal of protecting the City's interests" (*Seattle Times*, 2/27/2013); McGinn believed the City Attorney needed to represent and support the SPD and Mayor's positions when it came to the negotiation of the Monitoring plan. Chief Diaz had argued that Bobb's plan required more "clarity" and "guidance" and that the Monitor's plan went "beyond the scope" of the Settlement Agreement and "disputed the findings of the DOJ investigation." Holmes, apparently alarmed by Diaz' response, sent a letter to Bobb and the DOJ representing that the draft plan "provides the starting point for collaboration" and offering an appendix to the plan to address any opposition from the SPD. McGinn's council objected to Holmes submitting a response that was "materially different" from the proposal made by the SPD (*Seattle Times*, 2/27/2013, 3/1/2013); Holmes objected to the SPD continuing to argue against the DOJ's findings, eight months after the Settlement Agreement had been filed and made enforceable by the Court. As observed by the City Attorney's Civil Chief in a follow up email:

> We warned you that this strategy would backfire, but SPD nonetheless chose to communicate directly with the Monitor without even hearing us out directly … Our Client is the City. If a Department of the City insists on undercutting the City's interests, it is the City Attorney's duty to mitigate that harm. (*Seattle Times*, 3/1/2013, 3/6/2013)[928]

On the SPD command side, at least towards the beginning of consent decree implementation, some believed that the City Attorney, who had previously served on the OPA Advisory Board "wanted to take down the SPD." According to one member of the SPD command staff: "we had a city attorney that was supposed to defend us, but he did everything he could to get us under a Consent Decree." Of course, this perception would be at odds with Attorney Holmes' ethical requirements if, after evaluating the DOJ investigation and his knowledge of the SPD, he did, in fact, conclude that the SPD was

[928] Miletich, S. (2013, March 6). Officials' fight over police escalates. *Seattle Times*. Retrieved from https://www.seattletimes.com. On the other hand, according to one study participant, the Mayor's office believed that Holmes had his own agenda, "he was always cagy and noncommittal as to whether he would represent the executive or not … and feeding the other side [the DOJ and the Monitor]."

in need of externally driven reform in order to ensure Constitutional policing in Seattle. After reaching such a conclusion, Attorney Holmes would be ethically required to accept federal oversight, even if that conclusion were at odds with the wishes of SPD command.

With respect to Mayor McGinn, some study participants suspected that part of the contentious nature of the relationship may have been based on McGinn's concern that Holmes might run against him based on his long-standing interest in police reform.

Given Holmes prior willingness to take on the McGinn administration, there is some question as to why he has not more publicly opposed the Durkan administration's support for a police union contract that undermined the City's Accountability Ordinance and ultimately resulted in a finding of non-compliance. Although Holmes did not strongly support the Mayor's position in support of the contract (*Seattle Times*, 11/23/2017), and contradicted the Mayor when she suggested that the Court's "out-of-compliance" finding was not a setback (*Seattle Times,* 5/15/2019), one might have expected a higher profile opposition to the contract from a City Attorney who was publicly critical of the McGinn administration's approach to police reform. Research participants have suggested, however, that Holmes was in a less secure position politically to take on Mayor Durkan than he was with McGinn (who appeared to be a political loner). It has been suggested that Holmes, having been through a number of Mayors now, "is picking his battles" and though "he is not necessarily in alignment [with Durkan], he is tending to make decisions that will be more aligned with the Mayor."

Table 7.13. Public Statements by City Attorney Holmes

Date	Statement
July 17, 2012	In a letter to Mayor McGinn: "A troubling victim narrative has emerged at SPD, in which DOJ is cast as a 'bully' seeking to impose a 'shadow chief' at an unverified, speculative cost; [the city has an] unprecedented opportunity [to reach agreement with the DOJ], greatly benefiting the City for generations to come … But the clock is running out on this reform opportunity, … It is important that we not interpret DOJ's retreating deadlines as evidence of bluffing, or conclude that DOJ cannot prevail in Court." "Holmes also pushed McGinn to act as 'Commander in Chief,' adding, 'Civilian control of SPD is the Seattle Way. And times like these require strong leadership and control of SPD'" (*Seattle Times*, 7/17/2012).

Date	Statement
December 17, 2012	In a joint statement with members of the City Council criticizing Mayor McGinn for rejecting Merrick Bobb as monitor: "Unfortunately, the Mayor's statements today contribute confusion, doubt and mistrust, especially among our rank and file police officers who we believe are fully ready to embrace high-quality and professional improvements of the Police Department" (*Seattle Times*, 10/18/2012).
February 26, 2013	In a letter to Monitor Bobb and the DOJ, commenting that the Monitor's draft monitoring plan "provides the starting point for collaboration … if the Monitor would like to engage in discussions as suggested by SPD in Chief Diaz's letter, our office will assist in that process. If, however, the Monitor is inclined to reject SPD's approach, our office wanted to propose an alternative path for negotiation." To a reporter while entering a meeting with the Monitor: "I am concerned about the city getting on board and doing the job of reform" (*Seattle Times,* 2/27/2013).
March 5, 2013	"Now is the time when City leaders should be working together to achieve lasting reform of our Police Department. Under the rules of ethics and my personal concern for the City's best interests, I cannot comment in detail on the mayor's counterproductive statements, except to say that this is a sad day for Seattle. It is especially sad for the women and men of SPD who want us all to move forward, together" (*Seattle Times*, 3/6/2013).
April 9, 2013	Statement commenting on retirement of Chief Diaz: "He has helped prepare SPD for the reform effort now under way, and richly deserves some R&R before pursuing the next chapter in his life." "Holmes said he looks forward to working with Pugel 'to continue to advance these critical reforms and to ensure that public safety remains our first priority for Seattle'" (*Seattle Times*, 4/9/2013).
April 16, 2014	Regarding Interim Chief Bailey: "I think he trusted people who were not worthy of his trust" (*The Stranger*, 4/16/2014).
October 21, 2014	Commenting on the dismissal of an SPD-officer law suit over implementation of new use-of-force policies: "We are enormously gratified by [the court's] ruling … [and will work with the Chief and Mayor] to help bring Seattle the safe, effective and efficient police department we all want and need" (*Seattle Times*, 10/21/2014).
November 21, 2016	"Although the Consent Decree stemmed from an adversarial legal process, Holmes said, the relationship between the city and Justice Department has been 'very much a partnership.' The question now is whether that will change under Trump" (*Seattle Times*, 11/21/2016).
May 18, 2017	In a letter to the City Council regarding the proposed Police Accountability Ordinance: "The legislation ... proposes a larger, less-focused and much more expensive CPC, which could undercut the reform progress made to date." ["Arguing that the commission should be a 'megaphone' for community input"] … "this should be the CPC's primary mission – not to 'interpret' community opinion, decide who are the 'legitimate voices' of the community, or tell the community what it believes" (*Seattle Times*, 5/18/2017).

Date	Statement
May 22, 2017	On City Council approval of Police Accountability ordinance: "This is a significant step towards ensuring for the next generations that our police department remains accountable to the public and focused on maintaining its dedication to constitutional policing. We still have a way to go" (*Seattle Times*, 5/23/2017).[929]
July 26, 2017	Regarding a police union complaint over an Executive Order requiring body worn cameras for SPD officers: "We look forward to defending the legality of the Executive Order before PERC [Public Employment Relations Commission] and, if necessary, the courts … The legal proceedings will likely highlight the overwhelming interest that the people of Seattle have in expeditious implementation of this body-worn video program, a program that protects everyone involved when SPD officers engage in difficult and dangerous encounters leading to the use of force" (*Seattle Times*, 7/26/2017).[930]
September 30, 2017	In a news release after the City filed its motion to be found in "full and effective compliance" with the Consent Decree: "We will continue to work, through the Consent Decree and under continued oversight from the Monitor and Court, to sustain the important reforms that have already taken place, build upon them, and implement the City's recent police-accountability ordinance to ensure that reform will continue long after the end of federal oversight" (*Seattle Times*, 9/30/2017).
November 23, 2017	Regarding the SPOG union contract: "Without weighing in on the advantages or disadvantages of this departure from the ordinance, I recognize that bargaining requires compromise" (*Seattle Times*, 11/23/2017).
May 15, 2019	At a press conference with Mayor Durkan after the court found the city "partially out-of-compliance" with the Consent Decree: "City Attorney Pete Holmes, who represented the city at the hearing, contradicted the version presented to Durkan, saying it would be a 'fair characterization' to say Robart's criticism of the guild amounted to an indictment" (*Seattle Times*, 5/15/2019).
August 17, 2019	In a joint statement with Mayor Durkan, responding to a judge's decision to overturn an arbitrator's reversal of termination of an SPD officer for excessive force: "Judge McHale rightly recognized the arbitrator's order for Mr. Shepherd's reinstatement violated the public policy against excessive use of force in policing, … SPD should not be forced to employ an officer whose view of reasonable and necessary force is so immutable and so contrary to SPD's policies and values" (*Seattle Times*, 8/17/2019b).
October 16, 2019	In a joint statement with Mayor Durkan after the Court authorized the city to consult with experts on Seattle police accountability issues: ""We are grateful that the Court agrees that this process could help further reform, … These national experts will help the parties to not only address the Court's concerns, but further strengthen a culture of continuous reform and improvement, inform the parties of potential other best practices, and inform collective bargaining" (*Seattle Times*, 10/16/2019).

[929] Miletich, S. (2017, May 23). City Council approves police oversight system with historic 8-0 vote. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[930] Miletich, S. (2017, July 26). Police union complaint over body camera order. *Seattle Times*. Retrieved from https://www.seattletimes.com.

As the quotes in Table 7.13 show, after City Attorney Holmes' initial conflicts with the McGinn administration, he appeared to be well aligned with Mayor Murray who took office with a pro-DOJ, pro-Monitor agenda. After Mayor Durkan took office, however, and once her administration began to support a union contract that did not appear to be consistent with the terms of the Consent Decree, Holmes did appear to try to maintain some distance on this issue by disagreeing with Durkan's assessment of the court's ruling of non-compliance. Even so, Holme's overall strategy appeared to be more in accord with the traditional role of the City Attorney supporting the Mayor's initiatives in court and in public, regardless of any personal concerns he may have harbored.

7.6.3. The Seattle City Council

The Seattle City Council, with authority over the City Budget, and the ability to pass police legislation binding SPD policy and practice, was an active stakeholder during the Consent Decree implementation process, particularly with respect to forcing the Mayor's hand in choosing the federal monitor, in passing police accountability legislation and in enhancing the powers of the CPC and making it a permanent organization. Members of council were quite vocal when implementation issues became a matter of public concern. Members were particularly vocal immediately after the DOJ investigation results were announced by the DOJ, and rejected by the SPD, and over the course of settlement agreement negotiations and the appointment of the Monitor.

In addition, City Council action was required when in early 2014, Mayor Murray was expected to bring in a new Chief and a statutory prohibition against bringing in command staff from outside the SPD could have been expected to inhibit reform. Subsequent to passing the Accountability Ordinance (AO), however, Council approved Mayor Durkan's proposed contract with the police unions, even though there were significant differences between the contract and the Council-supported AO. After Judge Robart found the city out-of-compliance with the Consent Decree, some Council members entered the fray, supporting the amendment of the police contract agreements. Finally, in August 2019, it was a City Council resolution, in support of cutting funding to

the SPD and a reduction of command staff salaries, that resulted in the resignation of Chief Best (*Seattle Times*, 8/12/2020).[931]

Table 7.14. Public Statements Made by Members of the Seattle City Council

Date	Statement
September 3, 2011	City Council Member Tim Burgess [former SPD officer and Chair of Safety Committee]: "I think my general impression was that the department was resting on its laurels and had become disconnected, both from city elected leaders and … also from the community, … This insular attitude of, 'We're the experts and we know everything we need to know' set in, … [as well as a] circle-the wagons mentality" (*Seattle Times*, 9/3/2011).
December 17, 2011	Council Member Burgess: "[The DOJ investigation findings] confirm what many, including myself, have believed for some time — our Police Department can do better … Chief Diaz, the police command staff, every officer and civilian employee of the Seattle Police Department and the elected leaders of our city should embrace this informed, constructive criticism and work quickly to implement fundamental and sustainable reforms, … Rebuilding the public's trust and confidence in the Police Department is an essential and urgent obligation" (*Seattle Times*, 12/17/2011).
December 22, 2011	Councilmember Bruce Harrell (Public Safety Chair-elect) commenting on the DOJ finding that 20 officers were responsible for 18% of the Department's 2010 use-of-force incidents: "If we can't identify the frequent fliers, that's a huge problem. This has been an issue for the community for years. They know these officers by name" (*Seattle Times*, 12/22/2011).
February 3, 2012	City Council President Sally Clark: "I was afraid they [the DOJ] were just going to come in and tell us what to do… That has not been what has happened" (*Seattle Times*, 2/3/2012).
March 29, 2012	Letter from City Council President Clark & Councilmembers Burgess & Harrell (past and present Chairs of Council Safety Committee) to Mayor McGinn: "Our primary interest in initiating a collaboration with you and the city attorney was to seize this opportunity [to cooperate with the DOJ, quickly address the findings in the report and define a] broad set of reforms to improve policing in Seattle . . . Unfortunately, we were not successful in advancing this approach… While we appreciate the negotiations with the DOJ are sensitive, we feel strongly that they need not be adversarial, … We feel strongly that now is the time to advance a new vision for SPD that can be broadly supported by the city's elected leadership, the people of Seattle, and the leadership and personnel of the police department." Councilmember Harrell: "There were a lot of strong opinions on how we should proceed…" (*Seattle Times*, 3/29/2012).
March 30, 2012	Council Safety Chair Harrell on the Mayor's 20/20 plan: "[It was put together] without any real input from the City Council … One of my concerns is that this is a very top-down plan … I think we were hoping for a more holistic approach" (*Seattle Times*, 3/30/2012).

[931] Beekman, D. (2020, August 12). Best: Budget cuts, disrespect drove her decision. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
May 11, 2012	Councilmember Burgess: "The primary focus should be on providing the most effective and professional policing that garners the highest trust and confidence of the people … The cost issues should follow, not the other way around" (*Seattle Times*, 5/11/2012).
May 15, 2012	According to the *Seattle Times*: "Council President Sally Clark said a 'shadow chief' or 'shadow mayor' would not be an outcome of negotiations with the DOJ. 'That's not what DOJ wants and not what we want." "There will be costs … [but] [w]e have a responsibility to maintain the services people expect. One of those services is a well-functioning Police Department" (*Seattle Times*, 5/15/2012).
May 18, 2012	Council Safety Chair Harrell on the City's negotiating strategy: "We were not required to make a response on biased policing. We can, however, voluntarily address the issue, … At this point, however, the strategy has to be to narrow the demands on the city from the DOJ, not expand them." Council Member Nick Licata: "From my reading of the initial DOJ report, biased policing is very important to remodeling our Police Department, … I don't see any downside to addressing it in a consent agreement" (*Seattle Times*, 5/18/2012).
May 25, 2012	Council Safety Chair Harrell on the DOJ's response to the City's negotiation strategy: "When we entered into these negotiations, we had two goals, [addressing the necessary SPD reforms & dealing with the deep mistrust of the SPD that has grown among the city's minority community], I'm not convinced we are doing either" (*Seattle Times*, 5/25/2012).[932]
July 18, 2012	Councilmember Burgess: "We attempted early on to collaborate with the mayor so the city would have a unified response to DOJ, … Unfortunately, that did not pan out." Council Safety Chair Harrell: "The mayor, yes, I guess he has blown certain opportunities when it comes to working strongly with the community, with the council, with Councilmember Burgess and myself and (with) ... business leaders. We are not under the tent, so to speak, on these negotiations, and that is an opportunity lost" (*Seattle Times*, 7/18/2012).
July 27, 2012	Councilmember Burgess on the City & DOJ settlement agreement: "great process has been made" (*Seattle Times*, 7/27/2012).[933]
July 28, 2012	Council Safety Chair Harrell on the DOJ settlement agreement: "I remain concerned over whether the Police Department and the community will embrace the Consent Decree, given how it was negotiated, [without involvement by police or Council]" (*Seattle Times*, 7/28/2012).[934]

[932] Miletich, S. & Carter, M. (2012, May 25). Fed's mad over city's cop reform response. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[933] Carter, M. & Miletich, S. (2012, July 27). City, DOJ reach deal on police. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[934] O'Hagan, M. (2012, July 28, 2012). Deal brings guarded optimism. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
October 22, 2012	Council Public Safety Committee Chair Harrell upon passing ordinance creating the Citizen Police Commission: "This is a time when building trust between the Police Department, the Office of Professional Accountability and the public is a priority and we must demonstrate this by our action; not simply our talk, … This ordinance demonstrates that the Council takes seriously its obligations to listen to the public faithfully and effectuate positive police reform." Councilmember Nick Licata: "The Community Police Commission will provide our citizens with a seat at the table in reforming our police department. I expect it will represent our city's ethnic diversity, and involve those who have direct interactions with our police, as well as professionals practicing in the justice system" (*Council Connection*, 10/22/2012).[935]
October 23, 2012	Councilmember Burgess: "Reform will be especially more difficult if the mayor keeps saying it will be difficult" (*Seattle Times*, 10/23/2012).
November 21, 2013	Councilmember Burgess, welcoming the hiring of a consultant by Mayor-elect Murray who will provide a "fresh perspective, … [his wide-ranging experience will] gain the confidence of our officers and the people of Seattle" (*Seattle Times*, 11/21/2013).
February 22, 2014	Councilmember Burgess email to Interim Chief Bailey: "As my questions indicated, I'm concerned that your review of prior cases, all fully investigated with final dispositions reached, will send a message that I don't believe you intend and that is that you are reversing previous Police Chief findings merely because you don't personally agree with the outcomes…" (*Seattle Times*, 2/22/2014).[936]
April 4, 2014	Council President Burgess regarding a 10-page memorandum from the Monitor regarding SPD's lack of compliance with respect to a data platform: "The opening paragraphs of this memorandum are a stunning indictment of current practices and systems … The Seattle Police Department ('SPD') currently lacks data to access officer performance; manage constitutional violations; identify misconduct; manage the risk of litigation and liability; hold supervisors and managers accountable; and identify and reward those who are best at community-based policing, communication, and constitutional, respectful, and effective law enforcement ... Furthermore, SPD's existing database platforms make data retrieval and analysis time-consuming and frequently unreliable… For such a high-tech city, this is unacceptable. It reflects a major failure of the Police Department's leadership for many, many years." (*Seattle Times*, 4/4/2014).

[935]Harrell, B. (2012, October 22). Seattle City Council Passes Ordinance to Create Community Police Commission. *Council Connection*. Retrieved from Council Connection » Seattle City Council passes ordinance to create Community Police Commission.

[936] Miletich, S. (2014, February 22). Mayor Backs SPD Chief's Misconduct Findings. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
June 4, 2014	Council President Burgees on sponsoring legislation to allow the Police Chief to hire command staff from outside the SPD: "The police chief's ability to hire the best candidates for her command staff is a central part of our new approach to management of the police department, … The status quo is not acceptable. We expect significant change and it begins with the command staff. The new chief faces huge issues, … The culture of the police department is stagnant. Basic management systems and protocols are lacking. Management accountability and core business practices are not well defined. Data systems are severely lacking. There are significant questions about use of resources and deployment of officers. The new Chief will need very experienced and seasoned managers to create and sustain the change we want" (*Seattle Times*, 6/4/2014).
June 25, 2015	Council Safety Chair Harrell on the Monitor's request to hold off on Accountability legislation: "I have a sense of urgency and we will begin working on this immediately, … But we'll certainly comply with instruction from the Monitor and other parties" (*Seattle Times*, 6/25/2015).
December 1, 2015	Councilmember M. Lorena González regarding conflicts between the CPC and the Monitor: "It's a stark example of the disconnect between the Federal Judge's and the Monitor's opinion on the progress made by SPD, as opposed to the community's experience and interpretation of that progress" (*Seattle Times*, 12/1/2015).[937]
July 8, 2016	Councilmember (and former Seattle PD officer) Burgess on the Seattle Police union: "I think sometimes the police union leadership are their own worst enemies. They fire off these statements and then take them down. It's terrible, because it reflects an inner cycle of thinking that is very negative and disrespectful. Sometimes I find it disgusting... They're harming themselves... it reflects an immaturity and an insensitivity to the issues we're dealing with" (*The Stranger*, 7/8/2016).
April 7, 2017	Council Safety Committee Chair M. Lorena González commenting on Monitor's assessment report regarding SPD use-of-force: "Today's report proves the efficacy and importance of consent decrees." Councilmember Burgess: "Changing culture is slow-going and hard work, but our city's efforts are bearing real, positive results. The officers who are on the street every day deserve all the credit" (*Seattle Times*, 4/7/2017a).
May 22, 2017	Council Safety Committee Chair M. Lorena González commenting on Council's passage of the Police Accountability Ordinance: "Today's vote crystallizes my vision for Seattle's police accountability framework and our ongoing efforts to reform the Seattle Police Department" (*Seattle Times*, 5/23/2017).

[937] Miletich, S. & Beekman, D. (2015, December 1). Coalition wants quicker reforms in SPD. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 18, 2017	Council Safety Committee Chair M. Lorena González: "We had hoped that today would be the final thumbs-up from Judge Robart to allow us to continue to move forward with the implementation of the accountability legislation, … And obviously we did not get that final approval. But we understand that Judge Robart is extremely concerned as we are about ... the possible negative implications that our collective-bargaining process could have on the ultimate goal of making sure this accountability legislation establishes constitutional policing." Council Safety Committee Vice-Chair Tim Burgess: "[It's] another step in a long, sometimes tedious process toward the final outcomes that we're looking for … We will not be deterred in achieving that goal … I was particularly impressed and appreciative of the judge's comment that the Constitution trumps everything, … That is so true and that is, in fact, our guiding star" (*Seattle Times*, 7/19/2017b).
September 30, 2017	Then-Interim Mayor Burgess commenting on the City of Seattle's motion to be found in full compliance with the Consent Decree: "While we welcome this good news, we will not stop in our efforts to assure that all Seattleites feel safe and secure and have a relationship of trust with their police," (*Seattle Times*, 9/30/2017).
January 11, 2018	Former Councilmember Burgess on news that the City was found in full compliance: "This is such wonderful news. Lots of people deserve credit, especially the officers, detectives and civilian employees of SPD" (*Seattle Times*, 1/11/2018).
May 15, 2019	Councilmember M. Lorena González: "I acknowledge that a signal by the Court that we may be partially out of compliance with the Consent Decree is not an ideal outcome. This is a message that we should all take to heart while we eagerly await Judge Robart's written court order. When it comes to constitutional policing, any ground lost is simply too much" (*Seattle Times*, 5/15/2019).

Date	Statement
July 15, 2019	Joint letter from Council members González, Herbold and Mosqueda, regarding out-of-compliance finding by Judge Robart, urging Mayor Durkan to: "exhaust all efforts to reach an agreement with SPOG to *jointly* reopen negotiations [to enact various components of the accountability ordinance]" (*K5 News*, 7/15/2019;[938] *Seattle City Council Insight*, 7/15/2019). Council Member González: "If we miss the mark, the price we pay is community trust…I think the best thing for morale at the City of Seattle and the Seattle Police Department is to get out from under the Consent Decree…." (*K-5 news*, 7/15/2019). "I believe good officers want to be held to higher standards, and I also believe the good officers want the bad officers to be held accountable, … This is to our mutual benefit … … (*MyNorthwest.com*, 7/16/2019).[939] "Asking for additional police reform is fundamentally not anti-cop or anti-labor … Centering our work on … the voices of people who have lost brothers and sisters and other relatives to police violence – is what will ultimately lead to transformation of this system" (*NPR*, 7/15/2019).[940]
June 3, 2020	Council President González, supporting decision by City to withdrawal motion for partial dismissal of consent decree: "The sheer volume of … complaints that are flowing from the Police Department's response and management of these demonstrations is reason enough for the city to take a step back" (*Seattle Times*, 6/3/2020).

On the whole, it was the members of the Council's Public Safety Committee who spoke as to consent decree issues. At the beginning of the process, the Council members were aligned with City Attorney Holmes against the McGinn administration. Once Mayor Murray took office, the Mayor and Council's agendas appeared to become more aligned; and the City Council's attention became drawn towards the need for City-initiated reforms in the area of police accountability. Even though the Council did not give the CPC everything it wanted in the AO, Council was clearly aligned with the CPC in general. Council became more publicly engaged after the finding of non-compliance with respect to the union contract (which they approved) and ultimately supported the City's decision to withdraw its motion for partial dismissal of the decree.

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[938] K5 News (2018, July 15). The War of Words over Police Accountability heats up in City Hall. *K5 News*. Retrieved from https://www.king5.com/video/news/local/seattle-city-council-disappointed-in-mayors-approach-to-police-reform/281-74bb7be0-ce36-405e-98d1-41cbc011e793..

[939] Bowman, N. (2019, July 16). City Council Members call on City to renegotiate police contract. *MyNorthwest.com*. Retrieved from https://mynorthwest.com/1451386/seattle-police-contract-renegotiation-consent-decree/.

[940] McNichols, J. (2019, July 15). Seattle Police Reform could backslide if steps not taken, critics say. *KUOW NPR*. Retrieved from https://kuow.org/stories/seattlepolice-reform.

7.6.4. Seattle Politics & the Political Landscape

There is little doubt that Seattle politics impacted the implementation of the Consent Decree from day one and throughout the entirety of the process. The political actors were many, ranging from the Mayor and the Chief, to the City Council and its Safety Committee, the City Attorney, members of the Community Police Commission, high profile members of the civil rights community, and the leadership of both Seattle police unions (the Seattle Police Officer's Guild (SPOG), representing the rank and file, and the Seattle Police Management Association (SPMA), representing front line supervisors.

One participant, particularly well versed in Seattle politics compared the McGinn and Murray administrations as follows:

> There were issues regarding both McGinn's failure to be willing to cooperate with the DOJ and his political relationship with council and the city attorney. He came in as an urbanist, not opposed to social justice, but not attuned to it either. McGinn was inconsistent at times, with good rhetoric, but his actions almost seemed random – he was not trying to be deceptive but he was also not experienced in the political environment. Murray, on the other hand, knew how to say things that people could interpret the way they wanted to hear. Murray was able to frame his concerns amongst McGinn's supporters for them to understand. Murray was more consistent and better understood what was going on. People felt they were getting something more solid with Murray. Murray outflanked McGinn on the framing of the issues by appearing to be more receptive to community input and forcing police to be more responsive to community. McGinn hesitated and people lost faith. McGinn was too focused on winning the election through the establishment, even though he ran against the establishment and won the first time. McGinn probably thought if he could keep police management happy, they would not attack him…

As one might expect, the different political players had different visions of what police reform needed to look like. Some believed that "the DOJ needed to use whatever force was necessary to get the job done," believing Jenny Durkan to be "a straight shooter;" with others believing that Durkan and the DOJ were, in fact, not aggressive

enough; and yet others believing the DOJ intervention was simply unnecessary and no more than a politically motivated "hit job."[941]

Participants observed that in Seattle, where all but one members of Council currently identify as Democrats (and the lone dissenter identifies as a socialist), a tremendous amount of the political banter is "personality driven" with big personalities "and even bigger egos" driving various agendas. When Merrick Bobb stepped down as Monitor, he specifically commented on "the endless squabbling at the top of Seattle leadership" and noted that "the Mayor, City Council, City Attorney, the CPC, and other community groups and organizations must really try to work together and not a cross purposes." He concluded by commenting that "I will not miss the endless jockeying and some runaway egos" (Bobb, 2020, p. 10).

On the DOJ, Monitoring Team side, there was speculation that "Mayor McGinn was resisting the DOJ-initiated reform because he thought Jenny Durkan was stealing the show from him and putting herself in a position to kick him out of office."

More than one study participant described Seattle politics as "a snake pit" and "contentious and nasty" where city officials "are constantly internally forever back biting and back stabbing," with one participant going to far as to say that: "they are all a bunch of out-of-control egos trying to best each other with few adults in the scheme." The City was described by outsiders as "being like a multi-headed hydra, the City Attorney, Mayor, SPD, CPC and City Council – all with different views and agendas and sometimes completely at odds with each other."

As perceived by one member of the McGinn administration:

> Everything was contentious and dysfunctional anyways, and then you had the pressure of the Consent Decree and the pressure to come together as a City – even where everyone was trying to shoot each other down as it was unfolding. … It was very stressful and very messy.

This participant also commented that:

> the DOJ had a great brand, everyone assumes they are fair … So, in a progressive city like Seattle, if DOJ says you are wrong you would be

[941] One participant suggested that if Mayor McGinn had been part of the "club" [the Democratic establishment of Seattle] and not an "outsider," Durkan would never have come after him in such an aggressive manner.

> hard pressed to disagree … We would have had to have a very cohesive city structure to really stand up to the DOJ at that point … In retrospect, we should have just rolled over … we were pretty self-righteous and outraged … we should have just realized it was just a political process and the police felt abandoned anyway…

One political insider opined that the initial DOJ report "was absolutely necessary and could not have been avoided to enforce reform," but believed that once that shot had been fired, it was time for collaboration as opposed to confrontation, but that the McGinn administration chose the latter. Other participants were surprised to see McGinn, "who held himself out as a progressive to be so stuck at the hip with the SPD," believing them to be "strange bedfellows," resulting in the SPD and McGinn "becoming an impediment to progress in the first years." Some members of the SPD noted that "politics overturned the 'win' of the Consent Decree…the fighting against it never stopped."

From the community side, study participants described the political leadership, including the DOJ, as simply wanting "a political win" and as failing to set up any real collaboration with the community. The original effort to obtain DOJ intervention in Seattle has been represented as a "grass roots effort" with the City Council going along for the ride.

7.7. Seattle Consent Decree Implementation – Community Voices

In the winter of 2010, at approximately the same time that the ACLU facilitated the writing and sending of the community letter that started the Consent Decree process in Seattle, Law Professor Kami Simmons addressed the new framework that was then seen to underline the DOJ's approach to consent decrees. According to Simmons,

> The New Governance theoretical framework addresses "traditional policy needs but operat[es] outside the traditional, formal legal infrastructure" and is generally "characterized by the greater participation and collaboration of non-traditional players, the use of consensus building mechanisms, reliance on peer review and collaboration, and the integration of public-private partnerships and research experiments into the formal policy-making process." Embracing characteristics of democratic experimentalism, such as stakeholder engagement and local experimentation, allows for much-needed federal oversight without

> sacrificing local needs. (Simmons, 2010, p. 379, quoting Simpson, 2007-2008)[942]

Given this description of the new framework being used by the DOJ, and the creation of the Community Police Commission (CPC) as part of the Consent Decree implementation process, one would have expected the Seattle experience to have thoroughly engaged civil rights and community activists and reduced criticism from that perspective. In actuality, however, the gap between the DOJ, the Monitor, the SPD and "the community" seemed to grow and criticism over the handling of the Consent Decree, from a community perspective, continued unabated.

Although some ACLU letter signatories advised that they had no real expectations regarding the letter that was sent to the DOJ asking for a §14141 investigation, amongst community members who sought the decree, there was still disappointment that the DOJ failed to find a pattern and practice of biased policing. Biased policing was not only perceived to be the cause of much of the pattern and practice of excessive force, but was also believed to have been provable based on prior litigation and research conducted by sophisticated community stakeholders.[943] Even so, community participants were supportive of DOJ intervention and pleased to see that racial based policing issues ended up being addressed in the settlement agreement. Community participants were also supportive of the creation of the Community Police Commission, although there were significant concerns that the community was "left out" of the Settlement Agreement negotiation process. Although the DOJ represented that they had conferred with many community members over the course of the investigation and believed that they could adequately represent community interests in the negotiations, there was a great deal of suspicion about what was perceived to be a "paternalistic" approach on the part of the DOJ.

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[942] Simpson, C. (2007-2008). Policy as a Process: The Pedagogical Role of the EU in Health Care, 33 N.C. J. INT'L L. & COM. REG. 293, 302 (citations omitted).

[943] Community anger at the DOJ's failure to make a finding on biased policing was identified in most of the community research interviews. One community leader observed that the Seattle Public Defender's Association had previously litigated issues of racial disparity with success – "then the DOJ walks out and announces its findings on excessive force – which were so poorly founded – it was laughable. But with respect to racial disparity, they made no findings? This was, at best, extremely sloppy analysis, at worst, it appeared corrupt. It appeared that they simply did not want to make findings regarding racial disparity … perhaps it was that Chief Kerlikowski was Obama's Drug Czar? Either they were bad at it or corrupt… the result was that the DOJ findings were founded on a lie."

Community relationships with Mayor McGinn were described as "complicated." It was Mayor McGinn who sought to exclude racially biased policing issues from the Settlement Agreement, at least initially, and his administration pursued the strategy of using a mediator, which led to confidential negotiations which left community members feeling disenfranchised from the process.[944]

Research participants also identified "a lot of grumbling" amongst community members about having to pay for the reforms. As observed by more than one community member, "if the City Council and Mayor had just done their jobs, we would never have even needed DOJ intervention."

7.7.1. Community Perceptions of the SPD

> *"SPD's first line of defense was 'let's make it collaborative,' but their definition of that was to keep a tight fist over all the information. They always offered to be cooperative and open, but, in the end, it just appeared to be a stalling tactic to wear people down."*
> **Seattle Community Member**

The DOJ investigation was initiated by the aforementioned ACLU letter, signed by 35 signatories, identifying multiple instances of excessive force over a 16-month period. What seemed unusual about the request was that, at the time of the letter, Seattle had a robust and unique tripartite civilian oversight of law enforcement program, which included the civilian-led Office of Professional Accountability (OPA), an OPA Auditor and an OPA Review Board. This oversight program was created as a result of the 1999 Civilian Review Panel recommendations and was later enhanced by recommendations made in 2008 by the Police Accountability Review Panel.

[944] Both the Mayor's office and the DOJ appeared to believe that having conferred with community representatives, that they were in a position to "represent" the community in the settlement negotiations and incorporate their voices into the settlement effort. Community members participating in this research, however, tended to disagree with that assessment. Notably, Chanin has suggested that "[p]articipating in negotiations can increase the legitimacy of the settlement in the eyes of potential opponents and would-be critics (Tyler, 2006; Tyler & De Cremer, 2005). It can also give key stakeholders a sense of ownership over both the process and the content of the agreement" (Chanin, 2017a, p. 266). How exactly to do that, however, appears to remain a challenge (but, see Patel, 2016, for arguments in favor of allowing "community" to be heard at "fairness hearings" before a federal court approves a Section 14141 settlement agreement).

According to the community-based research participants, however, the oversight program was "investigation-centric" and unable to "do some of the important, big work," including issues relating to policy, training and police practices.[945] According to one participant: "There were so many layers of accountability, it gave the SPD and the union 'a way out' – saying that there was accountability when there was not." And, according to virtually every research participant of color, even though Seattle views itself as a progressive place, "there is an undercurrent of racism within the City and the SPD that has never really been dealt with."

"The ACLU had several goes at the City, trying to get changes, but to no effect."
ACLU Letter Signatory.

Although participants reported that they had no real expectations when they signed onto the ACLU letter, some were not surprised DOJ "took on Seattle." Because Jenny Durkan was a member of both of the panels examining SPD accountability, participants believed she felt "personally offended" that after all the work of the blue-ribbon panels, police accountability concerns were still not being addressed. Participants believed Durkan saw an opportunity to use her position to say "come on in and we'll show you how this can be done." "She was tied into legal and political community. She not only brought in DOJ but also knew how to work with both the community and the police."

As to the criticism lodged by City and SPD personnel that the DOJ used "excessive and unnecessary force" in the implementation of the Consent Decree, there were divergent opinions amongst community research participants. While some participants spoke in terms of a need for the DOJ to have been more "holistic" in their approach,[946] others spoke in passionate terms about the need for aggressive action to

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[945] The OPA Auditor was given the authority to make policy recommendations. However, those recommendations tended to be ignored and remained generally unimplemented. As suggested by one community participant: "If the Department had just implemented the Auditor's recommendations, the SPD could have fixed itself."

[946] According to one participant: "A Consent Decree is unhelpful in setting up an environment for police community relationships that will move towards transformation. Not everything needs to be achieved by a boot on the neck. It is possible to change, but through a different set of skills than is used in a Consent Decree."

change SPD behavior.[947] On the whole, however, community members generally supported the concept that the necessary change would not have taken place without a consent decree. As explained by one community participant:

> I don't think reform in accountability structures would have happened without the Consent Decree. For the first time, there had to be a more open process for development of policy. By having the Consent Decree pull all that stuff out of the SPD, it was all made more visible, and has resulted in improvements in accountability. There was a shock value to DOJ coming in that resulted in change that would not otherwise have happened.

As argued by one well-placed community member, the suggestion that a consent decree was required to reform the SPD appeared justified by the conclusion that:

> the SPD, similar to a lot of police departments, has a culture of "justify and defend" – they would say "we are not LA/Detroit/etc., why are you coming down on us?" "We're not that bad…." But what we saw was a culture of "that's what they told you in the academy…." The FTO's had a real attitude and it ended up being very detrimental to the community. In addition, although not as bad as Chicago or New Orleans, there was some thuggery – not unique to Seattle, but it was there. There was also an attitude of "we'll do what we want to do…," regardless of whether or not it was the right thing to do.

Table 7.15. Public Statements by Community Activists Over the course of Implementation

Date	Statement
September 3, 2011	Estela Ortega (ED, El Centro de la Raza): "From our perspective, El Centro de la Raza and other communities of color, police misconduct has been an issue for decades in our community" (*Seattle Times*, 9/3/2011).
December 17, 2011	Estela Ortega: "This is what people have been saying all along, that police use excessive force, especially against people of color, … This gives our communities a lot of hope. I think John Diaz has a commitment to wanting his department to have good relationships with the communities, and this gives him the tools he needs to make the changes." James Bible (President of the Seattle NAACP), "called on the Police Department to 'clean house' from top to bottom, 'including Diaz.' 'The Seattle-King County NAACP has been aware of the pattern of excessive force for the past 25 years, … Now, we need to take a step back and decide where to go from here'" (*Seattle Times*, 12/17/2011).

[947] Referring to police requests for "holistic change:" On participant argued: "Holistic change? The Community response would be 'so sorry your feelings are being hurt, can you please bring my family member back to life?'"

Date	Statement
December 22, 2011	Nicole Gaines (President, Loren Miller Bar Association): "It's disappointing that it took community pressure to get [Mayor McGinn] to implement reforms. This is what he should have been saying originally. He only said it when it was clear the public was outraged … It seems more politically motivated than that it's the right thing to do." Kathleen Taylor (ED, Washington ACLU): "The Mayor's statement embracing the DOJ's recommendations for reform is a welcome and positive development. The ACLU and other groups who wrote to the Mayor today look forward to working with City officials and the DOJ to bring about much-needed changes" (*Seattle Times*, 12/22/2011).
February 2, 2012	Estela Ortega: "We felt that the process would be more inclusive, … We'll be seeking a little more time to make sure that occurs" (*Seattle Times*, 2/3/2012).
March 30, 2012	Kathleen Taylor (ACLU): "We urge the city to speedily negotiate a consent decree with the DOJ that will include a monitor and court oversight, … Seattle cannot solve the longstanding problems of SPD culture and accountability without that assistance. A consent decree is critical to ensure that reforms are thoroughly implemented and are sustained for the long term" (*Seattle Times*, 3/30/2012).
May 10, 2012	Kathleen Taylor (ACLU): "[To] ensure that reforms to the Seattle Police Department are fully implemented and long-lasting, the city needs speedily to agree to a consent decree with the Department of Justice that includes a monitor and court oversight … The DOJ investigation and recommendations resulted from the SPD's inability to curtail excessive and unconstitutional use of force by some of its officers, … It's clear that the problems within the police department have been so ingrained that our city can't fix them without outside help" (*Seattle Times*, 5/11/2012).
May 18, 2012	Jennifer Shaw (Deputy Director, ACLU): "I suspect [the groups representing communities of color who signed on to the original ACLU letter to the DOJ] will be quite upset if it's true that the city's response does not address biased policing" (*Seattle Times*, 5/18/2012).
June 22, 2012	Jennifer Shaw (ACLU): "If you're not at the table, you're on the menu … We've had a lot of 'thank you for comings,' and 'We'll see you later,' comments, … So I think now is the time we need to be invited and allowed to fully participate with both the city and the Department of Justice." Jaime Garcia (ED, Consejo Counseling & Referral Services): "Let's be clear, it is a travesty of justice to lock out the very people most directly affected by police misconduct from taking part in the ongoing consent-decree negotiations, … We need to have a seat at the negotiating table with the Department of Justice and the city of Seattle" (*Seattle Times*, 6/22/2012).
July 28, 2012	Doug Honig (ACLU spokesman): "What we have is a starting line, … But now the marathon begins. ... We have a lot of good words on paper, but what really is going to matter is how it's implemented" (*Seattle Times*, 7/28/2012).
July 29, 2012	Estela Ortega: "The fact is, we have a consent decree, we met the deadline and we have community involvement that can lead to meaningful discussions and other improvements" (*Seattle Times*, 7/29/2012a).

Date	Statement
January 18, 2014	Jennifer Shaw (ACLU) "called the bias and stop policies a 'positive move' toward ensuring constitutional policing in Seattle. 'The next important step will be to train every officer on the new policies'" (*Seattle Times*, 1/18/2014).
August 2015	CPC Member Jay Hollingsworth (member of the John T. Williams Organizing Committee): "The fifth anniversary of John's death is on Sunday, and we'll be gathering at the totem pole, … People are still going to ask, 'What really has changed in five years?' Right now, I'm having a little bit of difficulty with explaining what's happened. I mean, there have been positive changes in policies. And we're looking to review them and looking for ways to confirm that these policies are working and are effective... however, I'm happy that we're talking about working together and the judge has set forth a path for that to happen" (*The Stranger*, 8/26/2015).[948]
November 30, 2015	"[N]early 50 community organizations sent a letter to Bobb saying further delay in moving forward with the [Police Accountability Ordinance proposal] 'does not meet the expectations of our communities for substantive and timely reforms'" (*Seattle Times*, 12/21/2015).
November 9, 2018	Michele Storms (Deputy Director, ACLU): joining with 23 other community groups opposing ratification of the tentative contract with SPOG: "Today the council stands at a critical juncture, whether to take the community a step backward on accountability or to vote no, and we are asking the council to reject [the police union contract]" (*Seattle Times*, 11/9/2018).[949]
June 26, 2019	Michele Storms (ACLU): "We are disappointed with how the Mayor's office characterized the status of the City's compliance with the Consent Decree, … Judge Robart's finding was clear: The City has partially fallen out of compliance with the federal consent decree with regard to discipline and accountability … Every denial creates delay and every delay in establishing a system of true and effective police accountability reduces public safety, erodes community trust in law enforcement, and most significantly, costs lives. Neither the City nor its communities can afford to bear the heavy costs of denial and delay" (*Seattle Times*, 6/26/2019).
July 15, 2019	Andre Taylor (founder of *Not This Time*) "In 2018, when they [the Seattle Police Officers Guild] were asking for a pay increase... we said absolutely, SPOG should have a pay increase, … But we were asking for accountability back then. We agreed with their pay increase, but now they're disagreeing with accountability. And that's problematic" (*KUOW*, 7/15/2019).[950]
August 17, 2019	Former CPC Commissioner Diane Narasaki: "Hiring new consultants and diverting attention away from the Court's directive serves to undermine, rather than build, community trust" (*Seattle Times*, 8/17/2019a).

[948] Herz, A. (2016, August 25). Federal Judge calls The Stranger's Reporting on SPD 'Inflammatory,' but it's clear he learned from it. *The Stranger*. Retrieved from https://www.thestranger.com.

[949] Miletich, S (2018, November 9). 24 Community groups urge council to reject Seattle police contract. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[950] McNicols, N. (2019, July 15). Seattle police reform could backslide if steps not taken, critics say. *KUOW*. Retrieved from https://kuow.org/stories/seattlepolice-reform.

Date	Statement
May 11, 2020	NAACP statement opposing dismissal of portions of the Consent Decree: "The SPD should not be released from oversight while its police union contract rejects accountability measures … The NAACP-SKC condemns the premature motion to end the Consent Decree and its police accountability oversight."[951]
June 12, 2020	Michele Storms (ACLU): "The City must allow for freedom of speech and freedom of assembly, and it must address police accountability and excessive use of force, … It is impossible to expect progress if the city continues to attempt to silence protester demands with excessive force" (*Seattle Times*, 6/12/2020).[952]

Community commentary of the status of the Consent Decree largely consisted of public statements made by members of the CPC, supplemented by statements made by leaders of community organizations that originally requested DOJ intervention – to include the ACLU and the NAACP. These community representatives consistently pushed for greater community involvement in the implementation of reform, strongly supported the establishment of a permanent CPC and an accountability ordinance that would ensure appropriate police discipline, and opposed any premature dismissal of the Consent Decree.

7.7.2. Community Research Participant Thoughts with Respect to the Implementation of the Consent Decree

Community participants were split between comments supportive of the Consent Decree implementation process and comments critical of the process. In many cases, community research participants themselves had mixed feelings with respect to the implementation process. Some of the supportive comments included that:

- "For the first time, the SPD had to have a more open process for development of policy. By having the Consent Decree pull all that stuff out of the department, it made it more visible, which resulted in more accountability. The transparency of the process was an important part of overall success of the process. This was the first opportunity for

[951] NAACP (2020, May 11). President's Statement read at Seattle City Council today on ending the Consent Decree. Retrieved from https://www.seattlekingcountynaacp.org/press-releases-and-statements/presidents-statement-read-at-seattle-city-council-today-on-ending-the-consent-decree.

[952] Carter, M. (2020, June 12). Judge bars Seattle police from using tear gas. *Seattle Times*. Retrieved from https://www.seattletimes.com.

'outsiders' to have an impact on SPD policy, training and practices and we could see what was going on and the push for positive change;"

- "There was really a mix of stakeholders working together: the DOJ was like the 'mom' coming in when the siblings were fighting. There was a shock value to the DOJ coming in that resulted in change that would not otherwise have happened. Without community involvement, sustainable change would not have been possible;"

- "It helped that the federal judge did not pull punches with anyone…;"

- "The City Council had years of recommendations from the OPA auditor that they did nothing about. If the City had held the police accountable, we never would have needed the DOJ. Having Monitor and Court involvement has put a type of pressure on the Department that City Council has not done in the last 20 years;"

- "I don't think the reform in the accountability structures would have happened without the Consent Decree."

As previously noted, in some cases, participants provided mixed reviews:

- "With Jenny [Durkan], we ran into some challenges with her getting frustrated at constantly being pushed by the community. There were times when she wanted the community to 'back off.' It got tense at times, but it was a healthy tension, generally combined with a mutual respect;"

- "The use-of-force policy probably went overboard. It was drafted by attorneys without thinking of its impact on officers; ultimately it had to be amended and adjusted. Even though it was very 'lawyerly,' it was still such an improvement over what they had before. I know the police were really upset about the policy, but that was probably more the result of the Department's failure to 'roll it out' appropriately;"

- "Data collection has definitely been a success, but it is still difficult for outsiders to access and to understand how to use the information;"

- "It was an iterative process - an evolution: At times the Monitor felt the he had specific boxes to check and he did not like being pushed by community members and it led to some very heated interactions. There were lots of battles over process. Because the Monitor had the ear of the Judge, there were things that the Judge did and said that seemed to indicate he believed the community was an adversary to the Monitor. But that did appear to change over time…"

Some well-placed participants, however, had very negative perceptions of important components of the implementation process:

- As stated publicly by Gerald Hankerson, the president of the local NAACP chapter that was part of the initial group that requested federal oversight of SPD, he had little confidence in the reform process: "The

community should have a chance to oversee the police, … I get so frustrated when I hear people say 'we're making progress.' The consent decree created all kinds of ways of measuring improvement, but those are not reflected in a changed reality on the ground. This is a technocratic process to get the people to think there's reform; (*The Stranger*, 8/25/2015)."[953]

- "Policing in Seattle has gotten better, but it's largely despite the Consent Decree;"

- "The consent decree was a trauma for this City; I have a high tolerance for difficulty and cannot remember giving up on anything in my years of work, except I have quit on this."

Some community members saved their greatest vitriol for the Monitor and his team; with others being critical of Judge Robart's role as well as that of City Attorney Holmes:

- "The City Attorney, the Monitor and the Judge were a triumvirate of inadequacy. We drew the wrong person at every turn. The Monitor and the Judge engaged in a mutual dance of arrogance. The Monitoring Team was working 'pro bono' at $200 an hour – which Judge Robart thought was a big concession, while community members were working for free. Attention was focused on a Judge who wouldn't listen, a Monitor who knew better, and a Mayor involved in self-aggrandizement and self-promotion;"

- "When the CPC asked for help from the Monitor on race and accountability, Merrick would choose not to help, saying he 'couldn't.' Then the CPC would come up with a strategy and the Monitor would move to stop it;"

- "There was a motivation on the part of the Monitoring Team of arrogance, money, and creation of a racket of white male lawyers who believe they know everything and think they are critical to success in oversight;"

- "The Monitor engaged in public posturing but not when it mattered. He did not protect people in the department who were doing great things. It has been a terrible experience: betrayal, great sacrifice by some and no action by Monitor. That is why the Consent Decree process is unhelpful and should be at the bottom of any list in police reform for bringing it back;"

- "The Monitor: had a very non collaborative approach. He would walk in, tell you what was wrong and how to fix it, but in a very directed, paternalistic and disrespectful way;"

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[953] Herz, A. (2015, August 25). Police Reform Advocates say Federal Oversight Hasn't Gone Far Enough. *The Stranger*. Retrieved from https://www.thestranger.com.

- "The Judge and the Monitor were the wrong people: it wouldn't have been as bad with a different Monitor and a different judge."

Overall, even though it was "the community" that called for, and recognized the need for DOJ intervention, it was the same community members who took umbridge at the DOJ, the Monitor and Judge Robart for their perceived "paternalistic" attitudes towards the public and community involvement in the federal reform effort. Community research participants would have likely been more satisfied with the type of intiiatives taken in the Portland, Oregon Consent Decree process as described in Section 3.3.3. This was even though the CPD received amicus status in the Seattle consent decree litigation, an enhanced level of status not normally given to community organizations by courts outside of Seattle.

7.7.3. The Community Police Commission

"You don't own the community, …And you are not the only people getting community input."
U.S. Attorney Jenny Durkan in response to criticism from the Community Police Commission, December 12, 2013

At the time of its Creation, as part of the Memorandum of Understanding between the DOJ and Seattle,[954] the Citizen Police Commission was perceived by community members to have been "a brilliant move" on the part of Mayor McGinn and the DOJ. One of the more challenging aspects of the Commission, was the decision to include both community activists as well as representatives of the two police unions, SPOG and SPMA.[955]

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[954] "The [Seattle] MOU specifies five policy issues for which the CPC is responsible: community engagement, accountability, investigatory stops and data collection, officer assistance and support, and transparency and public reporting. For each of the enumerated areas of reform, the CPC is specifically charged with providing input as the reforms are developed, ensuring support and guidance in the implementation phase, and reviewing all reports and recommendations put forth by the court's monitor. The CPC issues its own reports, holds regular public meetings, and gathers a broad array of public input to achieve its mandate. It is also required to maintain regular contact with the city and post its reports publicly on the city's website. The CPC has published several reports based on community-driven data collection and focus groups with recommendations for topics covered in the Consent Decree, such as bias-based policing, performance mentoring, Terry stops, and use of force" (Patel, 2016, pp. 821-822).

[955] The ordinance by which the CPC was established (Seattle, Wash., Ordinance 124021 (Oct. 22, 2012) defined the number of members on the commission and specified mechanisms by

Members described the CPC's initial work as "collaborative:" as represented by one CPC member, "it was pretty remarkable about how well things worked… there was minimal finger pointing and accusations … the concept of 'Seattle nice' worked in our favor." Even so, CPC members noted that the CPC was created as a temporary body, to be disbanded upon the dismissal of the Consent Decree and reliant on the Mayor's office for its budget. According to one member: "the joke was that the CPC was given all of the problems that neither the City, SPD or Monitor wanted to solve."

And Mayor McGinn made sure to put his imprimatur on the body, appointing members who had previously served on a community body (the MEDC [Minority Executive Directors Coalition] which he counted as part of his constituency.[956]

CPC members noted that, at the outset, the CPC and the Monitor had difficultly "getting along." There was a perception on the part of the CPC that the Monitor was prepared to diminish the CPC's role and his silence on the issues the CPC was created to address "was indicative of a lack of prioritization of the CPC's work." In addition, the Monitoring Team brought in its own measurements for community satisfaction and conducted its own outreach – whereas the CPC believed that they should have been accepted "as a vehicle of the community" and should have been engaged more in the Monitor's outreach to the community.

Members of the Commission believed themselves to bring a lot to the table with respect to their knowledge of the SPD and its challenges in dealing with the community. Some considered themselves to be "experts" and were offended in not being recognized as such by either the Monitor, the City or the DOJ. At the same time, many in the SPD, the City and the Monitoring Team were concerned that many of the members of the CPC had their own political and personal agendas, that they were unwilling to go along with SPD or Monitor-identified "best practices," and too willing to take positions contrary to the parties.

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which the selection of members would ensure the diversity of the Commission. The members of the CPC were appointed by the mayor and confirmed by the City Council. The commission was required to include one rank-and-file officer and one mid-level manager from the SPD to be chosen by SPOG and the SPMA, respectively.

[956] According to one participant, five of the first fifteen members of the CPC were previously members of the MEDC.

The conflict first came to a head in the Summer of 2013, while the parties were trying to finalize a new use-of-force policy for the SPD. The issue of the CPC's role in the process became controversial when the parties proceeded ahead with the preparation of the new policy without the participation of the CPC, as the policy was not one of the enumerated policies put under the CPC's jurisdiction in the MOU; the CPC, however, objected.[957] By August 2013, the CPC was asking Judge Robart to delay the implementation of the new policy to give the CPC the opportunity to "garner community input" and "provide…formal feedback."[958] And, in the end, the parties relented.

By October 2013, the CPC was attempting to intervene in the Settlement Agreement, against the wishes of both the City and the DOJ.[959] While the CPC's motion to intervene was denied, they were granted *amicus* status and allowed to submit briefs in the Consent Decree litigation. According to one CPC member: "We got amicus status because we were bad assess…. We threatened to all quit, including the two police officer members … We felt frustrated and believed that parties were attempting to interfere in our work."[960] CPC members believed that the Monitoring Team and DOJ "loved us until they disagreed with us and then, suddenly, we needed to be silenced."

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[957] "Because SPD's use-of-force tactics and the deaths of unarmed persons drove advocates' initial request to the DOJ to investigate the SPD, the CPC interpreted the MOU not to foreclose its involvement in the development and evaluation of a new use-of-force policy" (Patel, 2016, p. 822, citing Walker, 2015).

[958] U.S. v. Seattle, Document 82, filed August 20, 2013.

[959] U.S. v. Seattle, Document 90, filed October 24, 2013.

[960] As reported in The Stranger in August 2015: "In the summer of 2013, CPC commissioners unanimously threatened to resign unless they were allowed a larger hand in the overhauling of Seattle's use-of-force policies. According to police expert Sam Walker, who recounted this history in a new article for Criminal Justice Review, the federal monitor initially rejected their requests, but conceded after all 15 commissioners communicated their intent to resign (The Stranger, (8/25/2015). See also Walker, 2018, p. 1813 ["The Seattle settlement went further than any previous ones with regard to community input by requiring the creation of a Community Police Commission, a broadly representative body that would have a formal role in the development of police department policies …The MOU did not, however, give the CPC the authority to review police department policies, an issue that became a matter of conflict in the early history of the CPC. CPC members demanded to have a voice in the development of the new police department use of force policy. The result was a stand-off between the CPC and the Monitor, the U.S. Attorney, and city officials. The CPC members stood their ground and, at one point, threatened to resign en masse, with some arguing that if they were denied a voice in the critical issue of use of force it would reduce the CPC to 'window dressing.' The other side then relented, not willing to risk a mass resignation, which could have jeopardized the entire consent decree implementation. As a result, the CPC participated in the development of the new use of force policy"]. See also, Walker, 2017, p. 22; Walker 2018, p. 1817 [discussing the union representatives' alignment with

CPC members believed it was "important to bring external community concerns into the mix…" The goal was for the city "to resource the CPC to have a community engagement and education role and bring it into collaboration with the Inspector General and the OPA." According to one of the original members of the CPC: "for me, the CPC held the promise of meaningful community engagement that would be necessary to create and sustain a change in policing culture…"

Oft recognized as one of CPC's most significant projects was the creation of the Police Accountability Ordinance which was later passed by Council and resulted in making the CPC a permanent body. Although undermined by the eventual SPOG contract, the CPC went on to be the one holdout amongst the parties and within the City to call for the City to be found out-of-compliance with the Consent Decree based on the contract with the union.

By that time, however, with the Durkan administration lobbying members to support the SPOG contact, original members of the CPC believed that the Mayor was attempting to "stack" the CPC with her new appointments and had discussed "going back to the old ways – using the media to embarrass the SPD as an accountability measure."

One influential member of the CPC, however, had a different take on the conflicts between the CPC the Monitor and other City agencies (to include the SPD):

> If there were no conflict between Monitor and CPC, then you should worry. Talking about a community group fighting for power was not actually a bad thing. SPD and the CPC have not always agreed, but Seattle needs various voices – if everyone marched in unison, you would not need the CPC, the IG, the OPA, or the Monitor. However, a partnership is only meaningful if the actors have enough respect for each other that you can voice your opinions without fear of being marginalized.

According to another CPC participant, the Seattle CPC model was a necessary, albeit difficult way to achieve police reform:

> The CPC is a model of how you get to the solution, not what the solution is. How you get to the solution is by talking to a broad spectrum of the community and bringing them to the table and having difficult

civilian CPC members on the issue of the CPC's authority to evaluate the new use-of-force policy].

> conversations. Seattle was ready to have police officers and the police union on the board – even if that is not necessarily the right choice for all cities.

CPC members suggested that if the City were to have actually added up the number of uncompensated hours of work provided by its members, the value of the Commission was "unimaginable:" "The problem was that we had other jobs and had bills to pay – the fatigue of the work is just not sustainable."

According to one original member,

> the CPC was a brilliant move on the part of the DOJ and Mayor. When I was first told about this volunteer body with two members from police union – I thought it would do nothing, just perpetually fight. And there was tension until we all agreed "we are here to make things better."

According to this member, the philosophy of "Seattle nice," even though sometimes involving "passive aggressiveness," worked in the CPC's favor and resulted in many unanimous decisions on the part of the Board.

"Without community, sustainable change would not have been possible. Long term change comes only with power being given back to community."
CPC Member

Patel (2016) extensively discussed the Seattle CPC in his article, Toward democratic police reform – a vision for community provisions in consent decrees: According to Patel,

> The 2012 policing consent decree in Seattle highlights several shortcomings and opportunities found in the community engagement process, such as contestation over the scope of community members' involvement, both in terms of the type and form of input. The court has taken a rigid approach to its role in reforming the police department and has suggested that nonparties, including the city council and the Community Police Commission ("CPC") created under the Consent Decree, should limit police-reform efforts to the Consent Decree process. The parties and community members have disagreed over allocation of the city's resources and priorities for reform. (p. 818)

Ultimately, in late 2014, the CPC made recommendations for police reform that would eventually be adopted by the City Council within the Police Accountability

Ordinance. That package, however, ended up resulting in Judge Robart interpreting the reforms, including a provision to make the CPC a permanent body, as a “power grab” meant to alter the provisions of the Settlement Agreement and the MOU. Although they were eventually successful (except for those provisions impacted by the 2018 SPOG contract), the entire process left CPC members “feeling frustrated and ‘shut out’ of the police-reform process” (Patel, 2016, p. 824).

CPC members interviewed confirmed Patel’s findings that “[t]oday, members of the CPC question the DOJ’s motives in creating the oversight body and worry their function is to rubber stamp the parties’ reforms, rather than engage in community-driven decision making to effect a long-term shift in power between police and communities subject to police practices.” As noted by Patel “role confusion, frustration and lack of alignment regarding how and when the CPC can inject itself into the reform process” remain as barriers to the success of the community engagement provisions of the Seattle MOU as envisioned when the CPC program was first created (Patel, 2016, p. 824).[961]

Table 7.16 includes public statements made by representatives of the CPC over the course of the Consent Decree litigation. In their statements, the CPC consistently expressed concern over its “place at the table” when it came to DOJ-driven police reform efforts. In general, CPC members felt unheard and disrespected. At times, however, the CPC appeared to feel engaged, but only temporarily; over time, it appeared that the CPC would take positions adversarial to the City and/or the parties, in large part, to provide an alternative point-of-view, that it believed the City and the DOJ refused to consider.

[961] Patel concluded with the finding that “[i]n sum, despite praise from scholars and positive reports regarding the Seattle CPC's involvement in shaping the direction of the policies implemented as part of the Consent Decree reform process, genuine concerns remain regarding the actual power granted to communities to shape police policies” (Patel, 2016, p. 825).

Table 7.16. Community Police Commission Public Statements

Date	Statement
January 14, 2013	Upon appointment to the CPC, CPC co-chair Lisa Daugaard "said the commission would be different from past panels that looked into police accountability, which were weighted toward people with 'generic' civic-policy backgrounds in contrast to those with specific expertise on the issues the commission will tackle" (*Seattle Times*, 1/15/2013).[962]
August 20, 2013	Letter from CPC acting director Betsy Graef to Judge Robart: "We are deeply concerned that the time allotted is insufficient to ensure our considered review and will not serve the reform effort or the intent of the Court in establishing the CPC as a vehicle for community input."[963] CPC co-chair Diane Narasaki: "We just don't think this is enough time for us to go through this and ensure the community has an adequate chance to respond … The use of force is the very reason the DOJ investigated, and that is what led to the formation of the CPC, … It doesn't make sense for us not to review the policy that is key to the reason we are here in the first place." (*Seattle Times*, 8/22/2013).
December 11, 2013	In discussion with U.S. Attorney Durkan on the role of the CPC, CPC co-chair Daugaard "argued that the CPC's role is 'crucial' to ensuring community 'buy-in' to the reforms. She said that, without CPC involvement, the communities aren't being adequately heard" (*Seattle Times*, 12/12/2013).
April 16, 2014	CPC Co-chair Daugaard: "There are still many talented women and men of good-will and good intentions in SPD doing their best to make things better, [but] many I speak with are demoralized by some of the recent changes, because leadership in this area to date has been penalized, not rewarded, while resistance has been rewarded, not penalized. They can read the writing on the wall" (*The Stranger*, 4/16/2014).
November 12, 2014	CPC Statement regarding Mayor Murray's plan to reform the police accountability system and make the CPC a permanent body: "[The plan] puts the city on the right road to reforming the police accountability system, but much remains to be done in the collective bargaining process, in making reforms permanent in law, and in ensuring practices are in place in SPD and in other city offices to support the intended reforms" (*Seattle Times*, 11/13/2014).
June 10, 2015	CPC co-Chair Daugaard: "The CPC is seen nationally as a new model for ensuring a strong, effective community voice in police reform, … That's the job we all signed up for. We worked for many months to get to achieve consensus between civil rights leaders, public safety advocates and police employees about how to strengthen the accountability system and increase its independence. Our obligation to the communities we represent now is to ensure those changes are made" (*Seattle Times*, 6/10/2015).

[962] Miletich, S. (2013, January 15). Mayor names 15 to new SPD commission. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[963] U.S v. Seattle, Document No. 82, filed August 20, 2013.

Date	Statement
June 25, 2015	CPC co-chair Daugaard: "We've voted to hold off on sending our proposed legislative package to the council until Monday, … Deputy Mayor Kate Joncas came to the commission today and asked us to engage in further discussions to see if we can reach alignment on a joint package — and we agreed to do that" (*Seattle Times*, 6/25/2015).
June 30, 2015	CPC co-chair Harriett Walden, commenting on agreement of Mayor, Chief and CPC to proceed with Police Accountability Legislation: "Credit is due to the years of community activism to demand Constitutional policing for the people of Seattle" (*Seattle Times*, 6/30/2015).[964]
August 25, 2015	CPC co-Chair Daugaard: "It isn't going to work for the community voice to be just one of many at the table, and in many ways, the least empowered voice, … Local participants and activists are going to have the best information about both what is wrong and what needs to happen to make things better" (*The Stranger*, 8/25/2015).
September 23, 2015	CPC Member Enrique Gonzalez (El Centro de la Raza) to DOJ representative: "There have been challenges, there have been roadblocks and there have been difficulties that we've encountered … Historically, [making police accountable] has not been done in a courtroom, …It has been done on the streets, it's been done protesting." CPC Member Aaron Williams (Senior Pastor, Mt. Zion Baptist Church): "It was the community's voice that brought the DOJ here [to investigate the Seattle Police Department], … And for them to say that the CPC doesn't have a place at the table is really saying that the community doesn't have a place at the table. So I think it's important that if we're going to be a model for other cities, that this kind of mentality has to be dealt with. The community is the victim and they need to be heard." CPC co-chair Lisa Daugaard: "We could all be working on these issues in other capacities, … If we do this to no avail, then it won't be very obvious why people should sign on to this style of work." Melinda Giovengo (Executive Director, YouthCare): "There has to be some real skin in the game, or stake set out by the decree itself that gives the CPC a formal role in the process. Not just as a nice head nod or a token system." (*Seattle Times*, 9/24/2015; *The Stranger*, 9/24/2015).
December 20, 2015	CPC Statement regarding DOJ review of police accountability system proposal: "After vigorous debate this spring and summer, the City of Seattle and the CPC came together behind a comprehensive plan to strengthen community oversight over police practices and the accountability system. The Justice Department has not yet had a chance to take a formal position on that package, but soon will. This will be an important test of whether our communities will be left with real power or just the illusion of oversight" (*Seattle Times*, 12/21/2015).

[964] Miletich, S. (2015, June 30). Accord reached on SPD accountability measures. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
August 2, 2016	In a letter to Judge Robart: "We believe the City Council must be free to consider and legislate additional measures to ensure Seattle puts in place a highly effective police accountability system, with political independence and a robust community oversight structure."[965]
August 9, 2016	Statement from CPC regarding order of Judge Robart requiring court-review of Police Accountability Ordinance: "The City's police accountability reform efforts have been in a holding pattern for a year. Although we appreciate that the order allows the city to start moving again, we are now looking at a long-drawn-out process that has no realistic chance of producing legislative results until 2017, at the earliest. By then it will have been five years since the Consent Decree and three years since the CPC's original accountability recommendations" (*Seattle Times*, 8/10/2016).
May 17, 2017	*Seattle Times* guest editorial by CPC Board Members, Rev. Harriett Walden, Enrique Gonzalez & Isaac Ruiz arguing for Council to pass ordinance giving the CPC the authority to formally evaluate the OPA Director & Inspector General: ""It is essential that the police-accountability system and police services reflect community priorities and values. This requires a community board, representing community interests, to exercise system oversight, which will provide legitimacy for the accountability system and give the public greater confidence in SPD" (*Seattle Times*, 5/18/2017).
October 17, 2018	CPC votes against City Council adoption of SPOG contract negotiated by Durkan administration. CPC Member Jay Hollingsworth: "The union doesn't want to give up power … They cannot be trusted…" (*Seattle Times*, 10/18/2018).
August 7, 2019	CPC votes to reject Durkan administration proposal to address deficiencies in police-accountability system (*Seattle Times*, 8/9/2019).
August 9, 2019	CPC Chair Daugaard: "Our battle was about ensuring there was a strong community voice and that the work wasn't turned over to what we call the police-accountability-industrial-complex – an emerging professional class dominated by White men…" (*Seattle Times*, 8/9/2018).[966]
June 13, 2020	Former CPC Chair, Daugaard, noting that the SPD failed to follow CPC recommendation to suspend the use of flash-bang grenades to disperse protestors until policies could be reviewed: "We are used to 100 percent of our recommendations being ignored" (*New York Times*, 6/13/2020).

The CPC found itself in a unique position in Consent Decree history when, not only did it receive "amicus" status from the Court, but it also, on occasion, found its position used by Judge Robart to find against the parties when the CPC took a politically unpalatable position (such as finding the City partially out of compliance with the Consent Decree). Table 7.17 identifies CPC correspondence and pleadings filed

[965] U.S v. Seattle, Document No. 304, filed August 3, 2016

[966] Beekman D. (2018, August 9). Lopez guides community group. *Seattle Times*. Retrieved from https://www.seattletimes.com.

between August 2013 and June 2020. Significantly, in addition to obtaining amicus status, the CPC was successful in gaining an extension of time for consideration of the SPD use-of-force policy, and successfully argued that the police accountability system was deficient and in need of reform as a part of the Consent Decree litigation process.

Table 7.17. The Community Police Commission Involvement in the Reform Process

Date	Event	Author/Reference
March 18, 2013	Appointment and Confirmation of CPC by City Council.	Seattle City Council (per Monitor's 1st Semi-annual Report, p. 4).
August 20, 2013	CPC Letter requesting extension of time for Monitor to approve SPD use-of-force policy. (U.S. v. Seattle, Document No. 82).	Betsy Graef, Acting Director
October 24, 2013	CPC Motion to Intervene for Purpose of Proposing Modifications to [Monitoring Plan] Deadlines. (U.S. v. Seattle, Document No. 90).	CAO on behalf of CPC
November 26, 2013	Court denies CPC Motion to Intervene – CPC granted amicus curiae status. (U.S. v. Seattle, Document No. 106).	Judge James Robart
December 3, 2013	CPC submission of proposed Use-of-Force Policy. (US. V Seattle, Document, No. 108-1).	Lisa Daugaard, Co-Chair Diane Narasaki, Co-Chair
March 13, 2014	CPC's Initial Assessment of SPD's Community Outreach Efforts. (U.S. v. Seattle, No. Document 126).	CAO on behalf of CPC
July 31, 2014	CPC's Follow-Up Assessment of SPD's Community Outreach Efforts. (U.S. v Seattle, Document No. 164)	CAO on behalf of CPC
May 18, 2015	CPC's Amicus Curiae Submission Regarding Use of Force policies. (U.S. v. Seattle, Document No. 206).	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair
October 16, 2015	CPC's Amicus Curiae Submission Regarding approaches for SPD accountability and review systems. (U.S. v. Seattle, Document No. 240).	CAO on behalf of CPC
January 2016	CPC Report: "An Assessment of the Seattle Police Department's Community Engagement."[967]	Community Police Commission (CPC)

[967] Retrieved from CPC_Report_on_SPD_Community_Engagement.pdf (seattle.gov).

Date	Event	Author/Reference
February 1, 2016	CPC's Response to Monitor's OPA Assessment. (U.S. v. Seattle, Documents 264, 267).[968] CPC Comment regarding contract negotiations. (U.S. v. Seattle, Document No. 268-1).[969]	CAO on behalf of CPC Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair Fe Lopez, Executive Director
May 23, 2016	CPC's Amicus Curiae Submission regarding SPD's Accountability System Review. (U.S. v. Seattle, Document Nos. 290 & 290-1).[970]	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair Fe Lopez, Executive Director
August 3, 2016	Letter from CPC to Court Re: Accountability Proposal. (U.S. v. Seattle, Document No. 304).	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair
October 27, 2016	CPC's Amicus Curiae Submission regarding Draft Legislation Submitted by the City of Seattle. (U.S. v. Seattle, Document Nos. 325 & 325-1).[971]	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair Fe Lopez, Executive Director

[968] In this court filing, the CPC called into question the need for an Inspector General; an office which was strongly supported by the Monitor (U.S. v. Seattle, Document No. 267, pp. 9-10).

[969] In its comment, the CPC stated the following position regarding Court intervention in the collective bargaining process: "the CPC believes that it is neither necessary nor advisable for the Court to take the proposed step of forestalling implementation of a hypothetical duly-negotiated disciplinary appeal procedure. There is no evidence that the collective bargaining negotiations currently underway in Seattle are being used in a way that violates the civil rights of any person or group of people, which might make such a step necessary. Using the Consent Decree to override duly bargained contract terms could cause unnecessary resentment and resistance that would not otherwise exist, and thus have unintended and enduring negative consequences for the reform process that could outweigh any possible benefits in taking that step at this juncture" (U.S. v. Seattle, Document No. 268-1, Attachment 1 p. 1).

[970] In its brief, the CPC argued that it had expertise in the area of police accountability: "Collectively, the CPC has substantial expertise on police accountability matters. For example, five of its original commissioners served on the Minority Executive Directors Coalition Multiracial Task Force on Police Accountability. CPC staff and commissioners have included 10 signatories to the December 2010 letter sent by 35 community organizations asking the U.S. Attorney's Office for the Western District of Washington and the DOD's Civil Rights Division to conduct a pattern and practice investigation of excessive force by SPD; one original CPC member served on the 2008 Blue Ribbon Task Force on police accountability reform; two served on the Mayor's 2001 Racial Profiling Task Force; and one current member was on the selection panel for the present OPA Director" (U.S. v. Seattle, Document No. 290-1, p. 9).

[971] In this filing, the CPC requested that the court approve the City's draft accountability legislation be presented to the City Council: "The CPC hopes that the Court will clear the draft legislation for presentation to the City Council. Within the bounds established by the Court, our elected representatives can hear what all City stakeholders, and most important our community members, believe are the most critical requirements for our police accountability system" (U.S v. Seattle, Document No. 325-1, p. 4).

Date	Event	Author/Reference
November 15 2016	CPC's Amicus Curiae Response to United States Brief regarding Draft Legislation. (U.S. v. Seattle, Document Nos. 332 & 332-1).[972]	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair
December 30, 2016	CPC Brief Regarding Seattle Police Management Association Unfair Labor Practice Complaint. (U.S. v. Seattle, Document Nos. 346 & 346-1).[973]	Lisa Daugaard, Co-Chair Harriet Walden, Co-Chair
March 24, 2017	CPC Brief Regarding SPD Body-Worn Camera Policy. (U.S. v. Seattle, Document Nos. 377 & 377-1).[974]	Harriett Walden, Co-Chair Isaac Ruiz, Co-Chair Enrique Gonzalez, Co-Chair
July 10, 2017	CPC Brief Regarding Seattle's Accountability Ordinance. (U.S. v. Seattle, Document No. 402).[975]	Harriett Walden, Co-Chair Isaac Ruiz, Co-Chair Enrique Gonzalez, Co-Chair

[972] The CPC responded to the DOJ's concerns regarding two aspects of the draft Accountability Ordinance: "The first pertains to prioritizing the CPC's obligations under the Consent Decree. … The second pertains to the proposal that the CPC conduct performance assessments of the Office of Inspector General (OIG)" (U.S. v Seattle, Document No. 332-1, p. 1). The CPC presented the following arguments: "A. There is no one-size-fits-all model for accountability. Every community should make decisions about what works best." "B. The CPC is prepared to meet its responsibilities under the Consent Decree." "C. The community has a meaningful role to perform in civilian oversight." "D. CPC evaluation of the OIG's performance is consistent with the aims of reform." The CPC concluded that: "The CPC worked assiduously over the last two years to reach common ground with all stakeholders in the accountability system. In doing so, the CPC agreed to some softening of language pertaining to the authority of the CPC that was preferred by other stakeholders, while holding the line on certain key points. Any further dilution of the CPC's authority is of deep concern. It cannot be optional for SPD, OPA or the OIG to engage with the CPC, and the CPC's system oversight role must be clearly spelled out in law to send that message and ensure it actually happens. An accountability structure which does not give authority to the community based oversight entity to evaluate the professional-based oversight system is out of step with the national direction and the sentiment of communities, and may harm the perceived legitimacy of the system. In sum, a community-based oversight body that that is purely advisory, provides only "input" to other decision-makers, and has no formal role in policy development or in evaluating the efficacy of the accountability system and its components would fall well short of community expectations and be out of step with practices elsewhere in the nation" (Document No. 332-1, p. 7).

[973] In its brief, the CPC argued that "[p]reparation and adoption of the proposed accountability reform legislation does not in itself compromise collective bargaining. The City can defend this approach successfully before PERC [Public Employment Relations Commission]," and recommended that "The Court should monitor the PERC proceedings to guard against conflicts with the Consent Decree process" (U.S. v Seattle, Document No. 346-1, p. 3 & 5).

[974] The CPC expressed concerns about the proffered Body Worn Camera policy in two areas: 1) the Commission agreed with the Monitor that "officers should not be allowed to view BWC video prior to giving a statement or interview about what transpired in cases that involve the use of force" and 2) the CPC recommended that the policy "be revised to not allow BWC recording of questioning of victims, suspects, or witnesses" (U.S v. Seattle, Document No. 377-1, p. 1).

[975] The CPC asked the Court to approve the City's new Accountability Ordinance. "The CPC respectfully requests that the Court issue an order holding that nothing in the ordinance is inconsistent with the Consent Decree. The ordinance is a major improvement in Seattle's

Date	Event	Author/Reference
October 13, 2017	CPC Response to City's Motion to Declare It in Full and Effective Compliance and to Monitor's Compliance Status Report. (U.S. v. Seattle, Document No. 421).[976]	Harriett Walden, Co-Chair Isaac Ruiz, Co-Chair Enrique Gonzalez, Co-Chair
December 8, 2017	CPC Letter to Judge Robart Regarding Force Review Board findings in shooting of Charleena Lyles and agreement between the City of Seattle and the Seattle Police Management Association (SPMA), specifically concerning arbitration. (U.S. v. Seattle, Document Nos. 435 & 435-1).[977]	Harriett Walden, Co-Chair Isaac Ruiz, Co-Chair Enrique Gonzalez, Co-Chair
October 30, 2018	CPC Letter to Judge Robart arguing that the SPOG Tentative Agreement (contract) was not in compliance with the Consent Decree. (U.S. v. Seattle, Document No. 493-1).	Harriett Walden, Co-Chair Isaac Ruiz, Co-Chair Enrique Gonzalez, Co-Chair
February 20, 2019	CPC Response to Order to Show Cause. (U.S. v. Seattle, Document No. 531).[978]	David Perez, Esq. on behalf of the CPC

accountability system and passes the "three levels of scrutiny" identified by the Court in that it moves the City toward policing (1) that complies with the Constitution; (2) that allows police to be effective; and (3) that the people of the community can have confidence in" (U.S. v. Seattle, Document No. 402, pp. 2-3).

[976] The CPC supported the City's Motion to be Found in Compliance and put on record the need for the SPD to "move[] beyond what was required by the Consent Decree in existing areas of work" to include "Enforcement Patterns in Stops and Detentions in Certain Enforcement Practices. … Opening the Agenda of the Crisis Intervention Committee to Community-Identified Concerns, … Critically Examine Training on Taser Use and on Engaging Individuals Armed with Knives. … [and] Explore Alternatives to Internal Investigation of Serious Uses of Force." The CPC also identified the need for the SPD to address additional areas to include, secondary employment, the "complainant appeal process," demonstration policing issues, "being responsive to emergent community issues," "coercive interrogation techniques, and "Compliance with Court Rule 3.1 on Access to Counsel for Individuals in Custody." (U.S. v. Seattle, Document No. 421). The CPC was quite prescient when it came to being concerned about "demonstration policing issues," which was, in fact, the issue that derailed the SPD from even pursuing its 2020 motion to dismiss portions of the Consent Decree.

[977] The CPC was invited by the Judge to comment on these issues. The CPC recommended the City still be found in full compliance, although it expressed an interest in an external review process for police shootings and noted that the SPMA contract was not completely consistent with the Accountability Ordinance: "The SPMA contract differs in some important respects from the accountability ordinance. However, we were glad to see that it incorporates certain core components of the ordinance, particularly those that touch on SPMA's 'body of work,' accepting the transfer of all supervisory positions in the Office of Police Accountability (OPA) from sworn officers to civilians" (U.S v. Seattle, Document No. 435-1, pp. 1-2).

[978] The CPC recommended that the City be found out-of-compliance with the Consent Decree, requesting that "[t]he Court [] make clear that fixing what has gone off track with the CBAs, and undoing the impediments they embed to the intended reform of Seattle's police accountability system, is a necessary precondition to a successful resolution of the Consent Decree process" (U.S. v. Seattle, Document No. 531, p. 26).

Date	Event	Author/Reference
August 19, 2019	CPC's Response to City's Stipulated Motion to Approve Proposed Accountability Methodology. (U.S. v Seattle, Document No. 581).[979]	David Perez, Esq. on behalf of the CPC
January 6, 2020	CPC's Response to 21CP's Assessment of Police Accountability. (U.S. v Seattle, Document No. 602).[980]	David Perez, Esq. on behalf of the CPC
June 9, 2020	Motion by CPC for Order to Show Cause why City should not be found "further out of compliance" with Consent Decree. (U.S. v. Seattle, Document 622).[981]	CPC

7.7.4. Police Accountability

Virtually all participants agreed that the police accountability system was, is and always has been broken in one way or another. And in fact, there was also general recognition that the reform process would likely have gone better if police accountability issues had been included in the Consent Decree. Although Judge Robart eventually ruled that, in fact, SPD accountability systems were necessarily part of the Court's

[979] The CPC was critical of the City's methodology asserting that "the first part of the City's proposal is redundant with past efforts and lacks the commitment necessary for the City to achieve real reform" and that "a nationwide survey is unnecessary and counterproductive. Equivalency to other cities is not a metric to determine compliance with the Consent Decree" (U.S. v. Seattle, Document No. 581, pp. 5 & 7).

[980] The CPC was critical of the findings of the consultant group, hired by the City to evaluate its police accountability scheme: "According to the City, the 21CP Assessment 'concludes that Seattle's disciplinary and oversight system is working as intended,' and that there may be some areas 'in which the system could benefit from improvement.' … The CPC disagrees. The City's synopsis is contrary to the Court's conclusion that there is a 'critical need for reform to that [accountability] regime'" (U.S. v. Seattle, Document No. 602, p. 2).

[981] The CPC agreed with the City's motion to withdraw its request for the dismissal of portions of the Consent Decree. The CPC argued that "A) The Court found the City out of compliance on the issue of accountability … B) Over the past year, the City failed to formulate a methodology to achieve compliance on the issue of accountability. C) Ignoring its obligation to achieve compliance on accountability, the City moved to end federal oversight. Two weeks later, George Floyd was murdered, and widespread protests ensued. … This is not the time to end federal oversight of policing in Seattle." Further, the CPC argued that: "Paragraphs 69-168 cannot be terminated while the City remains out of compliance on accountability because they remain important for the Court's analysis of accountability changes."

assessment of overall compliance with the Consent Decree (although over the objection of the City and the DOJ),[982] the road to get to that point was, once again, rocky.

Ongoing problems with police accountability resulted in the creation of the 1999 Citizen Review Panel which recommended the creation of the Office of Police Accountability (OPA) and the 2008 Police Accountability Review Panel which recommended improvements to the OPA system. Problems were further highlighted when in February 2014, incoming interim Chief Harry Bailey reversed the discipline previously imposed by interim Chief Pugel in seven cases (*Seattle Times*, 2/27/2014). Eventually, however, it was the act of an arbitrator, overturning of the termination of an officer ordered by Chief O'Toole in a videotaped excessive force case that resulted in the City being found partially out-of-compliance with the Consent Decree. At one point in time, the staff of Mayor Murray reported spending most of their time on police disciplinary issues.

Perhaps the most controversial aspect of the implementation process, as it related to the CPC, was with respect to police accountability. The CPC was given the job of evaluating Seattle's oversight program and coming up with recommendations for any necessary changes to the accountability system. However, as noted by more than one participant, a negative result of failing to include accountability in the Settlement Agreement was the relegation of this issue to the status of "the bastard step-child of the reform family." While the SPD and the City spent its energy on consent decree compliance, work on the accountability structures was left behind. Then, when the CPC came forward with an Accountability Ordinance, "suddenly, the Monitor and the Court showed interest in the issue" and "the wheels feel off the bus." Even after the Accountability Ordinance was approved, significant portions were undermined during the negotiations of the new SPOG contract. With Judge Robart's finding of non-compliance on May 21, 2019, the status of consent decree compliance overall now remains an unresolved issue.

[982] U.S. v. Seattle, Document No. 562, filed 5/21/2019. "Order finding City of Seattle Partially Out of Compliance with the Consent Decree."

7.8. Seattle Consent Decree Implementation – The Police Unions

"Police officers also bring an important voice to the reform process. Their views, whether presented through their labor organizations or through other channels, should inform the development of the reform effort and its implementation."
Seattle Consent Decree, paragraph 5.

7.8.1. Seattle Police Union Issues

The involvement of the Seattle Police Officer's Guild (SPOG) in hindering and opposing police accountability efforts is replete in the history of the SPD. While the history of consent decree implementation as impacted by the SPD unions has already been discussed in prior chapters, the words of the union representatives and study participants, as they relate to union involvement in the reform efforts, provide a complex picture of rank-and-file engagement in the Consent Decree process.

In his first semi-annual report, filed with the court on April 26 2013,[983] the Monitor noted that the police unions "thus far have failed to play a constructive role in word and deed" and that "[a] part of the SPD, mostly but not exclusively within the union-organized ranks, remains 'dug in' and continues to resist the force and implications of the Settle Agreements" (Seattle Monitor, 1st Semi-annual Report, pp. 2-3, 5).

By June, 2013, however, the *Seattle Times* was reporting that SPOG appeared to be "striking a [more] conciliatory tone" with "the head of the Seattle police union urging members to accept federally mandated police reforms, saying it was time to put aside complaints and 'move forward' with the changes" (*Seattle Times*, 6/20/2013).[984] This new tone appeared to coincide with the resignation of Chief Diaz and the appointment of Interim Chief Jim Pugel who was appointed by Mayor McGinn, effective April 8, 2013 (*Seattle Times*, 4/11/2013).

[983] U.S. v. Seattle, Document No. 71.

[984] Miletich, S. (2013, June 20). Let's Move on Reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

According to the *Times*, the SPOG President, Rich O'Neill, wrote an article to the membership in the June issue of the union's newsletter telling his membership that: "Our job is to adapt to the change in a healthy way so we can remain safe and not turn into an old grump who only wants to talk about 'the good old days.'" Interestingly, this was only two months after O'Neill referred to the union's "need to survive 'DOJ Dark Days" in the April version of the newsletter: "At that time, he asserted the Justice Department investigation that led to the settlement had proved to be false and 'lacks credibility'" (*Seattle Times*, 6/20/2013). O'Neill who had been SPOG president since 2006,[985] was known for his outspoken ways and controversial statements, his "tumultuous relationship with City leaders," (*Seattle Times*, 4/16/2015) and his willingness to stand behind officers who had committed misconduct (*The Stranger*, 4/6/2011). In addition, however, O'Neill was also known for his willingness to "accept reforms in exchange for more money for his members" (*Seattle Times*, 1/30/2019).[986]

At that same time that O'Neill began offering a more conciliatory tone, SPOG was also exerting "enormous" pressure on Pugel to overturn discipline previously imposed in a number of cases by Chief Diaz (*The Stranger*, 4/16/2014). And, when Mayor Murray demoted Chief Pugel in January 2014 and replaced him with retired Assistant Chief Harry Bailey, research participants described the Bailey tenure as a "hay day" for the union, which saw discipline overturned and union supporters promoted amongst the command staff.

By early 2014, however, O'Neill retired, leaving Ron Smith as the new SPOG President.[987] Smith quickly became known for his collaborative approach to union-management issues and his approach appeared to work particularly well with Chief O'Toole. After O'Toole was appointed in June 2014, Smith appeared to have developed a strong working relationship with her, to the point that he had to withstand criticism from

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[985] See, https://seattlepoliceofficers.org/thank-you/spog-past-presidents/.

[986] Miletich, S. (2019, January 30). Controversial Seattle Police Union Leader to Retire, then Return in Bigger Role. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[987] O'Neill retired from the SPD in January 2019, and then joined SPOG as a civilian to "handle the union's most critical duties: overseeing news media inquiries, grievances filed with the department, disciplinary appeals and future contract negotiations" (*Seattle Times*, 1/30/19).

other officers for his collaborative approach (*Seattle Times*, 4/16/2015).[988] According to Smith, however,

> I would be a fool to waste the opportunity to try and work with the very first police chief in decades willing to sit down with labor. When she pisses me off or does something wrong, I'll be the first to stand up against her … My predecessor, and those before him, had no opportunity to work with the chiefs of police because they marginalized the union. They were forced to do nothing other than file grievances and unfair labor practices … Chief O'Toole has a different way of doing business; she is collaborative. (*Seattle Times*, 4/16/2015)

By February 2015, Smith was being quoted as saying that officers who had problems with Seattle politics "had the option to 'leave and go to a place that serves your worldview'" (*The Stranger*, 2/18/2015;[989] *Seattle Times*, 4/16/2015).

Study participants described the period of Smith's tenure, from April 2014 through July 2016 as one of unprecedented cooperation between police management and the union.[990] Unfortunately for Smith, in July 2016, he wrote what became a controversial Facebook post about the shooting of five Dallas officers.[991] Smith resigned from his position shortly thereafter. According to Smith, however, he believed he was forced out of his position by the SPOG Board due to "his pragmatic approach to federally mandate reforms, his collaborative relationship with Police Chief Kathleen O'Toole and his acceptance of accountability measures as part of a tentative contract with the city"

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[988] As reported by the *Times*: "During his meetings with officers he represents as the leader of the Seattle Police Officers' Guild, Sgt. Ron Smith has become all too familiar with criticism of his dealings with department leadership. 'Bootlicker' is how one officer described his relationship with Police Chief Kathleen O'Toole at a guild meeting earlier this spring."

[989] Herz, A. (2015, February 18). Seattle Police Union President to Cops: Get with the Times or Get Out of the City. *The Stranger*. Retrieved from https://www.thestranger.com.

[990] Even so, in September 2015, The Stranger newspaper was reporting on articles in *The Guardian*, the SPOG newsletter that were "racist and anti-reform." It was also reported that "[i]n the March issue of *The Guardian*, former SPOG president Rich O'Neill wrote that SPOG president Ron Smith's comments about the need for a culture change within SPD to The Stranger were 'completely taken out of context'" (*The Stranger*, 9/23/2015).

[991] The post read: "Dallas PD and their officers are in our thoughts and prayers.... The hatred of law enforcement by a minority movement is disgusting... Heads in swivels brothers and sisters...#Weshallovercome" (See, CBS News (2016, July 13). Retrieved from https://www.cbsnews.com/news/post-about-dallas-attack-gets-seattle-cops-union-head-in-hot-water/).

(*Seattle Times*, 7/15/2016).[992] The SPOG Board contradicted that claim in their news release announcing Smith's removal, stating that,

> Detective Smith was not removed from office because the board of directors is against reform in the Seattle Police Department. This misrepresentation of facts may have led the Guild Membership and the Seattle Community to believe that the Guild is against reform. The Seattle Police Officers' Guild has always and will continue to work collaboratively with the Seattle Police Department and the City of Seattle in the reform process. (*Seattle Times*, 7/15/2016)

According to a number of research participants, however, SPOG Board members were simply "lying in wait," looking for an opportunity to oust Smith, who was, in fact, perceived as being "in bed" with Chief O'Toole and who were motivated to "take back" the union from his collaborative leadership model.[993]

Smith was replaced by the Union Vice President, Kevin Stuckey, who filled out his term and served as the SPOG President until he was ousted by a "hardline" candidate, Mike Solan, in early 2020. Stuckey became known for fostering SPOG's relationship with other unions and engendering their support for SPOG contract negotiations. However, prior SPOG President Rich O'Neill continued to serve in the union as its Vice President where, according to research participants, he exerted power behind the scenes and led the union's contract negotiations.

How far SPOG's willingness to participate in the reform effort swung back from the collaboration of Ron Smith to its new President Mike Solan is probably best identified by comparing the ads posted on *You Tube* by Stuckey and Solan during their race for

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[992] Lee, J. (2016, July 15). Police guild votes to oust president now. *Seattle Times*. Retrieved from https://www.seattletimes.com.

[993] According to one community member participant: "The police union actually behaved well at the beginning. Mayor McGinn was resisting, Chief Diaz was resisting, community activists were resistant, and the DOJ was being ridiculous. But Ron Smith, the leader of the Guild was a visionary. He got turffed out…he ended up being a tragic figure. Smith appointed Kevin Stuckey to the CPC. They were progressive change leaders within the police union. Ultimately after Dallas shooting, Smith made a comment that people shooting cops were part of a minority movement; there was a big attack from the left and an opportunistic move from the right to take advantage of it and take over. Since then, Stuckey has been puppet of Rich O'Neil, who is a throwback to the old days and it evolved into a resurgence of the thug culture. All of this happened with the Monitor and Judge Robart oblivious. They have treated SPAG the same since day one…"

the SPOG Presidency in early 2020. Stucky staked out a moderate position,[994] while Solan painted himself as a hardline opponent to police reform efforts.[995]

Some participants blamed the failure of the Department to send out positive messages, particularly before and after the tenure of Chief O'Toole, as a reason for the election of a "hardliner" as the union President, explaining that "there was no proactive, positive messaging going on." Another participant put it in the form of a question:

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[994] Stuckey's YouTube Video, posted December 8, 2019, provided the following message to the SPOG membership: "I'm Kevin Stuckey. I'm President of the Seattle Police Officer's guild. Today, I am announcing that I am running for re-election for the President of the Seattle Police Officer's Guld. Now, the election is not until the end of the year, however I thought I would take a moment to tell you how important is it that we continue the stability that we have. When I took over 3 and a half years ago, it wasn't easy. Our organization was in crisis and in need of bold leadership. Changes had to be made. I brought back Rich O'Neil and I brought back our long-time attorneys Vick, Julius, McClure who have worked on all our labor contracts. We sat down and renegotiated a contract that originally had the largest "no" vote in the history of our organization. And, within a few months, we turned that around into the largest "yes" vote in the history of our organization. Now, we're again facing a new contract. However, with the team we've put together, I'm confident we can continue to make gains. But the only way we can do this is by continuing to build on the relationships I've built within the labor movement. The most important thing, as President of this organization, is for me to fight for your wages, your benefits and your working conditions. There's nothing else that a union can do other than to get your contract and to defend it. I'm Kevin Stuckey and I would be honored to earn your vote. Honored to earn your vote and to continue doing the job that you already hired me to do." Retrieved from https://www.youtube.com/watch?v=3jkNRsOW3gE.

[995] Solan's YouTube message to the SPOG membership, posted on November 6, 2019, contained the following message: "On February 7, 2019, two Seattle police officers were involved in a deadly shooting that resulted in the death of a suspect. In an unprecedented move, SPAG Vice President Mike Solan improvises a press conference at the scene supporting the officers' actions and quickly capturing the narrative. This marks a new chapter in SPAG media relations, as Solan's message is fully embraced by the SPAG membership, thwarting the anti-police activist agenda that is driving Seattle's politics. I am Mike Solan and I am running for the SPAG Presidency to chart a much-needed new course of leadership in our police union. I believe the purpose of a police union is to fight: fight for your rights, fight for your respect and fight for your contract. Police officers now are being held to an unreasonable standard and the scrutiny is immense. My course of action will lead us to fundamentally change the activist narrative that negatively impacts our profession, not only locally but nationally. I will do this by driving our own narrative. Our narrative will restore respect to our profession, protect our CBA and restore confidence within our membership so that we can all feel that our oath of service was indeed noble."

[0:52-0:56: shows black faced masked protesters holding sign that says: "#sayhername Black Lives Matter."]

[0:57-1:13: shows police officers in riot gear firing less lethal (shotguns and pepper spray canisters) at crowd of protestors, pushing protestors back with bikes and arresting protestors.]

"Please help me and vote for Mike Solan as your next SPAG President. It's time to get serious." Retrieved from https://www.youtube.com/watch?v=b6cJQ1XBH8M.

> the union and the rank and file? How could they not be resistant where there was a lack of procedural justice and lack of transparency?[996] How could they not be vocal and defensive and not defend their members when individual officers were under attack?
>
> From the union perspective, the Consent Decree implementation period was,
>
> a difficult union environment. The Department had no flexibility to deal with any proposal the unions put forward – they got stonewalled – they were told "this is what the judge wants, … this is what the Monitoring Team wants" and there was always a legal defense to anything the Department wanted to do.

Further, officers were described by union-oriented research participants as "weary … like a dog you keep hitting … eventually you raise your hand and they cower."

From a reformer's perspective, however, it was believed that the police unions had too much power and that they "stood in the way of there being permanent progress in oversight;" participants believed that the unions needed (and still need) "to be brought to heel" with more than one participant suggesting that has not yet happened. In fact, numerous participants noted Mayor Durkan's willingness to compromise on significant aspects of the Accountability Ordinance in her administration's negotiations with the union and her willingness to paint the new contract as in compliance with the Consent Decree (when it was not) as a key indicator of the political powers of the police unions.

In addition, the City Council, which voted to ratify Durkan's police union contracts, was also in a difficult political position when it came to contract negotiations with the union. As observed by one political insider:

> the context of the contract negotiations made everything very politically charged; we were already several years behind, owed $40 million in backpay and subjected to a narrative that officers were leaving the department because not having a contract was demoralizing. There was political pressure to get the contract approved, which would require compromises be made; compromises that otherwise would not have been acceptable to anyone interested in actual police reform.

The ongoing issue for Judge Robart, the DOJ, the Monitor, and the CPC related to the apparent ability of SPOG, over and over again, to resist reform through their

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[996] Another SPD officer commented that "It was almost like the DOJ did not use the procedural justice that they insisted the police use…"

contract negotiations. As noted by the first OPA Director, Sam Pailca (who served in that capacity from 2001 through 2007) in a Facebook comment posted on September 21, 2020:

> Over and over again, hard-fought and fundamental elements of accountability are rolled back, diluted, obstructed, or fully eviscerated in police union contracts. Accountability and effective discipline systems aren't working conditions to be horse-traded in bargaining; they're minimum requirements rightfully set by the community.[997]

Issues relating to police union contract negotiations impeding police accountability are not limited to Seattle. As noted by Hardaway, police contract issues also impacted consent decree implementation in Portland, New Orleans, Cleveland and Baltimore (Hardaway, 2019, citing, Rushin, 2017b ["analyzing 178 police union contracts to illustrate how they impede accountability efforts"].

In Seattle in late 2014, however, SPOG, in a brilliant strategic move, joined the King County Labor Coalition, which subsequently "fought on [SPOG's] behalf ever since. Labor council representatives even hosted a press conference in 2018, calling on the Seattle City Council to ratify a new contract with the police union" (*Crosscut.com*, 6/4/2020). It was only after the April 2020 protests against police abuse gained traction, that SPOG was eventually kicked out of the King County Labor Coalition by a vote on June 17, 2020 (*Crosscut.com*, 6/17/2020).[998]

Even so, study participants overwhelmingly believed that it would have been useful to have the unions involved early on.[999] One participant suggested that

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[997] Sam Pailca, Facebook Post, September 21, 2020.

[998] Kroman, D. (2020, June 17). King County Labor Council expels Seattle Police Union. *Crosscut.com*. ["The vote comes amid ongoing protests and weeks of pressure from community advocates and some union members"].

[999] As previously noted, in Chapter 7.3.4, the DOJ has previously included police unions as parties in two Section 14141 actions (see, Amended Memorandum of Agreement Between the United States Department of Justice and the City of Buffalo, New York and the Buffalo Police Department, and the Police Benevolent Association, Inc. July 9, 2007. Retrieved from https://perma.cc/7WGA-RV2Q; and Memorandum of Agreement Between the United States Department of Justice, Montgomery County, Maryland, the Montgomery County Department of Police, and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. Retrieved from https://perma.cc/44US-AELU. In general, however, the DOJ tends to oppose motions to intervene (Simmons, 2008, pp. 519-520).

> if the Consent Decree had been negotiated with some union participation by reasonable people and the union's concerns on the table and considered, perhaps we would not have had the craziness we experienced at the front end of the implementation effort.

The issue of involving police unions in the early stages of §14141 actions has been the subject of substantial debate amongst academics and commentators. Early opinions expressed by Chiefs of Police of affected jurisdictions (particularly Pittsburgh and Washington D.C.) supported the concept of excluding unions from the process due to the potential for them to "delay" or "derail" the process (see Chanin, 2014, pp. 178, 311; Chanin, 2017a, p. 264). However, academics have tended to support a more collaborative and cooperative vision, wherein union participation could have a positive overall impact on reform efforts, with particular note having been taken of Cincinnati's collaborative effort in that regard (see, for example, Simmons, 2008; Chanin, 2014, p. 47; Rushin 2015, p. 115; Rushin & Edwards, 2017, p. 773; and, Chanin, 2017a, p. 265 [positively commenting on union participation in the negotiation and implementation process as it related to the Cincinnati Collaborative Agreement]).[1000] In Chanin's most recent publication on this issue, Chanin & Sheats (2018) recognized the positive potential for including rank and file officers in the

> early phases of DOJ intervention, including both the initial investigation and the negotiation of settlement terms [as] a worthwhile first step, [along with] the creation of a forum where affected officers may engage directly with DOJ staff and other relevant stakeholders. (p. 120)

One city research participant did note that SPOG was invited to voluntarily participate in the Consent Decree hearings, but they declined, largely due to the concern that they would have "lost" in front of Judge Robart; the union believed it was in a much stronger position bargaining with the City than it would be by putting itself at the mercy of

[1000] Chanin (2017a) strongly argued for more inclusion of stakeholders in the negotiation of settlement agreements: "By formally including union and civil rights groups in the negotiation process, police management and jurisdictional political leaders would be forced to acknowledge and address opposition to the process before an agreement is in place, rather than during or after implementation. This makes much less likely the occurrence of two problems that have undermined efforts to reach sustainable change in places like Washington DC, where union groups continue to litigate in an effort to repeal parts of the settlement, and Pittsburgh, where members of the civil rights community lost sight of the reform effort to the detriment of lasting reform. What is more, the ability to participate in the implementation process, facilitated, for example, by an invitation to participate in regular status meetings, would provide these groups continued access to the reform effort while giving them a voice and the ability to shape the terms of compliance" (p. 266).

a federal judge.[1001] It was also observed that Seattle City Attorney Pete Holmes had expressed, on numerous occasions, a desire to bring the union in as a party, with the hope that it would have reduced their ability to be disruptive of the reform effort, particularly through otherwise secret contract negotiations. In fact, study participants commented that Holmes got attacked by SPOG as a result, with a full-page newspaper advertisement, and that he lost the endorsement of the labor counsel in his next election campaign.

Research participants also commented that there was "lots of misinformation out there" amongst the rank-and-file officers. Some pointed out that SPD command initially communicated issues relating to the Consent Decree to officers in either a poor manner or not at all. Only when Chief O'Toole took over did the communications become more positive and supportive. At the same time, however, some participants blamed the implementation process itself for ensuring rank and file officers would quickly become disenchanted with reforms:

> They just rolled out new program after new program, new policy after new policy – and the narrative became that it was just to make DOJ and the Monitor happy. So, instead of getting a full narrative, the rank and file would just become frustrated over time.

Over the course of implementation, research participants observed that the Monitor and the DOJ argued that best practices in force reporting and investigations (and the existence of body-worn cameras) would inure to the benefit of good officers in that it would provide "a record" that would allow them to defend themselves against complaints and lead to credible exonerations when they followed their training and SPD policy. Numerous SPD research participants, however, dismissed that suggestion, pointing out that prior to such techniques being put into place, officers would seldom face discipline. With those tools in place, however, more officers would be disciplined; thereby suggesting that it would be impossible to convince line officers that any accountability-related reforms would actually benefit to them overall.

[1001] According to one participant, one of the reasons the union did not join or support the law suit filed by the group of officers fighting the implementation of the use-of-force policy, was the fear that doing so might result in the union being named a party in the Consent Decree litigation.

In addition, while the Monitor lauded the department for its increase in internal complaints against officers (4th Systemic Assessment, p. 21),[1002] other study participants reported that "at one point 60% of the department was under investigation" which they perceived to be "evidence of a broken system."

One SPD participant suggested that reformists consistently underestimated the power of SPOG. As an example, the participant referred to the "leak" of information pertaining to a video that was embarrassing to Interim Chief Pugel, a perceived supporter of reform, by the union (*Seattle Times*, 4/26/2013). One well-placed SPD participant described it as a "shot over the bow," by SPOG, indicating that they still had "the files."

Other research participants noted that at one point in the implementation process, the Training Division started sending out two-page training memos, that while received well by some, were ultimately "shut down by the union."

By July 2016, with SPOG President Ron Smith being forced to resign and the union membership resoundingly rejecting the contract negotiated by Smith's administration (*Seattle Times*, 7/21/2016),[1003] according to one City-insider:

> the big unknown at the time was what to do about the police union and how it would impact the reform process … the union wanted to 'stick it' to the reform process and was looking to use the Consent Decree process as a way to do that.

Later, it became clear to City insiders that SPOG President, Kevin Stuckey "could not deliver" on a new contract which would be consistent with the proposed Accountability Ordinance, approved by Council on May 21, 2017 (*Seattle Times*, 5/23/2017). In fact, one insider suggested that "the biggest failure was in not understanding how dysfunctional the police union was." It was only when the membership rejected the

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[1002] The Monitor reported that as of the writing of his report (January 2016) about 39% of OPA complaints were initiated from within the SPD, which was "a remarkable number given that, during DOJ's 2011 investigation, internal complaints were 'rare to non-existent'" (Fourth Systemic Assessment, p. 21).

[1003] "Only 156 police officers voted in favor of the contract offer, while 823 were opposed, a source said" (*Seattle Times*, 7/21/2016). According to research participants, and news articles, SPOG Vice-President, Rich O'Neil was largely responsible for organizing opposition to the proposed contract (see, *Seattle Times*, 1/30/2019).

proposed contract that City leadership realized the real challenges that would be involved in obtaining a new contract.

It was also pointed out that the Accountability Ordinance put the union in a difficult position. According to one union insider: “There were things in the Accountability Ordinance that no police union in the country would agree to. Binding arbitration, all police agencies in Washington have it. How in the world could anyone expect the union to give that up?” The argument in favor of the city accepting the contract recognized that there were improvements in accountability as it related to the contract – “but if you put it against the CPC wish list, it looks a lot less satisfactory.”

From the union perspective, for the first two years, “policies were seeming to change on almost a daily basis.” The rank and file were described as “feeling like everything was a witch hunt” with officers being expected to comply with policies after having only minimal training or notice. “We became the ills of the world … in order to solve racism in the City, we had to reform the police department.” Officers were described as being fatigued by the lack of public support and the “constant suggestions of the Monitor, the Judge and the DOJ that there was still a long way to go…”

7.8.2. Seattle Police Union Involvement in the Implementation Process

The two Seattle police unions, the Seattle Police Officer’s Guild (SPOG), representing officers and Sergeants, and the Seattle Police Management Association (SPMA), representing captains and lieutenants, have had (particularly through their contract negotiations with the City of Seattle) a significant impact on police accountability reform challenges identified over the years. In fact, virtually all study participants identified the police unions and their contracts as being a primary reason for the creation of a Seattle police culture that, ultimately, led to the DOJ investigation and the imposition of the Consent Decree.

The 1999 Citizen Review Panel Report (authored, in part, by then-private attorney Jenny Durkan), addressed issues relating to the then-existing contract between SPOG and the City. The panel reported it’s “firm conviction that the investigation of police misconduct is one of the chief responsibilities of Department management and should be governed by the best investigative practices, not collective bargaining.” The

panel then went on to recommend twelve amendments to the SPOG contract to include such basic powers as the ability to interview officers face-to-face and to conduct investigations outside of the four corners of the original complaint.[1004]

In the 2007 Police Accountability Review Board Report Final Report (which also included Jenny Durkan as an author), and which reviewed the Office of Professional

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[1004] The Panel made the following specific recommendations for amendments to the SPOG contract:

"In the course of any investigation, be the allegation a violation of Department regulation or a violation of law, the Department may, in the· discretion of the investigator, conduct a personal face-to-face interview of the subject employee and any potential witnesses" [Manual Section 1.121.X.A and B; SPOGA Sec. 3.5].

"The Department will not be obligated to submit in advance to the employee the questions the investigator intends to ask during an interview" [Manual Section 1.121 .X.B; SPOGA Sec. 3.7.D.2.].

"During the interview of an employee as part of an US investigation, the investigator will be authorized to inquire about any rule or law violation discovered during the course of the interview, regardless of whether it is related to the subject of the investigation" [Manual Section 1.121.X.C; SPOGA Sec. 3.7.D.3.].

"There shall be no limitation on the number of investigative complaints which would give rise to the initiation of an administrative review [SPOGA 3 .5). Department management shall be allowed to conduct an administrative review of an officer whenever it has reason to believe circumstances warrant."

"While the confidentiality of IIS [Internal Investigation Section] files during the course of an investigation must be maintained, it is in the public interest to treat these files as public records and to make them available to interested members of the public after redactions are made, pursuant the law set forth in Cowles Publishing v. State Patrol, 109 Wn2d 712, 748 P.2d 597 (1988)." [SPOGA Sec. 3.7.J.).

"Since IIS files are beneficial to the Department and the employee, they shall be maintained permanently" [SPOGA Sec. 3.7.K.]

"Any voluntary, non-compelled statement made by a Department employee during any Complaint Hearing may he used against that employee in a criminal prosecution" [SPOGA 3.6.1.).

"All employees will be expected and obligated to assist in any Department investigation and to answer all questions truthfully. Any false statement made by an employee should be the subject of discipline and, depending upon the circumstances, may be used against that employee."

"In the case of criminal investigation or prosecution of an employee, any disciplinary hearing should be deferred until the criminal matter is completed."

"Any employee who receives the discipline of suspension will not be allowed to exchange vacation, holiday or compensatory time for the suspension" [SPOGA Sec. 3.6.N.].

"For the sake of continuity, the citizen member appointed by the Mayor to Complaint Advisory Boards should be the same person. The employee should not use a peremptory challenge for that citizen member" [SPOGA Sec. 3.6.D.].

"Either the Department or the employee may record the Complaint Advisory Board hearing" [SPOGA Sec. 3.6.G.].

Citizen Review Panel Final Report. (1999, August 19). Recommendation No. 19, pp. 30-32.

Accountability structure (created as a result of the 1999 Citizen Review Panel Report), the police contract was mentioned only once; with a recommendation to allow the OPA (which replaced the SPD Internal Investigations Section) to complete investigations beyond the 180-day limit then required by the SPOG contract.

As previously noted, in the Monitor's first Semi-annual Report, filed with the Court on April 26, 2013, the Monitor commented that the police unions "thus far have failed to play a constructive role in word and deed" and invited the unions to join in the reform effort. In addition, the Monitor noted that "[a] part of the SPD, mostly but not exclusively within the union-organized ranks, remains 'dug in' and continues to resist the force and implications of the Settlement Agreement." The Monitor suggested that "part of the cause of this resistance" could be attributed to a failure to adequately explain the Consent Decree to command and rank and file officers (1st Semi-annual Report, p. 5). In support of this conclusion, the Monitor stated that: "[s]tories and myths have been fed to rank-and-file officers without their having received counterbalancing messages from the command staff to understand reform as being in the long-term best interests of all officers and the Department." As such, the Monitor made it clear that he expected SPD command staff to send a clear message to officers "that the Settlement Agreement is here to stay and is not going to be fed to the shredder" (1st Semi-annual Report, p. 6).

In the Monitor's 7th Systemic report, relating to force investigation and review and released in January 2017, the Monitor noted that a change in police union leadership had brought about the rejection of a collective bargaining agreement negotiated between the City and the police unions. As reported by the Monitor, "[t]he new union leadership suggested that if there were more money for the rank-and-file, they might take a more flexible bargaining position. The Court has made clear that constitutional reforms would not be held hostage to monetary demands" (7th Systemic Assessment, p. 4). The Monitor also reported that the union representing police Lieutenants and Captains "took a different tack" by filing an unfair labor practice claim "that threatens to tie up the reform process in endless negotiations and proceedings ricocheting between the state labor board and the federal court" (7th Systemic Assessment, pp. 4-5).

The Monitor concluded on a negative note:

> The Monitoring Team suggested almost a year ago that the SPD could reach full and effective compliance with the Consent Decree in late summer

> or early fall 2017. At a status conference in early January 2017, the Court estimated that it might be 2018 or beyond before that point is reached – in no small part due to a lack of definitive action in the areas briefly described here. Indeed, describing the progress on issues related to body cameras, union agreements, and the prospective system of "accountability" in Seattle as glacial gives glaciers a bad name. (7th Systemic Assessment, p. 5)

The two unions fought issue-specific battles as they related to various aspects of the police-reform agenda. These included the lawsuit filed by 126 Seattle officers attempting to halt the implementation of a new SPD use-of-force policy, an attempt by SPOG to stop the City from implementing a body-worn camera policy without first negotiating a pay increase for officers, an attempt to halt the implementation of the entirety of the City's Police Accountability Ordinance, and an attempt by the SPMA to stop the implementation of a new City Ordinance, permitting the Chief of Police to appoint Assistant and Deputy Chiefs from outside the SPD. The Accountability Ordinance was heavily involved in the negotiation of the SPOG contract, which ultimately conflicted with the Ordinance in multiple ways.

The ultimate death knell of the Court's finding of "full and effective compliance" with the Consent Decree was the new contract with SPOG. As suggested by an article published in the progressive news website, *Think Progress*, "the mayor [gave] her police union a pocket veto over key provisions of a year-old overhaul of office discipline, prompting vigorous objections from reformers" (10/18/2018).[1005] According to the Mayor's Office, the new contract allowed for the creation of the new Inspector General's Office, the elimination of a statute of limitations that restricted officer discipline and union buy-in to the new Wearable Camera program (see, *Think Progress* 10/18/2018; *Seattle Times*, 10/25/2018[1006]). However, it was also pointed out that,

> there are numerous spots in the contract that either explicitly or subtly undermine or roll back provisions of the new Inspector General and OPA authorities over officers, and in some cases curtail police leadership's own disciplinary authority as laid out in the city law. The 2017 reforms enshrined police leaders' authority to reassign officers for either disciplinary or performance-based reasons. The contract pokes holes in that authority, forcing supervisors to both provide a formal written notice with evidence

[1005] Pyke, A. (2018, October 18). New Seattle police union contract overturns key tenets of police accountability law. *Think Progress*. Retrieved from https://thinkprogress.org/seattle-police-union-mayor-durkan-police-accountability-law-f587a55e1b9a/.

[1006] Miletich, S. (2018, October 25). Federal Judge sets hearing on Seattle police-union contract. *Seattle Times*. Retrieved from https://www.seattletimes.com.

> supporting their belief an officer is underperforming or harming their unit's work and to give the officer between 30 and 90 days to fix their deficiencies. Supervisors can't move a problem cop outright, despite the city law saying they can do exactly that. (*Think Progress*, 10/18/2018)

On November 5, 2018, Judge Robart found against the Mayor's position, commenting, in court, that "[w]hen the city takes the position that there's nothing in there that is inconsistent with the Consent Decree, I don't believe that to be accurate" (*The Stranger*, 11/6/2018).

7.8.3. The Union Speaks

Union officials were quite vocal over the course of the DOJ investigation and consent decree implementation.[1007] The extent of the union's support or criticism for reform and the tone of its message appears to have been dependent on who was currently serving as President and his general philosophy of policing and community engagement.[1008] While the union was initially in lock-step with the Chief and the Mayor in criticizing the DOJ investigation, it moved towards a more moderate, supportive public position under Chief's Pugel and O'Toole and then reverted to a more confrontational and oppositional position with the election of its hard-line President in 2000:[1009]

[1007] As reported by the *Seattle Times* after Judge Robart found the City partially out-of-compliance with the Consent Decree: "SPOG has complained about and fought many of the reforms, including the now-required use of body cameras, and bitterly criticized federal oversight and the civilian-led Office of Police Accountability (OPA)" (*Seattle Times*, 5/15/2019).

[1008] Although a constant presence in the union was former President Rich O'Neill, who also served as Vice-President and was hired after his retirement as an SPD Sergeant to work as a civilian employee of SPOG. As reported by the *Seattle Times* in June 2017: "During O'Neill's tenure as guild president from 2006 to 2014, he garnered a reputation as a staunch defender of collective-bargaining rights who worked tirelessly for his members. But he alienated people in city government and the community with comments that excessive-force complaints had been overblown, and SPOG's newspaper, *The Guardian*, published articles bitterly attacking the Justice Department. In 2013, after the federal reforms were agreed upon, O'Neill struck a more conciliatory tone, saying it was time to put aside complaints and "move forward" with the changes" (*Seattle Times*, 6/22/2017).

[1009] Regardless of the union's public position, however, participants reported that its behind-the-scenes negotiation strategy, managed throughout the entire period of implementation by Sgt. Rich O'Neill, always remained the same: insist on monetary compensation for any police accountability reforms (see, Seattle Times, 9/3/2011 ["The police guild went along with virtually all of the 29 changes in its 2008 contract with the city. In exchange, officers won hefty pay raises. But the union has continued to be a dissonant voice, even after Kerlikowske left and Diaz became chief"]). In addition, study participants observed that both police unions have always aggressively protected their members from the imposition of discipline through rigid interpretations of state labor protection rights and the aggressive filing of grievances and unfair labor practice claims.

As shown in Table 7.18, the union's public comments primarily defended the right of officers to negotiate their working conditions, under state law, regardless of the existence of a consent decree. Union leadership would generally argue that externally mandated reforms were not really necessary, but that the union was not anti-reform. Articles written in the SPOG newsletter, *the Guardian*, however, would often showcase an anti-reform, anti-DOJ and anti-consent decree agenda on the part of active members of the union and leadership actions were consistently publicly perceived by the Judge, the Monitor, and sometimes the City as reactive and resistant to reform.

Table 7.18. Public Statements by Seattle Police Unions Over the Course of the Consent Decree

Date	Statement
August 20, 1999	J.D. Miller, Vice President of SPOG, in response to Citizens Review Panel Final Report: "said he was 'pleased the panel spent a bunch of time' looking into the department and concluded that corruption is not a rampant problem. As for its criticism of union practices, Miller noted that 'We don't negotiate our contract with the panel'" (*Seattle Times*, 8/9/1999).[1010]
2007-2008	"'We have a squeaky-clean Police Department compared to other big cities,' Sgt. Rich O'Neill, president of the Seattle Police Officers' Guild, said when the department was under scrutiny in 2007 and 2008 over its use of force. O'Neill said many of the complaints investigated by the department's internal-investigation unit 'would be met with a dial tone if you called another big-city department' … The investigation, O'Neill said, grew out of complaints from a small number of groups. 'But that's the way it works, the squeaky wheel gets the grease,' he said … McGinn, Diaz and top police commanders failed to back officers when it was appropriate, O'Neill added, stressing he has been forced to fill the 'void' and speak out on officers' behalf" (*Seattle Times*, 9/3/2011).
April 6, 2011	SPOG President Rich O'Neill in article in union newsletter *The Guardian*: "It is extremely frustrating when individuals with zero police training feel qualified to voice their opinions on police actions" (*The Stranger*, 4/6/2011).
December 17, 2011	Statement of SPOG President Rich O'Neill: "It is my hope that the DOJ will be as cooperative as we have been and allow the police department to examine and study the data that helped them come to their conclusions. Officers are often put in very difficult and dangerous situations and all they want are clear and specific ground rules to guide them when making use of force decisions" (*Seattle Times*, 12/17/2011).

[1010] Miletich, S. & Carter, M. (1999, August 20). Citizen Panel Gives Mayor Chief Remedy for Seattle Police Problems. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 28, 2012	Responding to Settlement Agreement between City and DOJ: "The police officers' union, … said it was pleased with the agreement. Although the union 'had hoped that the city of Seattle would force the DOJ to go to court to prove their allegations, we understand the need to get this issue resolved,' Sgt. Rich O'Neill, president of the Seattle Police Officers' Guild, said in a statement" (*Seattle Times*, 7/28/2012).
August 2012	"In the most recent issue of *The Guardian*, the newspaper published by the Seattle Police Officers' Guild, the lead headline states: 'Consent Decree does not trump labor law'" (*Seattle Times*, 8/25/2012).
March 12, 2013	Upon filing for a declaration for injunctive relief in King County Superior Court in response to the proposed Monitoring Plan, in a joint news release by SPOG and SPMA: "This is about the rights of workers and should not be construed in any manner as opposition to police reforms" (*Seattle Times*, 3/12/2013).
March 13, 2013	"We're not trying to trump the reforms, we're not trying to stand in the way of reforms, and many reforms don't require bargaining, …We won't be obstructionists ... but we have to defend our rights" (*Seattle Times*, 3/13/2013a).
April 2013	"The guild's vice president, Sgt. Ty Elster, seized on the reports in a blistering *Guardian* article in April, accusing Bobb of 'plowing ahead while racking up expenses to include booze and Egyptian cotton pillow cases for his luxury Seattle apartment.'" (*Seattle Times*, 6/20/2013).
June 2013	"Striking a conciliatory tone, the head of the Seattle police union is urging members to accept federally mandated police reforms, saying it is time to put aside complaints and 'move forward' with the changes. 'Our job is to adapt to the change in a healthy way so we can remain safe and not turn into an old grump who only wants to talk about 'the good old days,' Sgt. Rich O'Neill, president of the Seattle Police Officers' Guild (SPOG), wrote in the current issue of the union's newspaper, *The Guardian*." "O'Neill, in his June column, conceded the expense stories [regarding the Monitor] were 'not completely accurate' and that the city had been reimbursed. 'Again, this monitoring team is not going anywhere and we need to work with them, so their work can be completed as quickly as possible,' he wrote. 'Deciding to work together does not mean we agree on all issues, it just means we accept reality and need to move on!' … We can argue all day over the original DOJ investigation and whether or not it could ever have held up under scrutiny in court. That train has left the station! The elected officials chose not to go that route'" (*Seattle Times*, 6/20/2013).
October 2013	"In the October issue of the guild newspaper, *The Guardian*, O'Neill wrote that Murray represents the best chance to fix Seattle's 'dysfunctional' government and wants to 'get out from under the DOJ as quickly as possible'" (*Seattle Times*, 10/24/2013).
August 28, 2014	Statement of SPOG President Ron Smith: "As I have stated before, there are severe flaws with the current Use of Force policy, but litigation is not the prudent route to achieve any changes to the policy. The review period for this policy is currently open, and input is being solicited from the rank and file on how to potentially improve the policy" (*Seattle Times*, 8/29/2014).

Date	Statement
February 2015	Posting by on SPOG Facebook Page attributed to SPOG President Ron Smith: "Times have changed and we must also change to adapt to societal expectations" (*The Stranger*, 2/18/2015).
March 2015	"In the March issue, one month after the pathbreaking *Stranger* interview, former SPOG president Rich O'Neill took to the front page of *The Guardian* to defend Smith. 'Some have questioned an interview he gave in one of the local tabloids (I won't dignify the rag by calling it by name). Did anyone ask Ron if they quoted him accurately? Soon after it was out he assured the board it was completely taken out of context.' The article is headlined, 'This Is The Time For Unity!'" (*The Stranger*, 9/23/2015).
April 16, 2015	SPOG President Ron Smith: "I would be a fool to waste the opportunity to try and work with the very first police chief in decades willing to sit down with labor. When she pisses me off, or does something wrong, I'll be the first to stand up against her, … My predecessor, and those before him, had no opportunity to work with the chiefs of police because they marginalized the union. They were forced to do nothing other than file grievances and unfair labor practices, … Chief O'Toole has a different way of doing business; she is collaborative … What I've learned is the rank-and-file are deeply impacted by these changing policies. They feel under attack from every corner all the time, … I believe we all want the same thing. We all want a better police department down the road, and I believe we all want to be done with the Consent Decree" (*Seattle Times*, 4/16/2015).
June 2015	"In the June issue [of the *Guardian newsletter]*, Virgil Macdonald … received front-page treatment, under the headline 'The Culture Change' Needed/Demanded.' He wrote, 'Wow, according to the media and DOJ that sounds like our culture that we must change. The only part of our culture is the 'dangerous' part as we must obey the rules of the game while the suspects we encounter make up their own.' He concludes: 'You cannot do my job until you have walked in my moccasins... But we, must change our culture as they are the omnipotent know it alls.'" (*The Stranger*, 9/23/2015).
August 2015	SPOG President Ron Smith: "We have the best PD in the country! Hands down!" (*The Stranger*, 8/26/2015). In an article in *The Guardian* by President Smith: "The SPD is on the cutting edge of police 'reform' ... Keep up the good work and this assessment phase of the Consent Decree will be over before you know it." "In another column, officer Tom McLaughlin, the editor of *The Guardian*, wrote dismissively of Department of Justice reforms: 'I am just glad we have been 're-educated' and are now doing things correctly'" (*The Stranger*, 9/23/2015).
August 9, 2016	In a letter to Judge Robart from SPOG and SPMA: "Our labor organizations have a long history of successfully negotiating changes to the accountability systems, … What both SPOG and SPMA oppose is any non-negotiated breach in its collective bargaining agreement or rights" (U.S. v. Seattle, Document No. 306).
September 2016	SPOG Vice-President Rich O'Neill in article in *The Guardian*: "Listening to some involved in this process, they appear to want the city to ignore the MOA and the state law. They want to simply have the changes legislated or ordered" (*Seattle Times*, 9/28/2016).

Date	Statement
April 7, 2017	"In an interview this week on KUOW, Stuckey noted that since Seattle signed a consent decree in 2012 and instituted reforms, police now have a 72 percent approval rating among communities of color, have reduced their use of force 55 percent and are going through unique and valuable bias-free policing training. … 'We've had a culture change here in Seattle,' Stuckey said." (*Seattle Times*, 4/7/2017b).[1011]
May 22, 2017	SPOG President Kevin Stuckey to the Seattle City Council before vote on Police Accountability Ordinance: "This is my community. I am ready to get to work … I'm just here to say let's play by the rules" (*Seattle Times,* 5/23/2017).
July 17, 2017	"Guild President Kevin Stuckey said Monday he was confused by the order, calling it unnecessary because both sides are still at the bargaining table. He said the guild has been bargaining in good faith toward a body-camera program, and that the mayor's action won't create a 'sustainable program.' Instead, it will lead to a program with 'many different holes in it,' Stuckey said. Stuckey said the filing of an unfair labor practice complaint is 'something available to me.' He declined to say whether the guild was seeking extra pay, citing confidentiality rules surrounding bargaining. But he said such compensation has occurred in other police departments around the country where body cameras are in use" (*Seattle Times*, 7/17/2017).
January 2, 2018	"We've said all along, 'Let's sit down like grown-ups,' …We don't want to be a stumbling block to reforms. But you have to play by the rules." (*Seattle Times*, 1/3/2018).
January 11, 2018	"SPOG President Kevin Stuckey, who attended the news conference [after Judge Robart found the City in full compliance] as a spectator, said he looked forward to working with the new city administration to resolve differences. 'I've said this before and I'll say it again, we do not wish to impede the progress,' Stuckey said, adding that it was critical the city play by the collective-bargaining rules" (*Seattle Times*, 1/11/2018).
June 2018	Comments made by SPOG Vice-President Rich O'Neill to Q13 Fox TV (KCPQ): "I have never seen the number of officers who are leaving and the way they are leaving, … Less officers on the streets, less safe for the citizens — and when you have all these officers you have invested all this money in and they are leaving for Tacoma, Olympia, Pierce County and Snohomish County," (*Seattle Times*, 7/10/2018).
July 17, 2018	SPOG statement on appointment of Chief Best, "thanking Durkan for her decision and praising Best for her work 'establishing relationships with the many diverse communities in the city as well as the rank and file officers'" (*Seattle Times*, 7/18/2018a).

[1011] *Seattle Times* Editorial Board (2017, April 7). Don't undo progress in policing reforms. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
September 20, 2018	Statement by SPOG Vice President Rich O'Neill announcing membership vote approving contract between SPOG and the City: "The contract ... illustrates, once again, that SPOG is willing to accept changes to the accountability system as long as that change is achieved at the bargaining table and both sides bargain in good faith." Statement by SPOG President Kevin Stuckey: "SPOG would like to thank Mayor Jenny Durkan, who inherited this 'contract mess' from her two predecessors, who unfortunately, did not choose to respect the labor laws of Washington, … From the onset, Mayor Durkan made getting a new SPOG contract a top priority and her team followed her leadership and got the work done at the bargaining table." "Stuckey also thanked Best, saying she was the first chief to attend numerous negotiation sessions, constantly urging both sides to reach an agreement" (*Seattle Times*, 9/21/2018).
February 2019	Comments by Rich O'Neill, SPOG Director of Labor and Media Relationships, in interview with *NPR* radio: [referring to the Consent Decree]: "The incentive to get out and be a proactive officer I think has been damaged … And something the city cannot deny anymore is that we have had a real hit in recruiting—retaining officers … At the very start, officers were very frustrated … they didn't know what was going on" (*Seattle Times*, 3/5/2019).
August 17, 2019	Responding to a Superior Court Judge's decision to overturn the reinstatement of an officer previously terminated by Chief O'Toole for excessive force: "Our hearts go out to the Shepherd family, who have been dragged through this process for nearly five years, … SPOG will be immediately appealing this decision as it will negatively impact all public sector union contracts" (*Seattle Times*, 8/17/2019b).
November 6, 2019	SPOG Vice-President Mike Solan *You-Tube* video in support for his campaign to be elected SPOG President: "Police officers now are being held to an unreasonable standard and the scrutiny is immense … My course of action will lead us to fundamentally change the activist narrative that negatively impacts our profession, not only locally but nationally. I will do this by driving our own narrative. Our narrative will restore respect to our profession, protect our CBA and restore confidence within our membership so that we can all feel that our oath of service was indeed noble" (Mike Solan for SPOG President 2020, *You Tube Video*, 11/6/2019).

The police unions' public positioning on consent decree related issues, as well as publicity relating to articles in the union newsletter, often resulted in public comment, from community and political leaders, as well as op-ed articles from the local media. Almost exclusively, the public comment regarding the unions' impact on the Consent Decree was negative. Comment was also often made of the apparent inability of either the Mayor or the City Council to "stand up" to the union and force reform through aggressive collective bargaining or legislation.

Table 7.19. Public Comment on the Seattle Police Unions' Impact on the Reform Effort

Date	Statement
August 20, 1999	More than a decade before the Consent Decree, then-SPD Chief Stamper "announced a 12-point plan to strengthen the department's internal investigations." Stamper's "efforts…have bogged down in this year's contract negotiations with the police union. Two weeks ago, he offered a terse statement saying the plan was a 'work in progress'" (*Seattle Times*, 8/20/1999).[1012]
April 6, 2011	Nicole Gaines, President of the Loren Miller Bar Association: "Rich O'Neill does a great deal of damage to the community's perception of officers." "Gains argues that O'Neill doesn't just speak for officers – his rhetoric pits them against the public they're sworn to protect" (*The Stranger*, 4/6/2011).
April 16, 2014	According to former Chief Pugel: "The union 'was unwilling to budge on any case … They would continually ask in different meetings if they could revisit this case or that case, … It was brought up to me at least once every two or three weeks…" (*The Stranger*, 4/16/2014).
September 23, 2015	*The Stranger* newspaper reporting on a lack of commentary by public officials regarding the Seattle police unions: "But for some reason that no one has been able to explain to me, officials overseeing reforms at SPD are afraid to openly criticize the union for fulminating against reforms and publishing racist commentary. The union is currently renegotiating its 80-page contract with the city behind closed doors…. Mayor Ed Murray, who was endorsed by SPOG, Ron Smith, and the local division of the Department of Justice, did not respond to a request for comment [on SPOG newsletter articles and cartoons opposing police reform]. Nor did Council President Tim Burgess" (*The Stranger*, 9/23/2015).
July 8, 2016	Councilmember Tim Burgess: ... "I think sometimes the police union leadership are their own worst enemies. They fire off these statements and then take them down. It's terrible, because it reflects an inner cycle of thinking that is very negative and disrespectful" (*The Stranger*, 7/8/2016).
May 15, 2019	"SPOG has complained about and fought many of the reforms, including the now-required use of body cameras, and bitterly criticized federal oversight and the civilian-led Office of Police Accountability (OPA)" (*Seattle Times*, 5/15/2019).
June 24, 2019	Email from King County Labor Council's executive secretary-treasurer to City Council regarding CPC request for Council to reopen negotiations with SPD unions: "Collective bargaining is a fundamental right awarded to all workers … Unilaterally opening a collectively-bargained contract between a workers' union and their employer undermines these rights and disrespects the entire collective bargaining process" (*Seattle Times*, 7/13/2019).

[1012] Miletich, S. & Carter, M. (1999, August 20). Citizen Panel Gives Mayor, Chief Remedy for Seattle Police Problems. *Seattle Times*. Retrieved from https://www.seattletimes.com.

Date	Statement
July 26, 2019	Letter from Seattle Coalition of City Unions (CCU) to City Council opposing reopening talks with SPOG: "The CCU wants to make it perfectly clear that we strongly disagree with any unilateral attempts to reopen SPOG's current collective bargaining agreement (CBA), … The CBA was bargained in good faith over the course of several years and signed by the Mayor and Seattle City Council … Any and all efforts to put undue pressure on SPOG to reopen this agreement are inappropriate. The members of SPOG have the right to determine, on their own terms, what course of action they want to pursue" (*Seattle Times*, 8/9/2019).
February 4, 2020	"Seattle police guild members overwhelmingly elected a hard-line candidate as their new president, the union announced Tuesday evening, signaling the city likely will face tough negotiations in upcoming contract talks considered key to resolving federal oversight of the police department" (*Seattle Times*, 2/4/2020).
June 4, 2020	"Lisa Daugaard, executive director of the Public Defenders Association, said there was a hopeful period where it looked like the cooperation [between SPOG and the Seattle community] was producing good results. 'But by 2018 that tentative relationship was in the trash heap, … It seemed as though SPOG suddenly devalued the relationship with the civil rights community and retreated to a more traditional view of their own self-interest. It was sad to see the window for partnership close after so much effort'" (*Crosscut*, 6/4/2020).

Ultimately, the election of a hardline as the union president in 2020 showed the SPD membership's thoughts on the ongoing consent decree. Whereas the previous union leadership had sent a message of conciliation and cooperation, the new union leadership was actively anti-reform. And, in fact, the union president ignored public calls for his resignation after he issued a statement blaming "the far left and Black Lives Matter activists" for the January 2021 insurrection at the Capitol in Washington D.C. According to the *Seattle Times*,

> "in an internal letter to members of the [union], Solan express[ed] regret for commenting on national politics but [said] his comments [had] been 'spun intentionally for political reasons to hurt SPOG and limit our influence … I interpret the calls to tender my resignation as political rhetoric. I will never bend to cancel culture as I lead this union with conviction."[1013]

Solan's refusal to resign and the executive board's refusal to remove him stand in stark contrast to the previously mentioned actions of the executive board after reform-

[1013] Gutman, D. (2021, Jan. 12). Seattle Police Union President won't resign after Capitol attack remarks, blames 'cancel culture.' *Seattle Times*.

minded SPOG President Ron Smith made an unpopular comment regarding a police shooting in Texas.

The question of the day rests with the next contract negotiation currently being conducted by the outgoing Durkan administration.[1014] With the union positioning itself in an apparent entrenched anti-reform position, will the Durkan administration have the political will to stand up to the union and reform the SPD accountability structure in a way that will both satisfy Judge Robart and avoid an award against the City in the event the union takes the contract to arbitration? In oft stated terms, “only time will tell.”

[1014] On December 20, 2020, Mayor Durkan announced she would not run for re-election (Beekman, D. & Brunner, J. (2020, December 20) Seattle Mayor Jenny Durkan won’t run for reelection. *Seattle Times*. Retrieved from Seattle Mayor Jenny Durkan won’t run for reelection | The Seattle Times. As such, it is anticipated that the Deputy Chief, chosen as Interim Chief to replace Chief Best, will remain in place until a new mayoral administration takes office on January 1, 2022.

Chapter 8.

Assessing the Sustainability of the Seattle Reform Effort

The ultimate question, relating to the implementation of the Seattle consent decree, is: To what extent are the reforms that brought the SPD to compliance sustainable in the long term? (See, Davis, el. al., 2002; Chanin, 2012; Chanin, 2015; Chanin, 2016; Harmon, 2017). Given the costs of consent decree implementation, to include financial, emotional, and reputational, it would be reasonable to conclude that the implementation of short-term change only would signal a failure of the Consent Decree process (Walker, 2017). And, if police reform via consent decree is not achievable in Seattle, a progressive city with significant resources, the question becomes whether the Consent Decree process itself is worth the time, expense and resources needed to support this form of police reform.

On its face, the Seattle consent decree appears to have created systems that would support long-term, sustainable reform, to include, 1) a strengthened civilian oversight program in the form of the OPA, CPC and Inspector General, 2) usable data platforms and technology to track patterns of police conduct and enhance supervision and accountability, 3) a more robust system of training (including crisis intervention training and de-escalation techniques), 4) enhanced use-of-force, de-escalation, “stop and frisk” and biased policing policies, and 5) a structured process for the investigation and evaluation of police uses-of-force. However, research participants still differed in their opinions as to whether Seattle could really sustain the reforms initially sought as a result of the DOJ investigation. And the concerns expressed by research participants highlighted the very areas that the literature has identified as essential to long-term reform: to include police and city leadership, ongoing investment of resources and, culture changes that would support a pattern and practice of Constitutional policing.

If anything, this research has highlighted an important aspect of externally-driven police reform efforts: even if a strong foundation for success is built as the result of consent decree-driven reform, policing in a major urban area is an ongoing process that requires constant attention and the opportunity for backsliding will forever be present

(see, Walker, 2012; Chanin, 2015). As such, all that consent decree-driven reform as a temporary process can promise, is to increase the potential for future success. This conclusion supports the conclusion that a key weakness in the current DOJ §14141 program is the lack of available resources and legal structure to revisit reforms once a §14141 action has been dismissed and the jurisdiction of the court has been terminated (see, Chanin, 2012; Chanin, 2014; Dukanovic, 2016; Rushin, 2017a).

8.1 The Literature on Sustainability

An abundance of academic discussion examines the issue of §14141 sustainability, even though there may be a lack of empirical data and applied theory by which the long-term success or failure of §14141 consent decrees can be objectively evaluated.

Theories of organizational change, as they relate to police organizations, abound. However, only a few commentators and academics have conducted deep dives into issues relating to evaluating the sustainability of consent decree related reforms.[1015] Specifically, only Chanin (2012, 2015 & 2016); and Walker (2010 [with Ikerd] & 2012) have offered specific criteria that they believe should be considered in evaluating and assessing the sustainability of these reforms.

As recently as 2018, Walker commented that, "[p]olice experts have given very little attention to this problem, and we have no real understanding of the conditions necessary for major reforms to be sustained over the long haul." This, even though "[t]he history of the American police over the last half century is littered with the bones of once-

[1015] Walker (2012) reported that "[o]nly two publications to date have explored the issue of institutionalizing police reforms in detail. Rachel Boba and John Crank define institutionalization as 'establishing as normal or making something a customary and accepted part of the organization.' … Similarly, Trent Ikerd and this Author define institutionalization as occurring when a particular reform becomes 'a way of regularly conducting police business,' and 'when certain norms, values, and structures are incorporated into an organization.' …this can be achieved when the reform in question is incorporated into regular police practice, in department-wide training, and in personnel practices including regular performance evaluations and promotions" (pp. 58-59).

celebrated reforms that simply withered away with time" (Walker, 2018, p. 1840; Dukanovic, 2016, pp. 926-927).[1016]

Even so, Chanin's 2012 dissertation, supplemented by his ongoing work in the evaluation of consent decree reform efforts in multiple cities, and Walker's academic commentary, do seem to provide a good theoretical foundation for evaluating the potential for long-term success, and I have, thus, applied them to the Seattle experience in this Chapter.[1017] I believe this theoretical foundation is usable, even though the ultimate answer as to whether the Seattle reforms are "hard baked" enough to stick, requires a prospective evaluation that belies any absolute conclusions.[1018] Even so, the conclusion that Stone, el. al, reached, shortly before the LA consent decree was terminated, seems to apply as well in Seattle:[1019]

[1016] Chanin (2016) provided an explanation of the difficulties involved in predicting the sustainability of police reform initiatives: "In general, scholars know relatively little about the bureaucratic response to reform and thus remain somewhat ignorant about how and why innovations in policing continue to erode. This is not entirely surprising given the complexity of the issue. Comprehensive reform efforts resist the kinds of clear, simple terms that facilitate ex post evaluation. The process is defined by multiple goals, varying perspectives, and competing political, administrative, and legal motivations, all conspiring to form 'a confusing and contradictory picture of change.' The complexity of the process is only magnified by the intensity of the current political and social context and the contentiousness with which police officers confront changes to the organizational status quo" (p. 71, quoting, Peters & Savoie, eds., (1988). Canadian Ctr. For Mgmt. Dev., Taking Stock: Assessing Public Section Reforms, p. 6).

[1017] In addition, in their 2017 report on DOJ's §14141 activities, the DOJ also provides some guidance on lessons learned regarding how to sustain otherwise short-term reforms achieved by consent decrees (USDOJ, 2017b).

[1018] Of course, it must be recognized that any attempt to assess the sustainability of the Seattle consent decree reforms at the current time, particularly when accountability-related programs are still works in progress and the Consent Decree has yet to be terminated, inherently involves speculation and guess-work. As an example of the premature nature of such an analysis, Chanin noted that "[s]ome scholars believe that analysis should begin after one year (e.g., NHS Modernization Agency 2002); others say institutionalization takes somewhere between five and ten years to manifest (e.g., Kotter 1995)" (Chanin, 2012, p. 207). At the same time, it has been over two years since the Seattle was initially found to be in full compliance, so there is certainly data that can be used to evaluate sustainability to date and predict potential future outcomes.

[1019] Similar to this study, the Stone et al., study, more commonly referred to as "the L.A. Harvard-Kennedy School study," was conducted while the Los Angeles Consent Decree reform process was still in progress. The L.A. consent decree was implemented in 2001 and five years into the reform process, the assigned federal judge found the city not yet in full compliance and extended the decree an additional three years. As of the writing of the Harvard-Kennedy School report (May, 2009), the judge was then considering the issue of full compliance (Stone et al., 2009, p. 5). In fact, the LA consent decree was dismissed shortly thereafter, on July 17, 2009. However, even then a transitional agreement was put into place to allow the DOJ to bring the case back to the federal judge in case the reforms were not sustained (Rubin, J. (2009, July 18). U.S. ends oversight of L.A. police. *Los Angeles Times*. Retrieved from U.S. ends oversight of L.A. police -

> Will the management and oversight improvements persist if the Consent Decree ends? Better yet, will management and oversight become still stronger? *While we cannot answer those questions in advance, the LAPD appears ready for that test* … Time and again we heard police officers and community residents pose the question: will the improvements persist if the Consent Decree ends? *Research cannot answer such a prospective question, but in our opinion the officers and residents with whom we spoke seem ready for that test*. It is not that policing in Los Angeles is all that it can ever be, but *the balance of local leadership and local oversight is healthy enough to carry the process of continuous improvement forward.* (Stone et al., 2009, pp. ii, 68, *emphasis added*)

As discussed by Walker (2003), a "new paradigm of police accountability" identified "the conditions necessary for achieving genuine accountability in policing." Walker specifically identified the requirements as: a) the need for reform to "reach deep into the police organization, b) have some direct impact on the day-to-day behavior of police officers; and (c) ultimately change, or at least begin to change, the culture of police organizations" (p. 9; see also, Patel, 2016, pp. 870-871 ["It has long been understood that for law enforcement reforms to stick, law enforcement agencies must undergo a culture change"]; see also, USDOJ, 2017b, p. 37 ["Ultimately, the Division's goal is for its reform agreements to leave a law enforcement agency with an enduring ability to self-correct when misconduct occurs and a culture that strongly supports constitutional and effective policing…"]). And ultimately, it is these questions that have to be answered with respect to the Seattle experience. Unfortunately, objectively evaluating the criteria identified by Walker, particularly as it relates to whether or not the SPD "culture" has changed, is inherently difficult, particularly given that identifying any police department's specific culture is an amorphous exercise, at best.

Commentators appear to agree that "organizational and culture change especially in insular organizations such as police departments, takes time and it takes leadership" (Jerome, 2004, p. 3). This concept is consistent with Professor Armacost's theory that formal policy changes are insufficient to change a police culture, concluding that: "no legal strategy that ignores the power of the police organization will have any

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Los Angeles Times (latimes.com). The case was finally and permanently dismissed on May 16, 2013 (Palta, R. (2013, May 16). Last of LA consent decree officially dismissed, *Associated Press*. Retrieved from UPDATE: Last of LAPD consent decree officially dismissed | 89.3 KPCC (scpr.org).

lasting success in addressing [Constitutional policing]" (Armacost, 2004, p. 521; see also, Walker & Macdonald, 2009, p. 529; Ikerd & Walker, 2010, p. 15).

As such, the literature highlights two issues: first, the need for ongoing imaginative leadership (Chanin, 2012, pp. 214-215, 292-302; Chanin, 2014, p. 40), and second, the need to address culture change (*Mollen Commission*, 1994, p. 69 [concluding that in order to address systemic corruption in the New York Police Department, "the department must transform [the] police culture"]; Walker, 2003; Chanin, 2012, p. 244, Walker, 2012, pp. 66-67, 81; Chanin, 2014, p. 40).

With respect to leadership, it is clear that sustainability becomes difficult after the tenure of the leader(s) who supported the reform effort have ended (Walker & Macdonald, 2009, p. 533) and, in fact, the tenure of U.S. chiefs of police is notoriously short (Jaio, 2020, p. 10; *Los Angeles Times, 5/5/2002*[1020]).

Both Walker and Chanin also appear to agree that "pervasive and ongoing communication between leaders and organization members is critical to successful institutionalization" (Chanin, 2012, p. citing Armenakis et al., 1999; Ikerd & Walker, 2010). Also cited by Chanin in support of sustainability of reform is "(1) the existence of capable, supportive leadership; (2) consistency and continuity among agency leadership; and, (3) support for the reform among organizational middle management" (Chanin, 2012, p. 292). Chanin also argues in favor of the need for ensuring that reform-related principles and philosophies "become part of [the] organization's core mission … they must become the operating philosophy of the entire organization" (Chanin, 2012, p. 226). Similarly, Chanin identified "the need for [the] chief to link reform-driven accountability with the department's anti-crime efforts which is very much in line with theoretical research on the importance of goal congruence, [and which] must be communicated clearly and repeatedly to agency staff" (Chanin, 2012, p. 294, n. 54).

With respect to changing the culture, Ikerd & Walker (2010) ascribed to the theory that culture change involves "win[ning] the hearts and minds of the officers in the department" and "resocializing" officers to accept new philosophies underlying constitutional policing (p. 15). Even so, Ikerd & Walker recognized, however, that

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[1020] Leovy, J. (2002, May 5). Little Job Security in Being a Police Chief. *Los Angeles Times*. Retrieved from Little Job Security in Being a Police Chief - Los Angeles Times (latimes.com).

"recommendations for successful organizational change in policing … have not been tested previously to see how they affect the institutionalization process of police reform. As a result, there is no established framework for institutionalizing police reform" (p. 5).

"Until new behaviors are rooted in social norms and shared values, they are subject to degradation as soon as the pressure for change is removed"
(Chanin, 2012, p. 201, quoting,
John P. Kotter, Harvard Business Review).

Ikerd & Walker (2010) go on to suggest four elements that can be used to evaluate whether reforms have been institutionalized in a police department: 1) that officers know about and can describe the basic elements of the reform; 2) that officers are supportive of the reforms; 3) that officer behavior reflects the reform; and 4) that the reform has been incorporated into the department's policies and procedures (pp. 13-14).

Chanin (2012) went into great detail about issues relating to consent decree reform sustainability, suggesting different, but related metrics for determining the permanency of these reforms:

> (1) the extent to which a department perpetuates the policies and procedures established under the reform; (2) the extent to which an agency's culture reflects the core values of the reform; and (3) the extent to which a department is able to maintain desirable levels of key outcomes related to the reform (pp. 203-204; see also, DOJ, 2017b).[1021]

Chanin supplemented these metrics by recognizing the existence of "various management techniques thought to enhance [] sustainability, including a commitment to officer training and recruitment, as well as an effort to adjust both performance and promotional standards so as to reflect the reform initiative" (Chanin, 2012, pp. 208-209).

Chanin (2016) revisited the sustainability issue, first noting that "sustainability of reform is undermined by the use of a transitory police solution – external oversight – to remedy what in many cases is a chronic organizational problem." He concluded by

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[1021] The DOJ also recognized the need for "policies incorporating each requirement of the reform agreement" to be put into place "to ensure that reforms become part of the fabric of the law enforcement agency, rather than viewed as changes specific to the particular chief in place when the reform agreement was implemented" (USDOJ, 2017b, p. 30).

noting that "[i]n the absence of persistent external oversight and accountability, … the affected bureaucracy can, and perhaps must, revert to ex ante operating procedures" (Chanin, 2016, p. 72; see also, Chanin, 2012, pp. 282-286, 320; see also, Mollen Commission, 1994, p. 75 [noting that a lack of "institutional mechanism[s]" allowed for there to be a lack of accountability at the NYPD]). Chanin went on to summarize "four interrelated metrics" that could be used to "examine[] the sustainability of organizational reform: (1) staff knowledge of and compliance with new protocols; (2) the extent to which staff culture reflects reform values; (3) trend-based outcome data; and (4) the presence or absence of performance crises" (Chanin, 2016, p. 75). Chanin also identified "an organization's ability to avoid large-scale performance crises" [such as "a police shooting or a particularly vicious use of force caught on tape"] as evidence of "an organization's ability to sustain change" (Chanin, 2015, p. 168).

Additional factors identified as being important to the sustainability of consent-decree enforced reform efforts include:

- Appropriate funding and resourcing for the agency, particularly after the Consent Decree has ended and the DOJ has "left town" (Chanin, 2012, p. 220; USDOJ, 2017b, p. 37; Alpert et al., 2017, p. 246);
- "Support for the initiative from jurisdictional political leaders as well as member of area civil society organizations" (Chanin, 2012, pp. 314, 320);
- "Relevant outcomes, including data on citizen complaints; police use of force; department civil liability; and public opinion" (Chanin, 2012, pp. 31, 200);
- "Compliance among mid-level staff" (Chanin, 2012, p. 189, Chanin, 2014, pp. 301-302);
- The extent to which "policy and organizational changes - including, for example, use of force incident reporting; officer training; and use of department early warning systems – remain in place and fully operational" (Chanin, 2012, p. 225);
- The extent to which police unions continue to oppose reform efforts (Chanin, 2017a, p. 264); and,
- The extent to which "properly designed" reform-related training is used "to improve officer receptivity to innovation and change" (Walker, 2012, p. 84).

For a list of the most substantive measures suggested for use by Chanin and Walker, as applied to the Seattle process at this time, see, Table 8.1, *infra*.

"In the end, a city completes a consent decree, then the judge goes away, the Monitor goes away, … All cities are on their own, and then it's dependent on the local community and local politics."
(Professor Samuel Walker, New York Times, April 9, 2017)

8.2 Sustainability Issues in Other Cities

Researchers and commentators have looked at sustainability issues with respect to a number of consent decrees, to include Pittsburgh, Washington D.C. and Cincinnati.

8.2.1. Pittsburgh

As previously discussed, the first post-consent decree evaluation study was conducted in Pittsburgh in 2005, three years after the termination of that city's consent decree. That evaluation, by researchers from the Vera Institute of Justice, concluded that the federal action brought "lasting improvement to the Pittsburgh police department." By 2009, Walker & Macdonald (2009) had identified "subsequent events that threatened the continuity of the [Pittsburgh] consent decree reforms." They observed that the City had experienced "a serious budget crisis" as well as a subsequent city election wherein a new Mayor, elected with the support of the police union, "immediately fired the police chief who had been credited with successfully implementing the Consent Decree" (p. 534).

Three years after the Walker & Macdonald article, Chanin (2012) conducted his own evaluation study which included the Pittsburgh experience. Chanin concluded that, by that time, there appeared to be "an erosion of the accountability infrastructure [that had been] developed during the reform period," potentially impacted by "[l]ongstanding and unaddressed tension between the police and minorities as well as shifts in economic and other sociological condition" (Chanin, 2012, p. 252).[1022] Also, in 2012, Walker made

[1022] Chanin (2012) further found that "[a]s the experience in Pittsburgh demonstrates, the passage of time can threaten what appears to be a well---sustained reform effort. After all, in 2005, some three years after the Consent Decree terminated, Chief McNeilly remained in charge of a department committed to perpetuating the reform effort. Over the next several years, the political winds shifted, department leadership changed, and the community moved on. Today, the city and its police department are struggling to reacquire the accountability and community support generated by the Consent Decree" (p. 327).

additional comments exhibiting his concerns regarding the sustainability of the Pittsburgh reforms citing a number of cases where officers remained on duty even in the face of serious and numerous accusations and complaints. Walker (2012) observed that [a]ll of the cases cited here involve the kind of pattern of officer misconduct that the Consent Decree mandate reforms, and the early intervention systems [], are designed to track (p. 64).

Most recently, Chanin (2015) concluded that:

> The PBP was not able to sustain organizational changes made under federal oversight. Key outcomes that remained flat during implementation, including officer injuries, use of force incidence, and allegations of misconduct, now trend upward. According to Pittsburgh Mayor Bill Peduto, a recent corruption scandal and several high-profile force-related incidents have the department "on the verge of another consent decree." (pp. 182-183, citing, Benzing, 2014; [1023] see also, Rushin, 2016; Rushin, 2017a, pp. 241-242)

8.2.2. Washington D.C.

In Washington D.C., Chanin (2012)'s evaluation came four years after the termination of that city's consent decree. Chanin observed a spike in citizen complaints one year after the settlement agreement termination, but noted "a different trend" with respect to civil litigation (p. 262). And while Chanin acknowledged that the MPD "boast[ed] of an award winning Force Investigation Team," he also noted that in 2008 the MPD suffered "the highest number of fatal [police] shootings since 2004, when the DOJ intervened" (pp. 51 & 71). Overall, Chanin concluded that "[d]espite ups and downs during the five year implementation, the city and its police department appear to have benefited greatly from the federal intervention" (p. 60).

Walker (2012) also looked at Washington D.C., commenting with concern about multiple arrests of MPD officers taking place in 2011 and 2012, suggesting that "the number of arrests … raises very serious questions about whether the accountability procedures instituted by the MOA are functioning at all" (p. 64).

[1023] Benzing, J. (2014, July 1). Pittsburgh police could face second federal consent decree, Peduto says. *PublicSource*. Retrieved 11/6/20 from, http://publicsource.org/from-the-source/pittsburgh-police-could-face-second-federal-consent-decree-peduto-says.

Chanin (2015) spoke with more conservative language:

> The picture in Washington, DC is more difficult to interpret. Significant reductions in force-based civil litigation and related payouts since 2003 suggest that both the frequency and severity of MPD misconduct has declined. A spike in allegations of misconduct complicates the picture, as does the startling number of MPD officers that have faced criminal charges in the postreform years. (p. 183)

And by 2016, the former court-appointed Monitor prepared his own evaluation report of the MPD, evaluating its use of force data and investigations from 2008 to 2015.[1024] Although the Monitor identified some significant areas of issues and concerns, his findings were largely positive, as described in an opinion piece he published in Washington Post on January 29, 2016,

> In large measure, the D.C. police department's use of force policies remain consistent with best practices in policing, and the data show that there has been no surge in any type of use of force, including firearms. The number of officer-involved shootings has remained low, and there is no evidence that excessive force has reemerged as a problem within the department. (Bromwich, *Washington Post,* 1/29/2016)[1025]

8.2.3. Cincinnati

In 2009, shortly after the conclusion of that City's consent decree, the RAND Corporation, hired to conduct ongoing evaluations of Cincinnati police-community relations, commented that,

> the improvements that have been seen over the life of the collaborative agreement may be fragile. It will require a continued and concerted effort on the part of CPD and community leaders to maintain progress toward the goals stated in the collaborative agreement, as well as to prevent reversals in the positive trends that we observed while this agreement was in force. (Ridgeway, 2009, p. xiv)

With respect to Cincinnati, Chanin (2012) observed that "[f]our years removed from DOJ and monitor oversight, [the CPD had] experienced little or no backsliding in

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[1024] Walker (2017) referred to the Bromwich report as "[t]he best post-consent decree assessment of a department [conducted thus far]" (pp. 4-5).

[1025] Bromwich, M. (2016, January 29). DC is Proof that Police Reforms Can Work. *Washington Post*. Retrieved from https://www.washingtonpost.com/opinions/dc-is-proof-that-police-reforms-can-work/2016/01/29/baa9fd62-c5bb-11e5-a4aa-f25866ba0dc6_story.html.

terms of its accountability infrastructure or its officer culture … In short, the reform effort in Cincinnati appears to have transformed the CPD" (p. 266).

Chanin (2015) continued reporting on Cincinnati in a positive manner:

> The process seems to have had a sustained, positive effect in Cincinnati. Numbers of postreform citizen complaints against CPD officers continue to decline, as does use of force incidence, and the number of injuries sustained by CPD officers. Such progress has contributed to increasing trust in the Department among minority community members [citation omitted] and a sterling national reputation (Schuppe, 2014;[1026] Vinik, 2014[1027]). (p. 183)

Chanin (2016) continued with his positive conclusions regarding the Cincinnati reform effort:

> Six years removed from DOJ and monitor oversight, the CPB has experienced little or no discernable backsliding, a finding supported by consistent reductions in undesirable outcomes, including use of force incidence and allegations of abusive or unlawful behavior. In short, the reform effort in Cincinnati appears to have transformed the CPD. (p. 91)

8.2.4. Prince George's County Police Department

Chanin (2012) evaluated the PGPD three years after its consent decree was terminated. After identifying numerous instances involving excessive force, misconduct and criminal conduct by PGPD officers, Chanin gently concluded that "even after five years under federal control PGPD remains a work in progress" (pp. 71-72).

Four years later, Chanin (2016) expressed deep reservations regarding any progress the PGPD had made toward reform. He identified a substantial lack of transparency and publicly available information, as compared to Pittsburgh, Washington D.C. and Cincinnati and no willingness on the part of County or police to cooperate with any evaluation. Although Chanin noted that it was "hard to draw any definitive conclusions about the effectiveness or long-term viability of the reform effort" as there

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[1026] Schuppe, J. (2014, August 30). Blueprint for peace: What Ferguson can learn from Cincinnati. *NBC News*. Retrieved from http://www.nbcnews.com/storyline/michaelbrown-shooting/blueprint-peace-what-ferguson-can-learn-cincinnati-n191911.

[1027] Vinik, D. (2014, August 18). We've been here before. A solution exists. *The New Republic*. Retrieved from http://www.newrepublic.com/article/119133/cincinnatis-2001-raceriots-reveal-solutions-fergusons-unrest.

was insufficient information available, he ultimately concluded that: “taken together, the existing quantitative and qualitative information seems to suggest a wide gulf between where Prince George’s County appears to be and where the Justice Department would have wanted them to be seven years after the MOA was signed” (p. 101).

8.2.5. Los Angeles

As previously noted, Harvard-Kenney School researchers, at the request of then-Chief Bratton, conducted an evaluation of the LAPD shortly before the termination of that consent decree that concluded that the LAPD had the tools necessary “to carry the process of continuous improvement forward” (Stone et al., 2009, pp. ii, 68).

Rushin (2015) referred to Los Angeles as a “best case” scenario commenting that “at the end of [the Consent Decree], the LAPD was a dramatically different department.” Rushin went on to conclude that “[v]irtually all empirical measures suggest that the LAPD is engage in less misconduct today than it was before federal intervention.” Ultimately, Rushan used quantitative analysis to demonstrate that “the LAPD showed dramatic improvement during the [consent decree] era” (pp. 116-136 & 140).

Only a year later, however, Rushin (2016) was more circumspect about the chances of LAPD reform being sustained. He identified a “sudden jump in officer-involved shootings” in 2011, which he referred to as “a potentially discouraging development.” He ended up concluding that “[t]ime will tell whether Los Angeles will be able to sustain the improvements it has made over the last decade plus” (p. 131 & n. 81).

8.2.6. Variability between findings

With respect to Pittsburgh, Washington D.C., Cincinnati and Prince George’s County, Chanin (2012) did note that in all four of the aforementioned jurisdictions, “many of the systems established under the [consent decree] process remain in place today.” Chanin, however, found himself unable to explain away the apparent variabilities between the sustainability in the decrees in the four jurisdictions, unable to identify any

"meaningful difference between the four settlement agreements" nor the implementation processes in each city (p. 291).[1028]

8.3. Media Reports on Sustainability

Numerous national media outlets have also reported on the use of §14141 actions offering differing views on their usefulness and often addressing issues of the sustainability of the reform process.

For example, in April, 2015, *The Marshall Project* published an article entitled: *Policing the Police* specifically discussing "the challenge of making [Section 14141] policing reforms last" and noting that even "where local leaders have embraced Washington's prescriptions, Justice Department officials have increasingly found themselves returning to grapple a second time with problems they thought they had fixed." The story identified Cleveland, Miami, New Orleans and the New Jersey State Police as departments that had been investigated before, "rais[ing] public expectations and sometimes fall[ing] short of lasting reforms." With respect to Cleveland, which had been the subject of a prior investigation and settlement agreement, a Justice Department official acknowledged that "[o]bviously the reforms that were attempted there didn't take hold." And with respect to Miami, which had an earlier §14141 investigation closed five years before (2006), the then-head of the Civil Rights Division documented in July 2013 that, "many of the systemic problems we believed were fixed have reoccurred, evidenced by a steady rise in officer-involved shootings" (*Marshall Project*, 4/23/2015).

In May, 2015, *Bloomberg*, in an article entitled *A Pattern or Practice of Violence in America,* also reported that "[m]ixed outcomes are more common," specifically observing that although the 2005 Vera Insititute study found "long-term improvements in police accountability" in Pittsburgh, "[s]ince then, Pittsburgh's police department has made headlines involving violent incidents including the 2010 beating of an unarmed high school student." The article also reported that "a former police chief, Nate

[1028] Although Chanin (2012) did speculate that "it [was] possible that marginal differences in process – e.g., five versus seven year implementation or the nature of one monitor's approach versus another – may help to explain variability in the sustainability of change" (p. 291).

Harper,[1029] is serving time in federal prison for conspiracy and fraud charges" (*Bloomberg*, 5/27/2015).[1030]

In November 2015, *Frontline* published a report, *Forcing Police to Reform*, asking "whether such interventions work?" and noting that the DOJ had "not studied the long-term outcomes at the law enforcement agencies it has targeted." *Frontline* reported "mixed" results relating to incidents of use of force, offering that in half of the ten departments for which data was available, incidents of use of force "increased during and after the agreements." Professor Jerrey Fagan, from Columbia Law School was quoted as saying "[t]he hard question – have you stopped doing the things that got you into court in the first place – is something that these consent decrees seem to have trouble answering." The report honed in on Pittsburgh, where it was reported that police uses of force had increased nearly 44% between 2005 and 2013 and, according to the legal director of the Pennsylvania ACLU "turnover in the chief's office and major violent incidents have made for uneven progress resulting in 'a good amount of backsliding.'" The then-police chief commented that:

> [y]ou can gain compliance with policies and get people to stop engaging in dysfunctional behavior … but unless you change the way people feel about their job and start holding themselves responsible … the accountability will only last as long as I do. (*Frontline*, 11/13/2015)[1031]

A *Frontline* story published one month after the November, 2015 story, was entitled: *Policing the Police – Inside 20 years of federal police probes*. That article,

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[1029] Chief Harper served more than six years as the Chief of the Pittsburgh Police Department, from October 31, 2006 to February 20, 2013. "Prior to his appointment he was the long-time 'Assistant Chief in Charge' of the Investigations Branch. He was, reportedly, asked to resign during the course of an FBI and IRS investigation and pled guilty to numerous felony charges approximately seven months after his resignation. See, Nathan Harper Wikipedia page, retrieved from, https://en.wikipedia.org/wiki/Nathan_Harper*;* Pittsburgh Action News 4. (2014, February 25). Ex-Pittsburgh Police Chief Nate Harper sentenced to federal prison, *Pittsburgh Action News 4*. Retrieved from, https://www.wtae.com/article/ex-pittsburgh-police-chief-nate-harper-sentenced-to-federal-prison/7465096.

[1030] Stroud, M. & Rojanasakul, M. (2015, May 27). A Pattern or Practice of Violence in America. *Bloomberg*. Retrieved from https://www.bloomberg.com/graphics/2015-doj-and-police-violence/.

[1031] McClay served as Chief of the Pittsburgh Police Department until November 18, 2016, for a period of two years (Bakalarski, A. & Brindle, E. (2016, November 4). Pittsburgh Chief of Police Cameron McLay resigns. *The Pitt News*. Retrieved from, https://pittnews.com/article/113167/news/pittsburgh-chief-police-cameron-mclay-resigns/.

again, noted how difficult it was to measure to what extent "those reforms have changed on-the-ground policing." The article reported that,

> The Justice Department has said it's been working to improve its process in recent years in order to evaluate whether reforms are working. In more recent agreements, with departments in Seattle, Cleveland and Albuquerque, N.M., it has built in new tests, including independent surveys of public perceptions of police, as well as requirements that independent monitors regularly analyze use-of-force data, stops, searches and arrests; and other metrics. All of these new agreements are still underway, so it will take time to know how effective the new approach will be. And reforming departments is a slow process. (*Frontline*, 12/14/2015)

In 2017, the *New York Times* ran at least two articles on the sustainability (or lack thereof) of §14141 actions, the first in January, entitled *Efforts to Curb Police Abuses Have Mixed Record*, again, singling out Pittsburgh as having "backslid after changes in leadership," citing the opinion of Professor Walker (*New York Times*, 1/14/2017). In April, the *Times* conducted a deeper dive into Pittsburgh, *Pittsburgh CD – It Did Not Stick*, commenting on union opposition to the reform effort, and the impact of a new Mayor, who was elected in 2006 with union backing, four years after the termination of the Consent Decree and who "promptly dismissed" the police chief involved in the reform effort. The *Times* reported that "[o]ver time, various aspects of the Consent Decree fell out of use" and quoted Professor Sam Walker as saying: "[i]n the end, a city completes a consent decree, then the judge goes away, the Monitor goes away, … All cities are on their own, and then it's dependent on the local community and local politics" (*New York Times*, 4/9/2017).

On June 3, 2020, two academics and a retired chief published a 4,000-word opinion piece in the *Atlantic*, as the result of the George Floyd protests. The authors,[1032] commented on the DOJ enforcement actions, which were no longer being used by the Trump administration, commenting that,

> [w]hile the DOJ cannot intervene in the actions of the more than 18,000 police agencies in the United States, Congress can instruct and empower it to offer technical assistance, identify conduct standards that can serve as references for courts in civil litigation, and provide a framework for

[1032] Seth W. Stoughton, a Professor of law at the University of South Carolina ; Jeffrey J. Noble, the former deputy chief of police at the Irvine Police Department in California, and Geoffrey P. Alpert, a Criminology professor at the University of South Carolina.

> responsive and democratically accountable community collaboration, opening additional avenues of reform. (The Atlantic, 6/3/2020)[1033]

Shortly thereafter, the *New York Times* once again reported on the challenges associated with consent decree-initiated reform, specifically focusing on the Ferguson, MO consent decree. The *Times* identified "significant obstacles" to reform "like state laws, union opposition and contractual protections for officers accused of misconduct." On the positive side, the *Times* reported that

> [e]ven though only a tiny percentage of the nation's 18,000 police departments ever came under a consent decree, they set a tone, established best practices and put police leaders on notice that they, too, could come under scrutiny if they showed a 'pattern and practice' of civil rights violations.

The *Times* quoted a former head of the Special Litigation Section as saying, "[t]here is something irreplaceable about the leadership of the federal government and the Department of Justice." The article went on to report that the Trump administration had ended the use of consent decrees as well as "the Collaborative Reform Initiative," a voluntary program used to help departments avoid pattern or practice investigations. The *Times* observed that "[c]onsent decrees have often been frustratingly slow to carry out, with even minor changes like requiring officers to give people business cards meeting with opposition." Even so, the *Times* did report positively on "tangible" results of consent decrees in San Francisco and Chicago, although both of those cities were the subject of State-initiated settlement agreements, after the Trump-DOJ refused to pursue §14141 actions against those cities (*New York Times*, 6/13/2020).

8.4. Divergent Opinions on Seattle Consent Decree Sustainability

Even though the Seattle Consent Decree remains open as to issues of accountability and police discipline (and now, with respect to the investigation and adjudication of protest-related complaints), all the parties (to include the City, the DOJ, the Monitor, the CPC and the Court agreed that in January 2018, the SPD was then in full and effective compliance with the four corners of the document. The key question

[1033] Stoughton, S., Noble, J., & Alpert, G. (2020, June 3). How to Actually Fix America's Police. *The Atlantic*. Retrieved from How to Actually Fix America's Police - The Atlantic.

then, relates to whether or not the changes that were implemented as part of the Consent Decree reform effort at that time were (or are sustainable).

The complexity of the answer can be seen in the divergent opinions published by a former DOJ lawyer, now Superior Court Judge (in on Op-Ed article in the *Seattle Times* on June 30, 2020) and the court-appointed Monitor (in a "final report" issued at the time of his resignation on August 31, 2020). The two public statements were highly divergent in their ultimate conclusions as to the current status of the sustainability of the Consent Decree-initiated reforms.

Judge Michael Diaz, previously assigned as a lead attorney for the local U.S. Attorney's Office, strongly argued that substantial change had occurred and that the Community Police Commission was a key to sustainability of the reforms. Diaz agreed that "the work of reform" was not "done," however, he painted a positive picture of the reform efforts and the ability of the SPD to move forward.[1034]

[1034] Judge Diaz's Op-Ed, appeared in the June 30, 2020 edition of the *Seattle Times* and read as follows:

"To those who say nothing has changed and the federal court process should be tossed aside: As the federal court's independent monitor Merrick Bobb and Professor Jacqueline B. Helfgott at Seattle University, among others, have detailed:
• Serious uses of force are down 60% from 2009, which means 700 fewer people each year since 2016 were subject to force than were in 2009. That means nearly 3,000 people have avoided police violence because of reform. More broadly, between January and July 2018, there were 103,553 police-resident interactions, but only 0.00369% (or around one-third of 1%) involved any force, 86% of which was "low level."
• Similarly, the use of force against those in active behavioral or mental-health crisis plummeted, from 70% of all force used to 15%. More broadly, between January 2017 and June 2018, of the 15,995 crisis contacts reported, only 1.73% led to any force, the vast majority of which was again low level.
• When misconduct does happen, the blue wall of silence has been breached. Complaints by SPD against SPD used to be "nonexistent" (as one officer admitted to me during the investigation). In 2017, internal complaints accounted for 20% of all complaints filed. This meant that SPD officers reported on each other more than 250 times that year.
• And those complaints, as well as the 15,000-plus complaints related to the recent protests, will be investigated, not just by a civilian-led unit, but now by a civilian-run internal affairs unit, the Office of Police Accountability (OPA), which reports to a civilian inspector general, a position that didn't exist in 2012.

Of equal importance, the Community Police Commission (CPC) did not previously exist. This was the first consent decree in the nation to create a community body designed to bridge the gulf that had formed between large portions of the community and the SPD, and to give those members an effective forum where they could interact directly with SPD.

And the CPC and other members of the community have been busy: from the development of binding use-of-force rules, where for the first time de-escalation was mandated and choke holds

Monitor Bobb, on the other hand was much more negative about the current state of the SPD, referring to it as at "a nadir," damning Chief Best with faint praise, and declaring the need for an outside Chief to be appointed as a result of her resignation. Bobb challenged the SPD for engaging in biased policing and challenged City leaders for their "endless squabbling, … endless jockeying, and some runaway egos." Bobb inferred that the SPD had become unable to sustain the reforms and argued that the

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effectively banned; to anti-bias training designed and actually conducted dozens of times by community members themselves; to crafting a new robust officer-discipline system, the vast majority of which was enshrined in city ordinance and labor agreements.

The bridge the CPC created continues to be well-traveled. On June 3, I, along with dozens of other community members, virtually attended the CPC's general meeting, where they bore witness, where they strategized, and where they had the ear of Chief Carmen Best and Mayor Jenny Durkan directly. One CPC commissioner — who told her story of being tear gassed the day before, picked herself up, dusted herself off and came to the meeting — still shaken — to share her experience and continue to do the hard work of reform.

So to those who say nothing has changed, it's simply factually wrong and a disservice to those community members, including the CPC, who have been marching, sweating and bleeding for this work, not just for the decade I've summarized but, for certain commissioners, for the last seven decades.

And yet, is the work of reform "done?" Definitely not. As the monitor found, disparities exist as to whom force is used on, who is searched and what is found during those searches. These are not minor matters. And lest there be any suggestion to the contrary, every use of force matters, even "low level." Indeed, any shooting rightly can destroy community confidence. The decree, however, was never meant to be the final word in reform. The decree doesn't require such disparities to be eliminated before it can sunset. The decree doesn't even contain words that are most pertinent now eight years later: "body cams," "demonstration management" or even "officer discipline." In some areas, the decree expressly relied on the community to develop solutions appropriate to it, outside the purview of the judge. In short, the decree did not swallow all of police reform whole for all time.

So to those who are wondering, whether loudly or quietly: "Haven't we dealt with this already?" or "When will things will go back to normal?" or are even skeptical of the motives of those in the streets and choose to focus on the few demonstrators who cause property damage: Things won't, can't and shouldn't go back to "normal" simply because we have the decree. Just as in 2011 — when the community protested the killing of Williams and demanded the civil-rights investigation that triggered the Consent Decree — the passion behind today's protests are as necessary to true reform as any shiny policy paper, any excellently-delivered training or any ruling by any federal judge.

We need both the wisdom of the slow, steady and effective organized reform efforts, and the urgency of the protests. They should reinforce each other. For me, it's a sign of our city's strength, not a sign of weakness, that we can hold both ideas at once. It is a cause for hope, not dejection, that we can come this far and still have the energy to go further."

Retrieved from https://www.seattletimes.com/opinion/seattle-police-have-made-gains-in-recent-years-but-work-remains/.

Department required a new and aggressive Chief to put the Department back onto the path of reform.[1035]

Even though the positions of Judge Diaz and Monitor Bobb appear, on their face, to be divergent, there may be more commonality than would initially be seen. In fact, many of the improvements cited by Judge Diaz are supported by the data collected herein. At the same time, Monitor Bobb's assessment that the Department had backslided during the administration of Chief Best rings true. In actuality, it may be that the SPD needs another outside, reform-minded Chief in order to take it over the finish line and ensure that police accountability initiatives are successfully implemented.

[1035] Pertinent portions of Bobb's "final report" read as follows:

"For the Monitor and the Team, the acme of the last seven years was the Judge's finding that the SPD had achieved substantial compliance. This is thus the right time for my monitoring and this Monitoring Team to end. There are new challenges for a new team to assist Judge Robart.

The SPD is at its nadir. It desperately needs a new chief from outside the organization to put it back together. It needs leadership. It can get back to the place where Kathy O'Toole left it and Carmen Best took over. Many of the same excellent people are still there. A wise chief of police will gather them up; empower them; bring in new good people, sworn and civilian, from around the country to leadership positions, like Chief O'Toole did with Mike Wagers; and get the job done. The SPD must move forward from the recent protests.

There is undoubtably waste and inefficiency in the SPD that should be eliminated. There are roles that persons other than sworn officers can perform without a law enforcement orientation. But 50 percent or even some lesser cuts to the police budget smack of ideology rather than the reality of maintaining the peace. Nonetheless, the SPD set itself up to criticism.

Its performance during the recent demonstrations and protests betrayed a lack of adequate preparation and training, an apparent absence of an overall strategic plan or foreknowledge how to deal with violent interlopers without cutting off legitimate First Amendment activity by peaceful protesters, even if loud and challenging; inadequate subtlety and sophistication about the use of powerful and injurious nonlethal weaponry; a seeming lack at times of sensitivity to the First Amendment role of journalists and the moral and ethical role of medics; a willingness to call something a riot when it might have met some technical definition but was a far cry from a rebellion or stampede or even a melee merely so the SPD could use tear gas, a chemical agent banned for use in warfare after World War I …

A final word about the endless squabbling at the top of Seattle leadership: As Rodney King said, "Can we all just get along?" The Mayor, City Council, City Attorney, CPC, and other community groups and organizations must really try to work together and not at cross purposes. I will not miss the endless jockeying and some runaway egos." (Bobb, 2020).

8.5. SPD culture: Has it Changed (For the Better)?

As previously noted, numerous commentators have discussed the importance of ensuring a police "culture that strongly supports constitutional and effective policing" as a factor impacting the sustainability of §14141 reform efforts (USDOJ, 2017b, p. 37).

Although Seattle research participants repeatedly pointed to new updated systems and policies which would support the sustainability of the reform process, the question of whether the SPD culture had changed was the subject of controversy. While some participants believed that many of the basic concepts that would support reform sustainability had been "hard baked" into the police culture (specifically as they related to the need for effective supervision, use of force investigations and reviews, and up-to-date policies and training), substantial concerns were expressed regarding the SPD culture. Specifically, it was questioned whether the Consent Decree effectively broke through the 'us versus them' and 'warrior' philosophies of policing that led the SPD towards federal intervention in the first place (see, PERF, 2015; Rahr & Rice, 2015).

To that effect, many participants expressed concern as to whether the SPD's culture had really changed:

- "They have made good changes, they are now tracking uses of force and crisis interventions; there's a lot more transparency, but the culture has not changed, the line staff hasn't changed as to their feelings on how to treat people" (SPD civilian);
- "We got so close to changing the culture, but some of the changes are now seen as not tactically sound and we've had budget cuts which have impacted training; and then we have some members of command staff who don't believe in what we've done – they are just waiting…" (SPD command officer);
- "Right now, it feels very transactional – the City just wants to get out from under the Consent Decree … If you have people who are not doing things for the right reason – will it change when the stick goes away?" (SPD outsider);
- "We still have command staff going around saying it was all bullshit" (SPD officer);
- "The Monitoring Team has no idea what is currently going on – they have no insight about the backsliding that is going on and the attitudes which are contrary to the intent of the reforms" (highly placed SPD official);

- "The SPD is still fighting; in the background, they are thinking 'you may be able to force us to do what you want, but we will just do what we have to do to get you to go away" (SPD civilian);

- "We are really good at making it look like there is change, but when you look under the cover, it hasn't really changed at all. I don't think the SPD was as broken as New Orleans, but it is at risk of getting there – I'm just not sure there is the political will to stop it…" (SPD officer);

- "I don't think the reforms will stick. As painful as it was, it was not painful enough. Our goal was just 'we have to be compliant.' The issue I see with sustainability is there are still a ton of people who have the idea of 'it's us versus them' and some of those who have that attitude are now in charge" (SPD officer).

The above-noted comments paint a very negative picture of sustainability based on a police culture that has not actually changed over the course of the Consent Decree. However, as indicated below, there is reason to believe that the implementation of certain "systems" and the longevity of the reform process will ultimately support sustainable change.

8.6. Are the Seattle Reforms Ultimately Sustainable?

Almost universally, participants did seem to recognize a difference in the Department's attitudes regarding the reform effort when comparing the tenure of Chief O'Toole (an SPD "outsider") to that of Chief Best (an SPD "insider").

- "Unfortunately [Chief Best] reverted back to people she had known for years and felt she could trust and reverted back to relying on sworn and not unsworn. Even so, so much was institutionalized that even a change in leadership won't change the path forward – but there is an insular mentality right now that is problematic" (High ranked SPD official);

- "Chief Best has the desire to keep the reforms going. But the ultimate question is does she have the buy-in of her officers? What does it say when they elect a 'hard liner' as the union president, instead of a 'reformer?' They seem to be saying they are tired of the Consent Decree and tired of the extra scrutiny. So, I'm thinking it's going to be hard to sustain the reform" (Seattle oversight professional);

- "Unfortunately, within the current administration, we have at least one high ranking official who has not embraced the reforms in his heart. When command staff undermines a system that is in place, it can negatively impact sustainability. That being said, the Chief is aware of it, although I am not sure what she will do about it…" (SPD command officer).

While some participants bemoaned the differences between the O'Toole and Best administrations, on the whole, they generally believed that consent decree sustainability was a fait accompli based on the "systems" and policy changes that had been implemented over the past eight years:

- "The rank and file have come a long way here, even perhaps unconsciously. Although some are questioning whether it is malicious compliance, it's hard to bide your time for six years; this has been a mask that eats into the skin. They have been doing things right for the last six years, it would be hard to going back to doing it wrong. It's become part of their reality" (SPD outsider);

- "A lot of the reforms have stuck due to us now having systems in place; overall, some of the use of force investigation review recommendations which have resulted in new training initiatives –I think that's the kind of thing that will sustain it overall" (SPD command officer);

- "The SPD has so much a better picture of where they are and their ability to self-police. They also have the ability to present information to the public and make their work more transparent. That's something that can outlive this process. I believe the community can be in the position to keep an eye on things" (SPD outsider);

- "There is a responsiveness here – community wise – to continue to push reform forward that that should give a lot of optimism. There have been changing norms in the SPD where the SPD, as a department, now engages in critical self-analysis; that is something that can be expected to continue to go forward" (SPD outsider);

- "The SPD's training and policies have all been overhauled – it would take a dramatic Mayor/Chief combination to undue the systems that have been put in place – and the data systems themselves are remarkable. With this in mind, sustainability seems highly likely" (SPD outsider);

- "'Best practices' have become the mantra. We are continuing to look at our policies and practices; absent complete changes at the top, we won't backslide" (SPD officer);

- "If Judge Robart holds the line – then this will be the success to which we aspired; regardless, I don't think it's reasonable not to expect there to be a drift backwards and a regression at some point after the DOJ leaves…" (SPD outsider).

- "There are still some 'die hards' in the SPD who think they can wait this out, but they are not taking into account that even in the Academy, they have moved from a 'warrior' to a 'guardian' persona; we will benefit from the new demographics coming out of the academy: younger, more educated, and more diverse…" (SPD outsider)

Still, many participants were either unsure or expressed overall concern with respect to sustainability overall. And, many recognized the need for continued engagement on the part of the elected officials and the community to ensure the long-term success of the reform effort.

- "I have some concerns, but at this point we have some good structures in place that are not going anywhere, so they can't just slip back into the 'good old days.' We will still need effective management and a good chief, however, to make sure that does not happen. So, what it really depends on is if there is a continued political will to demand an accountable police department" (Seattle city official);

- "Sustainability all depends on how much the mayor and council are willing to hold the line with the police union. You can be assured that SPOG will continue to try to assist individual officers who should be fired" (SPD command officer);

- "All of the elements are there for sustainable success, including the new records management system; for the first time, we have a comprehensive platform to see what officers are doing and the training is fantastic and sustainable; the problem is that you can give command staff what they need to successfully run the department, but you can't force them to use the tools you provide – it's the old adage: 'you can lead a horse to water, but you can't make him drink'" (SPD official);

- "We gave the reformists the opportunity to effect a change with the new generation of officers coming in and with the driving of the old guard off. It remains to be seen if that will be lasting. But, at least, it gave the guys who wanted improvement the opportunity to be agents for change" (SPD outsider);

- "Some of it will be sustainable…the processes used by the DOJ and the Monitoring team have been successful elsewhere, and there is no reason to believe that Seattle will be any different… However, I'm still worried about parts of it collapsing back into what it was before, given the most recent contract with the union …" (SPD outsider);

- "The consent decree really addressed what was a lack of management and internal systems. In that sense, the SPD has moved in the right direction – but they have still not tackled some major issues – such as off duty work – which is really problematic." (SPD outsider);

- "It's hard to say if we have seen evidence of malicious compliance with respect to the Consent Decree, but it does feel as though there has been some backsliding, particularly in how the SPD has reacted to 1st Amendment expression issues. With the pandemic, I have no idea where the resources will be going: but if we want sustainable change, we will need resources appropriately allocated." (Seattle city official)

Some participants, however, had very negative perceptions of the reform effort overall. For example, one well place community participant believed that the Consent Decree reform process was "build on using shame, stigma and humiliation," as opposed to collaboration and cooperation.[1036] Some of the negative comments, however, also came from within the city and the SPD:

- "SPD is still fighting, their internal mantra was 'we are not changing, … we are not moving, … you may force us but we will just do what we have to do to get you to go away.' Frankly it has been a very passive-aggressive approach" (SPD civilian);
- "By 2016, it seemed like 'the fix' was in and we started going back to the old ways. Suddenly command staff were the only ones with access to the DOJ and the Monitoring Team. In order to speak with the Monitoring Team, we would have to go through layers of people who would wax-on philosophic about their thoughts on the whole process" (SPD officer involved in the reform process).
- "The problem at the SPD has always been the management, and even after eight years, it still is" (City official);
- "The SPD command staff never got over the 20% finding, there was an internal sense that 'we are the best and how dare you criticize us.' Due to the early resistance from Mayor McGinn, the opposition was allowed to coalesce under a shared narrative and that opposition has never gone away." (SPD command officer).

"At some point, you just need to declare victory and walk away."
Seattle Research Participant

More than one participant highlighted the difficulties associated with the long-term nature of the implementation effort (now in its eighth year). One highly placed participant commented that,

> significant and positive changes have come out of this, but there has to be some ability to get out of it for the rank and file. Morale has been slipping and there is an opportunity for backsliding, as far as Department culture goes, the longer the Consent Decree goes on.

The participant further commented that "there must be an optimum time as to when changes take place," and suggested that the optimum time period had already passed.

[1036] Obviously, the Monitor and the DOJ would disagree with that assessment, and the monitor's reports consistently spoke in terms of collaboration and cooperation as key components for the success of the reform effort (see, Chapter 7.3.2, *supra*).

Other participants pointed to what they referred to as “consent decree fatigue” as being a potential danger of the reform process dragging on for much longer: “While there was a huge benefit in having the court-appointed monitor who was able to get the momentum going, there is still the potential to for the pendulum to swing back as a result of consent decree fatigue.”

As observed by another SPD participant,

> we went through phases – first we fought them, then we embraced them – now we are at the part where we just want to get rid of them – we are all now thinking – ‘this is stupid,’ we just want to check the box and get them to go away.

A third participant, intricately involved in the implementation process, suggested that “a consent decree needs to be like heart surgery; open and close, and then it’s up to the patient to maintain a healthy life style.” Instead, however, the Seattle consent decree has been more like a long-term rehabilitative hospital stay with some arguing that some providers have had an incentive to prolong the treatment.

Utlimately, there are strong arguments for the “heart surgery” tactic as opposed to the “long-term rehabilitative hospital stay” strategy in consent decree implementation. However, the long-term strategy used in Seattle, while costly, has also provided the “gift of time” which would suggest that many of the structural reforms are now so well imbedded in the Department that they will not be lightly set aside.

8.7. Civilian Oversight as a Key Component of Sustainability

Although there was certainly criticism of the current civilian oversight structure, with many SPD affiliated participants believing that the tripartite system (involving the Community Police Commission (CPC), the Office of Professional Accountability (OPA) and the Office of the Inspector General (OIG)) constitutes “oversight overkill,” it is largely believed that it is these structures that have the greatest ability to ensure the sustainability of the Consent Decree reforms. And, although there are critics on both sides with respect to the quality of the work of the CPC and the OPA, on the whole, the OIG seemed to have a high level of support from all sides of the police accountability debate.

With respect to the importance of oversight on the issue of sustainability, the following observations are representative of the viewpoints expressed by research study participants:

- "It was important to us to ensure that the Inspector General had sufficient authority and resources to take on the responsibility of the court-appointed monitor. The IG is necessary, but not sufficient on its own, to ensure sustainability" (SPD outsider);

- "Other systems, like the IG and the OPS will keep us on our toes. These, and other public partners (including the CPC) will ensure sustainability…" (SPD command officers);

- "You need permanent oversight, otherwise it will back slide. It doesn't have to be a monitor; it can be a combination of the IG and the CPC, as long as they are independent and have power" (Official involved in implementation process);

- "The worry post-consent decree, is how do we avoid back sliding. The OIG program, if run properly, will be a key to our success" (SPD insider);

- "The CPC, OPA and IG are the keys to sustainability. But, these agencies are person-dependent. The real question is, can you survive bad leadership in any or all of these organizations?" (SPD outsider);

- "The destiny, if we are to believe history, is that this police reform effort will fail, unless there are people committed to making it work every day;" (SPD outsider);

- "I'm hopeful as to the work of the OIG, but worried about whether or to what extent her recommendations will be enforced. If the SPD acts as it did before, we will be back to where we started" (Community member involved in reform effort).

According to participants, the Inspector General's Office was created with the intention of eventually replacing the court-appointed monitor and since the beginning of the "sustainment period," it has been striving to "complement" the work of the DOJ and the Monitor and become "a second version" of the Monitoring function.[1037] Participants observed, however, that the approaches of the IG and the court-appointed monitor are necessarily different. The Monitor has the ability to "come in and force change and

[1037] As of this writing, the OIG has conducted and published four audits, thus far: 1) a "Firearms Inventory Controls Review" (in response to an OPS case), issued on May 23, 2019, 2) an "Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code, Collection of Information for Law Enforcement Purposes," issued on June 21, 2019, 3) a "Force Review Board Assessment," issued on July 31, 2019; and 4) an "Audit of SPD Patrol Canine Teams," issued on June 24, 2020. See OIG website, located at http://www.seattle.gov/oig/reports.

dictate the pace of the change," the Inspector General, however, has to "cultivate relationships," "get buy-in, and collaborate" in order to "avoid malicious compliance."

With respect to the CPC, there appeared to be general agreement that the commission was never given a clear process by which they would be "seriously engaged as a primary stakeholder" and even though the court granted the CPC amicus status in the DOJ §14141 law suit, the court's pushback on the CPC attempting to become a permanent body "left a very bad taste in the mouths" of members of Seattle's civil rights community (see, *The Stranger*, 6/30/2015; *Seattle Times*, 7/1/2015). One participant, actively involved in the implementation of the settlement agreement, aptly described the problem: "when you create a body like the CPC, it needs to be long-term, with a defined authority which requires the City to seriously engage with them so discussions can be about substance, rather than process and personality."

Utlimately, the tripartite structure of Accountability in Seattle, to include the Inspector General, the Office of Professional Accountability and the CPC, would seem to have created a strong foundation for future accountability. Although the organizational structure has the potential to increase the opportunities for conflict, they also have the potential to ensure that all points-of-view are heard before decisions are made – and that has been defined as "the Seattle Way" (See, Section 7.5.13, *supra*).

8.8. Have the Seattle Police Reforms Become Institutionalized?

According to most metrics, it would appear that the Consent Decree reforms forced upon the Seattle Police Department have become institutionalized. However, as with the other reform efforts, there is a constant and ongoing danger of backsliding. Even so, it does seem unlikely that the SPD will ever return to the way it was before the settlement agreement was filed with the court.

In an attempt to objectively evaluate the extent to which consent decree-initiated reforms have been successfully implemented, such that they are likely to remain sustainable in the long term, I have applied the metrics suggested by Ikerd & Walker

(2010), entitled: *Making Police Reform Endure: The Keys for Success.*[1038] I have also applied the metrics suggested by Chanin (2012) in his PhD dissertation, entitled, *Negotiated Justice? The Legal, Administrative, and Policy Implications of 'Pattern or Practice' Police Misconduct Reform*.[1039]

With respect to Ikerd & Walker's first element, that officers know about and can describe the basic elements of the reform, the evidence tends to suggest that SPD officers are fully aware of the basic elements of the reform effort, to include the need to de-escalate and minimize uses of force (particularly as to persons in crisis) and the expectation that such uses of force will be the subject of intense scrutiny by supervisors and civilian overseers. Officers are also aware of concerns about biased policing and the laws that apply to "stop and frisk," to a point that they were clearly not aware prior to the Consent Decree (see, Seattle Monitor Assessment Reports, *supra*, Chapter 7.3.2).

Second, Ikerd & Walker suggested that officers need to be supportive of the reforms. Although it is clear that many officers (and command staff) still believe that the DOJ investigation findings were not legitimate, research interviews did not disclose a strong current within the SPD who still want to "go back to the old days," even though many participants identified a desire on the part of members of the SPD command staff to be rid of DOJ oversight and to be allowed to run the department on their own.

Third, Ikerd & Walker suggest that officer behavior needs to reflect the reform. Extensive analysis on the part of the Monitoring Team appears to support that officer behavior has dramatically changed; even if there may have been "backsliding" with respect to the Department's handling of recent protest activities (see Monitor Assessment Reports, *supra*, Chapter 7.3.2).

[1038] Ikerd & Walker (2013) suggested the following four elements be used to evaluate whether reforms have been institutionalized in a police department: 1) that officers know about and can describe the basic elements of the reform, 2) that officers are supportive of the reforms, 3) that officer behavior reflects the reform, and 4) that the department's policies and procedures have incorporated reform philosophies and realities into the department's decision-making and accountability processes (pp. 13-14).

[1039] Chanin (2012) suggested using the following three metrics to evaluate the sustainability of consent decree reforms: "1) the extent to which a department perpetuates the policies and procedures established under the reform, 2) the extent to which the department's culture now reflects the core values of the reform, and 3) the extent to which a department is able to maintain desirable levels of key outcomes related to the reform" (pp. 203-204).

And even so, although the SPD may have recently suffered setbacks with respect to its crowd control efforts in response to the George Floyd protests, the fourth element wherein the department's policies and procedures need to have incorporated reform philosophies and realities into the department's decision-making and accountability processes seem to have been applied with rigorous oversight by the DOJ and the Monitor.

With respect to Chanin's recommended metrics, first, the SPD does appear to have perpetuated the policies and procedures established under the reform. The Department has accepted and implemented DOJ and Monitor-approved policies relating to use-of-force (including de-escalation), use-of-force investigations, crisis intervention, biased policing and search and seizure. The second metric, however is more problematic. The answer to the issue of: "to what extent the SPD's culture now reflects the core values of the reform," unfortunately depends on who you ask. However, there is certainly reason to believe that there has been enough transition in departmental staff (to include street level officers, Sergeants and command staff) that the old culture of the SPD would have a hard time returning back to pre-Consent Decree days. Third, with regard to the extent to which the department is able to maintain desirable levels of key outcomes related to the reform – the existence of a working data platform, the ability to better monitor officer performance and the keen eye of multiple external oversight agencies suggests that to the extent undesirable outcomes occur (primarily unnecessary force and/or searches), the City has the mechanisms necessary to identify and address them.

8.9. Conclusions

Overall, it appears that the question of sustainability of the reform effort will depend, to a large extent, on the new leadership of the SPD, which was anticipated to be quickly chosen by the Mayor, until the recent decision by Mayor Durkan not to run for re-election. Regardless of who is ultimately chosen to lead the SPD as its permanent chief, however, the continued existence of the civilian oversight functions and their impact on the SPD cannot be ignored. As long as the CPC continues to function and have the ability to influence police decision-making and community and elected official's perceptions of the SPD, the opportunities for back sliding will be reduced. In addition, the Inspector General appears to be operating from a strong foundation and an enhanced

OPA is continuing its operations. There also remains an active and observant civil rights community who have the sophistication to put ongoing pressure on the Mayor and the City Council. And the rank & file police union, although it appears to have returned to a reactive stance with respect to oversight and reform, has lost some of its political power. As such, it seems unlikely that future contract negotiations will further impede accountability, particularly given the watchful eye of a new Monitor and Judge Robart, who clearly will not allow the Settlement Agreement to be terminated until accountability related issues have been fully addressed.

In Table 8, I compile all the metrics suggested by Chanin and Ikerd & Walker to help visualize the current state of the SPD vis-à-vis the sustainability of the Seattle consent decree reform effort. In general, it does appear that the positive factors outweigh the negative and that, overall, the Seattle reform effort appears to have a good likelihood of future success.

Table 8.1. Sustainability Metrics as Applied to the Seattle Police Department

Sustainability Issue	Status	Impact
Is there a capable, supportive leadership? (Chanin, 2012; Chanin, 2014).	Questions have been raised by research participants as to the ability of Chief Best to provide the leadership necessary to push forward reforms; it is currently unknown who will be chosen as Chief as a result of her resignation over conflicts with City Council over funding and command staff salaries.	Unknown factor
Has there been consistency and continuity among agency leadership? (Chanin, 2012, citing, Reiss & Bordua, 1967 & Murdaugh, 2005).	Yes and no. After Chief O'Toole, who was ultimately responsible for implementation, her Deputy Chief, Carmen Best took over as Interim Chief and then permanent Chief, resigning in September, 2020. Research participants have suggested that Chief Best did not have the ability to impact the SPD and push reforms forward as did Chief O'Toole. It is unknown whether an "outside Chief" will be appointed as suggested by Monitor Bobb or an "inside Chief" who may be less able to pursue further reform efforts.	Unknown factors

Sustainability Issue	Status	Impact
Have there been pervasive and ongoing communication between leaders and organization members? (Armenakis et al., 1999; Ikerd & Walker, 2010; Chanin, 2012).	There has been significant criticism among research participants relating to how the command staff communicated reform efforts to the rank and file. Even under Chief O'Toole, it is reported that her message was sometimes filtered in a negative fashion by non-supportive members of command staff. Rank & file report mixed messages as a result of the conflicts over the union contacts and issues of accountability.	Mixed experiences
Is there a continuing commitment to officer training and recruitment? (Chanin, 2012).	Research participants have suggested that the SPD has a continuing commitment to officer training and recruitment, but future financial support for training is unknown.	Positive factor Unknown factor
Has there been external support for the reform initiatives from jurisdictional political leaders and members of area civil society organizations? (Chanin, 2012).	There is strong support for reform from a sophisticated civil rights community. While Mayor Durkan initiated the reform effort, her willingness to negotiate a union contract that resulted in a finding of partial non-compliance indicated a problematic support for reform. At the same time, the police union appears to have lost some of its political influence and a new contract is likely to be more accountability based. Continuing conflicts between the Mayor and the SPD on one side, and the City Council on the other side has the potential to negatively impact long term, sustainable reform.	Positive factor Unknown factors Negative factor
Does the department have adequate resources to support reform-related initiatives? (Chanin, 2012; Chanin, 2014; USDOJ, 2017b, p. 37; Alpert et al., 2017).	Although the city has a strong tax base; pandemic and political issues regarding "defunding" the police, leave open questions as to future resourcing and funding that will be available for the SPD to sustain reform efforts, particularly as it relates to personnel, training and equipment.[1040]	Unknown factors
Do the officers know about and can they describe the basic elements of the reform effort? (Ikerd & Walker, 2010).	Research participants support the concept that officers are fully aware of the reform effort and what is expected of them – even though officers have a lack of understanding as to why the Consent Decree has not already been terminated.	Positive factor

[1040] See, Balk, G. (2020, November 9). Is the Seattle Police Department Understaffed? Here's what the data shows. *Seattle Times*; Beekman, D. (2020, November 10). The Seattle City Council is proposing a package of changes to Mayor Jenny Durkan's 2021 budget plan. *Seattle Times* ["The package would, among other moves, redirect tens of millions of dollars earmarked by Durkan, bolster the city's emergency reserves and further trim the Police Department's funding"].

Sustainability Issue	Status	Impact
To what extent is the police union leadership and rank & file officers supportive of the reforms? (Ikerd & Walker, 2010; Chanin, 2017a; Chanin, 2017b).	There is evidence of continuing union opposition to reform efforts. In fact, in early 2020, the police union representing rank & file SPD officers elected a "hard-liner" as President of the union.	Negative factor
Is there support for the reform among organizational middle management? (Chanin, 2012; Chanin, 2014).	Research participants offered differing opinions on support for reform by middle managers. Some suggested that some Sergeants and Lieutenants have "gone down the rabbit hole" created by command staff who remain resistant to federal intervention and reform-based initiatives. Some middle management participants, however, appeared to be fully engaged in the implementation and support for reform.	Unknown factors
Is there an accountability infrastructure in place that allows for a periodic continuation of the kind of review and analysis performed by the court-appointed monitor? (Chanin, 2012; Walker, 2012; Chanin, 2016; Alpert et al., 2017).	There is a strong accountability structure in place, in the form of the CPC, the OPA and the Inspector General's Office.	Positive factor
Have consent decree policies and procedures been perpetuated and likely to be in place for the long term? (Chanin, 2012; USDOJ, 2017b; Jaio, 2020).	Yes. There is no reason to believe that policies approved by the court will be substantively changed.	Positive factor
Has the collection and analysis of data become a part of the organization's regular way of conducting business? (Ikerd & Walker, 2010; Chanin, 2012).	According to research participants and monitoring reports, data collection and evaluation has become a normal part of SPD business operations.	Positive factor
Has the department been able to maintain desirable levels of key outcomes related to the reform? (Ikerd & Walker, 2010 [Does officer behavior reflect the reforms?]; Chanin, 2012).	There have been recent criticisms of SPD protest related activities and evidence of continuing biased policing. Monitor assessments show a dramatic decrease in officer use-of-force, particularly against people in crisis.	Negative factor Positive factor
To what extent does the department culture reflect the core values of the reform? (*Mollen Commission*, 1984; Chanin, 2012; Chanin, 2014)	Although some research participants have suggested that the SPD culture has not truly changed, outcome metrics support that officers are acting differently and it appears likely that a new "course of doing business" has impacted officer perceptions and philosophies in favor of constitutional policing.	Positive factor

Sustainability Issue	Status	Impact
Has the SPD been able to avoid large-scale performance crises? (Chanin, 2015, p. 168)	No. A massive number of complaints was filed against the SPD as a result of their response to the George Floyd anti-police brutality protests.[1041]	Negative factor

While Table 8.1 identifies a number of "negative factors," "unknown factors" and "mixed experiences," the "positive factors" appear to have established a sufficient foundation to give the SPD the tools necessary, to be used by a dedicated leadership, to sustain the reform effort. Specifically, the SPD's ability to sustain a commitment to officer training, external support for reform efforts, a strong accountability infrastructure that can be expected to be improved through further monitoring and court intervention, the perpetuation of consent decree created policies on crisis intervention and use-of-force, and a robust data collection platform all suggest that success is possible if there is a committed and effective SPD leadership at the helm of the organization.

Even so, the Seattle consent decree experience has identified the need for a more holistic approach to future federal reform efforts. The "lessons learned" and recommendations for future DOJ use of §14141 (now §12601) are described in Chapter 9, *infra*.

[1041] Combos, L. (2020, June 1). 11,000 Complaints Allege Police Misconduct at Seattle Protests. *MSN News*. Retrieved from 11,000 Complaints Allege Police Misconduct At Seattle Protests (msn.com).

Chapter 9.

Implications & Recommendations for Future Reform through DOJ Intervention

Generally speaking, it would be fair to consider the Seattle consent decree reform process to have been a success, although all research participants agree that it has been a long, rocky and meandering road to compliance. And, of course, there is still a level of uncertainty as to when or whether true compliance has been, or will actually ever be, achieved. Regardless, there are lessons to be learned even if there are strong and differing perceptions and opinions of the experience among the various stakeholders. Even so, the following conclusions can be stated with respect to the overall experience:

1. City officials and SPD command staff felt unfairly singled-out for a reform effort that included a formal consent decree and a court-appointed monitor and believed that a less stringent form of federal intervention could have been used to support the SPD in achieving the goal of effective and Constitutional policing;

2. City officials and SPD command staff believed (and still believe) that the DOJ investigation was faulty and lacked transparency and, as such, violated concepts of "procedural justice;"

3. An initial lack of support for the reform effort, on the part of City and SPD leadership, had a negative impact on the views and perceptions of rank-and-file officers and interfered with the messaging necessary to inform and educate the rank and file with respect to the intent of the reform effort;[1042]

4. The City's process for the selection of the court-appointed monitor was unnecessarily contentious (involving public disagreements between the Mayor, the City Attorney and the City Council) and resulted in roadblocks for the Monitor at the beginning of the process and implementation delays;

5. City politics and personal agendas involving multiple individuals and groups complicated the implementation process;

[1042] See, Chanin (2012), citing Armenakis et al., 1999, arguing "that pervasive and ongoing communication between leaders and organization members is critical to successful institutionalization" (p. 209).

6. CPC members and civil rights activists felt disrespected and left out of the overall process;

7. Substantive issues relating to police discipline and accountability were left out of the Consent Decree and negatively impacted and complicated the reform process; and,

8. Including the police union as a party to the §14141 litigation may have facilitated the reform process and avoided issues relating to police accountability from delaying and derailing the reform process.

With the election of a new Democratic administration, and a likely return to the use of §14141 (now §12601) litigation as a form of police reform (*Politico.com*, 6/29/2020), the time is ripe for the DOJ to learn from some of the lessons from the Seattle experience to better inform the future of this important tool in police reform.

Interestingly, it appears that the DOJ has already learned from the problems associated with the above-noted finding involving the City's perception that their procedural due process rights were violated by the DOJ. Even if the DOJ did not believe that perception to be reasonable, all stakeholder nonetheless agreed that it interfered with the progress of the reform effort, particularly during the first two years of implementation. As observed by one participant familiar with DOJ processes,

> In hindsight, Seattle was going to have a bad reaction to the DOJ's findings given the timing of the DOJ's notice to the City and the public release of the investigation report. DOJ now goes through their findings, more now than before, with the involved jurisdiction and gives more feedback over the course of the investigation. The DOJ has also tried to take steps to build-in collaboration. With direct briefings to Mayors, City Councils, and police command staff, a different way has been developed to do this than was done in Seattle.

That, coupled with the fact that, according to participants familiar with current DOJ techniques, cities now appear to better understand the need to "get ahead of" DOJ mandated reforms, it appears that the "procedural due process" issues seen in Seattle seem unlikely to reoccur.

Many of the other problems associated with the implementation of the Seattle reform process appear to be tied to an otherwise intractable problem where city officials tend to react poorly to the "directive" nature of reform recommendations that are inherent in the Consent Decree process. As noted by Jaio (2020):

> The nature of consent decrees is coercive. A consent decree is perhaps one of the most threatening vehicles for police reform. It poses threats to the entire police agency and the municipality because it is expensive and requires a herculean effort to resolve and a city has no option but to comply once a decree is issued (p. 9).

The most effective solution for dealing with this problem is the recognition that, as identified in Chapter 1, DOJ oversight of local police falls squarely into the theoretical concepts associated with police use-of-force. Given that the DOJ, like officers in the field, has wide latitude in the amount of force it chooses to use, it can be difficult to identify whether excessive force has actually been used or whether a less aggressive option would have been successful. And, like in police use-of-force incidents, the DOJ would be well served by considering accepted police use-of-force force concepts, such as communication, de-escalation, crisis intervention, tactical repositioning, and alternative force options (PERF, 2015, p. 22) when deciding how to proceed against a local police agency.

In addition, just like in policing, concepts associated with problem-oriented policing (Goldstein, 1990) and community-oriented policing (Goldstein, 1987), which often involve more holistic and collaborative approaches to law enforcement actions, and often involve more multi-disciplinary approaches to problem-solving are also easily transferable to DOJ police reform efforts.

In fact, it appears that the DOJ has accepted these concepts implicitly in much of its work. Both the DOJ and some commentators have already spoken in terms of a "second generation" of consent decrees, which, in addition to better addressing sustainability, monitoring and outcome measure issues, have also addressed important issues relating to community and officer engagement and officer wellness as essential parts of any reform effort (USDOJ, 2017b; see also, Walker, 2018).[1043] As recognized by Jaio (2020),

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[1043] The DOJ report made multiple references to "the Division's current generation of police reform agreements" and identified the areas where improvements had been made. According to the DOJ report, "In contrast to the first generation of police reform agreements, the current generation emphasizes:

- Community engagement from the earliest stages of an investigation and throughout the course of a case, including incorporation of community engagement strategies and community-based solutions into reform agreements;

> The publication of the PERF report (Police Executive Research Forum, 2013) and the Michael Brown tragedy in August 2014 marked the beginning of the second generation of consent decrees. While excessive force remains front and center, community-oriented policing or problem-oriented policing and involvement of rank-and-file officers and their union representatives have been added to the decrees with detailed requirements in the form of outcome measures and compliance conditions for the police to meet. (p. 4, citing, Walker, 2018)

In this regard, I would like to speak in terms of the first generation of consent decrees as "Section 14141, Version 1.0," the "second generation" of consent decrees as "Section 14141, Version 2.0" and the opportunity for the post-Trump era of Section 14141/12601 police reform as "Section 12601, Version 3.0."

With these thoughts in mind, I am recommending that the DOJ consider transferring the responsibilities associated with Section 14141 investigations and litigation from the Special Litigation Section (SLS), to a more holistic and multi-disciplinary "Police Reform Section." The Section would include DOJ lawyers and investigators with expertise in §14141 investigations and litigation, supplemented by current and prospective DOJ staff with experience in police training, policy development and collaborative reform initiatives.[1044] In addition, knowledgeable staff would be required with experience, education and training in data collection and analysis,

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- Incorporating the input of rank-and-file officers at both the investigatory stage and in the development of reform agreements, through engagement with police labor organizations and face-to-face meetings with officers from all ranks, and recognizing the link between officer support and constitutional policing;
- Issuing appropriately detailed findings letters or reports at the conclusion of every investigation, to publicly document the evidence obtained by the Division, explain the Division's conclusions about the existence of a pattern or practice of police misconduct, and set a framework for negotiating a reform agreement;
- Bringing diverse perspectives and real-world policing experience to the independent monitoring teams overseeing court-enforceable consent decrees; and,
- Defined outcome measures to create objective, evidence-based benchmarks for assessing the value of reforms and the law enforcement agency's compliance with the agreement" (DOJ, 2017b, p. 40).

[1044] See, Cole, et al, 2017; Collins, et al, 2017, for descriptions of the Collaborative Reform Initiative Process which was abandoned by the Trump administration after its successful use in Las Vegas and other cities. In disbanding the program, the Trump administration suggested that collaborative reform program "had evolved from a program that provided technical assistance on a specific issue to a broader adversarial assessment that incorporated critiques and deficiencies and monitored implementation of recommendations" (Noble, A. (2017, September 15). Justice Dept. overhauls program to tackle violent crime rather than police use-of-force concerns. *Washington Times*. Retrieved from DOJ overhauls COPS program to focus on violent crime rather than use-of-force concerns - Washington Times).

communication and transparency, organizational development, civilian oversight of law enforcement, and with the expertise and authority to obtain and deny police-related grants. If the DOJ were to create this new Police Reform Section within the Civil Rights Division, §14141 lawyers and investigators would have all of the tools necessary to conduct police reform in a holistic and collaborative way and still have the ability to "use force" as necessary by applying formal consent decrees against police agencies either unable or unwilling to engage in constitutional policing.[1045]

Staff would need to liaison with policing groups, such as the Police Executive Research Forum (PERF), the International Association of Chiefs of Police (IACP), the Major City Chiefs Association (MCAA), and civilian based think tanks, such as the Vera Institute of Justice, the Harvard-Kennedy School, and the Crime and Justice Institute (CJI) in order to provide policing agencies with the resources necessary to successfully avoid future Section 12601 litigation.[1046]

Just like a police officer who is equipped with only a firearm, the SLS' sole tool is a Section 12601 lawsuit, with the equivalent harms that are associated with costly and forced external reform. And while the SLS has reportedly already made great efforts to connect struggling police agencies with both technical and financial support on an ad hoc basis, it would be better for the DOJ to engage in a multidisciplinary approach where any struggling police agency can be systemically and seamlessly referred to cooperating agencies and organizations for an appropriate level of support.

The new "Police Reform Section" would be able to engage in a more holistic approach to police reform, using the aforementioned use-of-force continuum theory, in identifying what form of federal intervention is best suited to each particular case. Staff in

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[1045] One research participant, who worked closely with the DOJ's Special Litigation Section during the Seattle reform process made the following observation, "DOJ needs to work more collaboratively to piece together a team with the skills needed on Section 14141 projects – a lot of the line attorneys from the local U.S. Attorney's office have not worked with police departments before. If you are talking about improving the process, it would be aided by filling out the Special Litigation Section with people who really know this stuff."

[1046] There is every reason to believe that these organizations would be interested in formalizing collaborative relationships with a new Police Reform Division. As recently as June 2020, the Executive Director of PERF was commenting on collaborative options for police reform: "Consent decrees are a method to deal with the most intransigent departments, …The one part of this process that is a tough pill to swallow is this notion that the department is under federal oversight, … Is there a way to build a model that accomplishes the same thing, but somehow gives police departments that sense that they're making the changes?" (*Politico.com*, 6/29/2020).

this new section would also be able to emphasize on getting model policies and practices and "lessons learned" out to struggling or offending agencies as well as other policing professionals throughout the country.

In some cases, the Police Reform Section might be able to assist a department in obtaining appropriate grants (see, Rushin, 2017a)[1047] or could use the threat of refusal of federal funding as a deterrent to unconstitutional policing practices (see, *Marshall Project*, 2015).[1048] In other cases, the Section might work with a generally cooperative police department by providing technical advice or by encouraging participation in a collaborative reform effort.[1049] A team approach could also facilitate the re-visiting of agencies that were subject to prior consent decrees to determine to what extent the departments have continued on the path forward or identify areas where non-compliance has returned; and then address those issues with access to the aforementioned multiple support and enforcement tools.

Simply put, a consent decree should not be the only tool in the DOJ's tool belt – much more is needed, to include "less-than-lethal equipment" that will facilitate compliance with constitutional mandates without having to resort to the expensive and labor-intensive solution that is a §14141/12601 investigation or litigation. The Seattle experience suggests that the DOJ may want to try collaborative reform first, when there is reason to believe that an organization may be willing to reform under the watchful eye of the Police Reform Section or an appointed monitor, and only then revert to a consent decree if the collaborative effort does not succeed. The Seattle reform effort has, thus

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[1047] As observed by Rushin, "The federal government has rarely subsidized and rewarded police departments for adopting cutting edge policies or technologies aims at combatting misconduct. Instead, it has provided penalties for police officers and police departments that are engaged in wrongdoing. Things could be different … In sum, the federal government could use its current grant-giving apparatuses to fund more police reform efforts" (Rushin, 2017a, p. 280).

[1048] In 2015, the Marshall Project observed that "[s]ome legal scholars and civil libertarians have argued that the costs of the refusing to change discriminatory police practices should be even higher. They have pressed the Justice Department to aggressively use of its authority under Title VI of the 1964 Civil Rights Act, which allows the department to cut off federal funds to any program or agency that is found to engage in discrimination."

[1049] "There are several possible reasons for the provision of technical assistance over former intervention. The former is much cheaper and less involved for both the DOJ and the affected department. If the DOJ believes that department leadership is capable of implementing reforms on its own, it may be likely to give the department that opportunity, in the process saving the federal government time and money while providing a boost of public confidence for the police" (Chanin, 2012, pp. 355-356, at n. 93).

far, taken eight years. The length of the process itself suggests that not much time would have been lost if the DOJ had started first with a less intrusive means of reform.

Table 9.1 shows potential tools for DOJ intervention, to include some types of intervention that do not currently exist in a formal way. In order to approach police reform in a more holistic way, the DOJ would need to use each intervention technique and apply them as needed in a coordinated effort.

Table 9.1. Potential Tools for DOJ Intervention

Classification of Intervention	Type of Intervention
Voluntary intervention	Communication of expectations and best practices.
Voluntary intervention	Referrals to agencies engaging in best practices.
Voluntary intervention	Facilitation of new policy initiatives.
Voluntary intervention	Facilitation of new training initiatives.
Voluntary intervention	Federal Grant(s) in Support of Constitutional Policing Initiative
Voluntary intervention	Section 12601 investigation with technical assistance letter(s) and subsequent review to ensure compliance
Voluntary intervention	Section 12601 investigation & Collaborative Reform effort
Involuntary intervention	Denying federal grant(s) & subsequent review & technical assistance
Involuntary intervention	Section 12601 investigation and appointment of a federal monitor to report back to DOJ
Involuntary intervention	Section 12601 investigation & consent decree
Involuntary intervention	Court-appointed monitor & active monitoring of compliance by the DOJ and a federal judge.
Post Intervention	Periodic re-evaluations of compliance.
Post Intervention	Reliance on local municipal monitoring programs and reports back to DOJ.

9.1. Approaching Police Reform in a Holistic Way

As previously discussed, the DOJ team needs to be able to approach police reform in a holistic manner armed with multiple tools; including both the “stick and carrot” approaches to police reform, which would include variations of funding, collaborative agreements, training, collaboration with police professionals and social scientists and the use of collaborative agreements in lieu of, or as predecessors to, consent decrees.

Numerous Seattle research participants, after considering the Seattle consent decree process, suggested solutions along the lines of those proposed above. As noted by one research participant knowledgeable of the DOJ's consent decree reform efforts:

> The DOJ has developed one tool and even though it is customized for each jurisdiction, it is a 'one size fits all' type of tool. However, it does not make sense to apply the same reform efforts in Seattle as you would use in New Orleans or Baltimore. In an ideal world, there should be a spectrum of reform packages – some kind of 'consent decree-lite' process – and then maybe something more significant where there is institutional or leadership resistance to reform … There is room for something more holistic. In jurisdictions where there is not a resource problem or structural problem – where problems are caused by deficient policies or training, there may be other solutions; maybe a solution that could be done more quickly and at less cost, or where perhaps a grant would have been of more assistance.

Another research participant, who studied the Seattle implementation process, also supported the concept of a more holistic approach to DOJ involvement in police reform:

> The DOJ needs a systemic, sustainable plan, using all aspects of the DOJ and the federal government (including the NIJ and the COPS office) and other police-related programs and come up with a holistic way of dealing with the problems faced by local police. The DOJ tends to think of things in a legalistic format; they need to work with social scientists, funders, and policy wonks to ensure constitutional policing on a systemic level.

One SPD official also suggested the need for the DOJ to develop organizational development expertise, commenting that,

> the Consent Decree process needs intentional change management in place before a consent decree is allowed to land. When it becomes a "you're bad and I have to watch everything you do," type of enterprise, the tendency is for people to become defensive and it can spiral downward into griping and grievance – which is exactly what took place in Seattle.[1050]

This proposal supports a hybrid approach to the Consent Decree process when comparing the Bush Administration approach with the approach used early on by the Obama Administration and a more toned-down approach later professed by the Obama

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[1050] Other Seattle participants commented on the need to "come up with a strategic plan before starting anything." Other solutions included hiring the court-appointed monitor before negotiating the settlement agreement in order to ensure all stakeholders, including the monitor, have a full understanding of expectations and implementation plans before the implementation period begins.

DOJ (*New York Times*, 4/9/2017).[1051] The Bush administration approach was well described by the then-Assistant Attorney General of the Civil Rights Division to the House Judiciary Committee in 2005,

> Rather than adopting a purely litigation-driven enforcement model, our experience demonstrates that a cooperative model produces much better and faster results. Accordingly, rather than husband findings of potential violations for use in court, we work hard to keep target agencies informed of our findings and progress, so that they can begin to develop and implement effective solutions. (Simmons, 2008, p. 510)

If these concepts were to be used in conjunction with the Obama administration's willingness to also engage via more aggressive approaches, as necessary, it would seem that many of the problems associated with the Seattle implementation process could be avoided in future DOJ enforcement actions.

Within the Consent Decree evaluation literature, there are many references to the need for a more holistic and multidisciplinary approach to federal police reform efforts. In 2009, Harmon opined that, at that point in time, "§14141's greatest potential has been overlooked." Harmon identified that "§14141 had the potential to motivate proactive reform in more departments than the Justice Department can sue." Harmon also recommended the creation of "a 'safe harbor' from suit for police departments that voluntarily adopt best practice reforms" (Harmon, 2009, p. 1). The concept of the granting of a "safe harbor" would seem much more consistent with a holistic Police Reform Section than it would be with a Special Litigation Section whose primary tool is investigation and litigation. Later, Harmon (2012) went on to suggest a form of

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[1051] As reported by the *Times*, "Mr. Bush preferred voluntary arrangements, known as memorandums of agreement. Cleveland, Miami and New Orleans were all investigated by the Bush-era Justice Department, but none were required to enter into consent decrees. All three were reinvestigated by the Obama administration. President Barack Obama's first civil rights division chief, Thomas Perez, came in determined to build on the work of the Clinton administration and consent decrees like that in Los Angeles, which had been hailed as a success in a Harvard study. But Mr. Perez's hard-charging style drew the ire of union leaders, including James O. Pasco Jr., the national president of the Fraternal Order of Police. In an interview, Mr. Pasco accused Mr. Perez of waging "a virtual jihad against rank-and-file police officers." Christy Lopez, a former Justice Department lawyer who worked on police abuse investigations during the Clinton and Obama administrations, said of Mr. Perez: "He represented a shift, and it was very hard for police officers. He was telling them things that no one really had the nerve to tell them before." Mr. Perez's successor, Vanita Gupta, sought to mend fences, but by then, many union leaders say, the relationship had been poisoned".

"accreditation" from the DOJ, that would only be possible if the DOJ were to use a more multi-disciplinary team approach to its police reform efforts:

> Federal resources could also be used to increase the reputational and professional benefits for chiefs who adopt reform efforts. Accreditation provides reputational benefits to departments and chiefs that satisfy specific administrative and operational standards, and it could be a mechanism for further identifying and rewarding reform efforts. The Department of Justice could also increase professional benefits for civil rights initiatives informally, by holding prestigious invitation-only conferences for police chiefs with reputations as reformers. (p. 55)

As early as 2010, the DOJ was describing its initial §14141 investigative work in a holistic way, as involving, information collection, collaboration and the provision of technical assistance.

> During an investigation, technical assistance may be provided, along with letters memorializing advice and suggestions, to enable the jurisdiction to make needed changes as soon as practicable. … Investigative staff meet with all relevant stakeholders, including agency command staff, line officers, bargaining unit representatives, and members of community and advocacy groups. Investigators also observe trainings and participate in police patrol ride-alongs. (Clark, 2010, p. 3)

However, as of 2014, the DOJ was being described as "rely[ing] on the language, goals and enforcement strategies typical of contractual enforcement, rather than policy implementation or organizational reform, to bring affected departments into compliance with the law" (Chanin, 2014, p. 50). And, in fact, that is exactly what would be expected of a section that relies primarily on lawyers in pursuing work in police reform. Chanin went on to conclude that,

> As a result, both the means and ends of pattern or practice reform are driven by legal concerns; the process is defined by the goal of creating an agency that complies with the law. This approach emphasizes process over substance and short-run compliance over long-term reform. Heavy weight is given to the symbolic value of the initiative; evaluation is a function of the presence or absence of mandated contractual changes, not the substantive value of the process, the functionality or sustainability of the new systems, the durability of agency priorities, changes in officer cultures, or any other policy-driven output performance-related outcome. The central assumption underlying this approach is that the presence of new policies and systems will automatically translate into desirable policy-related outcomes and a police culture respectful of civil liberties and legal values. In other words, embedded in the process is a definition of implementation

> that conflates fidelity to the language of the policy with the depth of organizational change.
>
> Not only does this thinking ignore decades of research and practical experience warning against such assumptions, but it renders broader evaluation or analysis exceedingly difficult. (Chanin, p. 50)

In 2020, at the height of the police accountability protests following the death of George Floyd, and after the Trump administration had wholly abandoned consent decrees as a form of police reform, Stoughton, Noble and Alpert wrote a 4,000-word essay in the *Atlantic* Magazine, which appears to support the concept of the creation of a holistically based Police Reform Section in the DOJ. The authors called for the federal government to "dedicate significantly more resources to supporting police training, local policy initiatives and administrative reviews." The authors went on to recognize that while the DOJ did not have the resources to intervene with respect to all police agencies engaging in unconstitutional policing practices, "Congress can instruct and empower it to offer technical assistance, identify conduct standards that can serve as references for courts in civil litigation, and provide a framework for responsive and democratically accountable community collaboration, opening additional avenues of reform" (*Atlantic*, 6/3/2020). I would suggest that there is no need for Congressional action in that regard; a change in how the DOJ manages and applies the powers and responsibilities it currently has is at the complete discretion of DOJ managers.

And, in fact, as of 2017, the DOJ was already speaking in terms of their holistic reform efforts by noting that "[i]n some instances, the Division has drawn on other federal resources – such as the assistance of the Office of Community Oriented Policing Services (COPS) or the Office of Justice Programs (OJP)—to provide technical assistance or other support" (USDOJ, 2017b, p. 15). What I am recommending, however, is that process become more seamless, by more formally incorporating these DOJ programs into one another with respect to police reform initiatives.

"A consent decree is a blunt instrument that takes a huge amount of money and time – if I had my druthers, we would have gone the collaborative reform route – we should have started there, set up the benchmarks and then proceeded accordingly."
Seattle City Official

9.2. Reincorporating "Collaborative Reform" into the Federal Police Reform Effort

To the chagrin of many at the DOJ (and police professionals as well), shortly after the Trump administration took office, the DOJ eliminated the Community Oriented Policing Section's "Collaborative Reform Initiative" effort as it related to police reform (Walker, 2018, p. 1780; see also, *Washington Times*, 9/15/2017; *New York Times*, 6/13/2020). The collaborative reform effort had been used as a voluntary process for police reform in multiple cities to include Las Vegas, Philadelphia, Milwaukee and San Francisco. As described by USDOJ (2017b), the "COPS Collaborative Reform Initiative advances police reforms by undertaking assessments of a law enforcement agency's operations, providing recommendations for reform, and assisting the agency in implementing those reforms" (p. 50). There is simply no reason why this DOJ initiative should not be re-initiated under the auspices of a new Police Reform Section. The process, which does not involve the federal court, or the appointment of a monitor, is a means to achieve reform, cooperatively and collaboratively, in a more timely and cost-effective way than can be achieved through a formal consent decree. Having the program managed within a newly re-invigorated Police Reform Section would allow for the type of "consent decree-lite" program called for by Seattle research participants and could allow for a more seamless transition between voluntary and aggressive reform initiatives.[1052] In addition, creating a mission statement for the Police Reform Section that would include coordination amongst and between the Police Reform Division and other DOJ agencies with functions that could support police reform efforts would increase the potential for a holistic approach to the new Section's work. [1053]

[1052] In the Police Executive Research Forum's report on a Summit it held on October 25, 2012, the Chief of the Missoula, Montana Police Department was quoted as saying: "The first thing that I said to Jonathan Smith [the head of the DOJ's Special Litigation Section] when he came to my office was, "Why didn't you talk to me about this issue before you announced an investigation?" When the Department of Justice announces an investigation into an agency, there is a significant impact on the agency's reputation and credibility with the community. I believe that we could have quickly achieved a mutually desired outcome if the process were more collaborative" (PERF, 2013, p. 39).

[1053] The January 2017 DOJ report, issued the same month that the Trump administration took office, also identified additional programs within the DOJ that provided assistance to police agencies, to include the Bureau of Justice Assistance (BJA) and the Office of Justice Program's (OJP) Diagnostic Center. The report noted that BJA programs have provided equipment, technology "and other resources for effective policing through millions of dollars in grants" to police agencies throughout the U.S. Numerous consent decree jurisdictions have been identified

"At a high level, the DOJ should regard a consent decree as the 'nuclear option,' only to be used when all else has failed."
Seattle Research Participant

According to one research participant, the Community Oriented Policing Section of the DOJ also used to manage an "Appreciative Inquiry Program" wherein DOJ staff would be brought in to evaluate conflicts between police and other stakeholders, and would conduct "deep dive interviews" and make recommendations on how to improve relationships. That type of program could also be managed within the Civil Rights Division's Police Reform Section. The very fact that the Section would have the ability to "drop the bomb" and file a Section 12601 lawsuit, also means that the DOJ could publicly incentivize departments voluntarily coming forward to come up with solutions to problems if the potential for a consent decree looms in their future.

"Command staff wouldn't have been resistant to a more tailored and narrowly focused reform effort. No one would have resisted a more honest attempt to fix an actual wrong. But since that was not how it was presented, no one wanted to play ball on the Department side."
Seattle Police Department Supervisor

In addition, the Police Reform Section would have the ability to rely on small "evaluation teams" who could operate prior to, or in lieu of, formal DOJ investigations and save substantial resources. The teams could work with University-based social scientists and policing experts to determine to what extent an intervention may be necessary and the teams could prepare evaluation instruments that could be shared with the affected police departments, thereby increasing the level of transparency as it relates to the initial review process. These evaluators would be able to review policies, training curriculum, department demographics, and use of force and complaint data, in

as engaging in unconstitutional policing as the result of inadequacies in equipment and technology (e.g., Seattle, Cleveland and Baltimore, as per DOJ investigation reports in those jurisdictions). The Diagnostic Center was specifically identified as having "helped law enforcement agencies across the country with a variety of objectives," to include "assessing and identifying weaknesses in officer supervision and discipline processes." In addition, the Office for Civil Rights (OCR) at the OJP was reported as ensuring "that recipients of financial assistance from OJP, COPS, and the Office on Violence Against Women (OVW) comply with federal laws that prohibit discrimination in … the delivery of services or benefits based on race, color, national origin, sex, religion, disability and age" (USDOJ, 2017b, pp. 50-51).

conjunction with conducting interviews of police and community stakeholders and use objective criteria in determining appropriate intervention techniques.

The Police Reform Section would also be able to use another more collaborative tool in the form of a formal or informal diversion program. Such a program was described as "a recurring suggestion" made during the 2010 Roundtable on the §14141 Program, organized by the Civil Rights Division in conjunction with the Office of Justice Programs: Specifically, participants requested that the DOJ consider "some sort of diversion program whereby police agencies can avoid litigation if they make necessary changes and reforms." In addition, participants "suggested the development of some sort of —continuum of litigation, wherein SPL would —dial down in cases of cooperative, voluntary compliance and —dial up intervention in cases where an agency is resistant or noncompliant" (Clark, 2010, pp. 4-5).[1054] And while, as indicated in the DOJ's response to these suggestions, it is clear that the DOJ has engaged in multiple levels of intervention, depending on the involved jurisdiction,[1055] there seems to be no reason why the DOJ could not use additional tools such as a formalized diversion program, in conjunction with the previously recommended "use of force continuum" (see, Figure 1.2, *supra*), a concept which would likely have had the support of the roundtable participants.

[1054] In response to these recommendations, the DOJ noted that the comments reflected a lack of understanding of then-DOJ practices: "By and large, comments regarding the need for early notice, diversion, negotiations, monitoring and follow-up may reflect a lack of appreciation for the role of, and process used [] in § 14141 cases. For instance, technical assistance, often documented in writing, is provided to the executive of the jurisdiction under investigation in most if not all cases. In this regard, it may be the role of the local executive — not the federal government — to make the police department aware of the situation and to involve other parties in the negotiation process. Most comments voiced at the meeting seemed to reflect a lack of understanding of the [] process related to diversionary or informal options in § 14141 cases. It is clear from the information provided by [the DOJ] that most investigations have been resolved without a court-enforceable agreement. Moreover, technical assistance is offered, if not provided, in many of these instances. How counsel chooses to proceed in handling a case when representing the local executive has more to do with the outcome than anything [DOJ] could provide by way of information or guidance to the local police department under investigation. The lack of understanding of the [] process points to the need for broadly disseminated information on the pattern or practice litigation process …" (Clark, 2010, p. 5).

[1055] For example, in the case of Columbus, Ohio, the DOJ agreed to terminate its investigation after the Columbus Police Department "made substantial alterations to many of the policies, procedures, and training that [the DOJ] sought to change through the lawsuit." See USDOJ, 2017b, p. 42; DOJ Agreement to terminate investigation. Retrieved from https://perma.cc/T38F-58BE.

9.3. Communication

Seattle participants repeatedly highlighted the need for the DOJ to have a more effective communication strategy, particularly as it related to SPD rank-and-file officers.

Comments critical of the DOJ's community and police engagement were made by numerous city officials, to include those highly supportive of reform efforts:

- "One of the problems was that the rank and file didn't know from Adam what was going on. They heard rumors and were told to stop being proactive. What happened in the North Precinct with 100 officers suing to stop the implementation of the new use-of-force policies, should never have happened. It's not that the DOJ or the Monitoring Team did anything wrong, but there was never adequate communication to the rank & file as to what was going on. The early opposition by the McGinn administration resulted in no one learning about the positives of the Consent Decree – the attitude was so negative – it would have been good to have people in the DOJ or on the Monitoring Team who could communicate directly to the rank and file."

- "It was the SPD command staff who were the ones who were constantly dealing with the Monitor and they were the ones providing the narrative throughout the agency – a better system of communicating what was happening and why would have been good."

- "Although the DOJ and the Monitor were transparent and collaborative with the City, they did not get input from the officers on the street. The top-down nature of the communication has always been a flaw in the process and has been a challenge throughout implementation. It's amazing how little new supervisors knew about the Consent Decree and the reasons behind policy decisions."

Interestingly, the January 2017 DOJ report on §14141 actions is replete with comments about the need for outreach to community and officers in the initial stages (specifically with respect to the investigation and negotiation), and also appears to suggest a recognition of the need to continue that outreach and communication throughout the implementation period (USDOJ, 2017b, pp. 11-12 ["The Role of the Law Enforcement Agency in Pattern-or-Practice Investigations"], pp. 13-14 ["The Role of the Community in Pattern-or-Practice Investigations"], pp. 29-30 ["Community Engagement"]. Even so, it does appear that the DOJ and the Monitoring team may have missed the mark in Seattle. I would suggest that a more holistic approach to consent decree implementation might improve the potential for DOJ community outreach specialists to be engaged in all aspects of DOJ interventions.

9.4. Adopting Prior Recommendations of Commentators & Academics

It is also likely that if the DOJ were to approach police reform from a multi-disciplinary team approach, a Police Reform Section of the Civil Rights Division would have the ability to engage in many of the activities previously recommended by other commentators and academics. Examples include recommendations relating to data collection and analysis, grants and federal funding, and education.:

9.4.1 Data collection & analysis

Numerous commentators have noted a "dearth" of available data by which the DOJ could identify departments engaging in abuse and have bemoaned what appears to be the necessarily required ad hoc response by the DOJ when selecting departments for intervention (Powell et al., 2017; Harmon, 2017; Rushin, 2017a). And Rushin, in particular, has discussed in length the type of data which Congress could order collected to assist the DOJ in identifying departments engaging in patterns or practices of constitutional violations (Rushin, 2017a, pp. 250-275).[1056]

Rushin went on to propose that with the assistance of the aforementioned data, the DOJ could adopt a proposal previously made by Professor Rachel Harmon, arguing "that the DOJ could use data on local police behavior to create a national list of police departments that may be engaged in a pattern or practice of misconduct." Arguably, that national list could be used by the DOJ to engage with those police departments and pressure them to improve, in the face of potential DOJ action (Rushin, 2017a, pp. 271-272, citing Harmon, 2009) and to prioritize §14141 actions based on such statistics. Rushin suggested that "[b]y publicly prioritizing litigation in such a way, the DOJ can create a race to the top, as departments try to avoid expensive and stigmatizing federal intervention" (Rushin, 2017a, pp. 268-269).

My intention for this research project was, in part, to make recommendations that can be followed by the DOJ, without resorting to additional acts of Congress (except to

[1056] Rushin proposed a number of reforms to improve federal oversight of local police departments. His first proposal related to the need to "collect better data on local police behavior," to include officer involved shootings, citizen complaints, and information pertaining to civil law suits filed against local departments (Rushin, 2017a, pp. 19-20).

the extent that the DOJ might need to request additional resources or budget to fund an effective Police Reform Section). Regardless, even without Congressional action requiring the creation of data bases which would assist the DOJ in better identifying pattern or practice violations, it would seem likely that the inclusion of personnel with the ability to collect and evaluate data in a Police Reform Section would increase its overall ability to effectively and fairly enforce the Police Reform Section's responsibilities.

9.4.2. Grants & federal funding

One of the most significant benefits of a multi-disciplinary approach to police reform would be to more closely align the work of the Civil Rights Division and other sections of the DOJ as it relates to federal subsidies and grants provided to law enforcement throughout the country. As suggested by Rushin (2017a):

> it is time for the federal government to move from reactive to proactive regulation of local police departments. One way to accomplish this would be for the federal government to tie federal funding to local police departments to the enactment of reforms aimed at curbing police misconduct (Rushin, 2017a, pp 20-21; 248-249).

Similarly, Harmon suggested the creation of a federal grant program "designed to subsidize cost-effective remedial measures for preventing key forms of misconduct" (Harmon, 2012, p. 54). And more recently, Powell & Worrall (2021) have suggested that there would be public support for the creation of a "police reform fund, … whose money [would be] reserved strictly for consent decrees" (p. 1).

The costs attributed to the enforcement and implementation of consent decrees has been a continuing concern to all involved. As suggested by Ross & Parke, "Startup and maintenance costs linked with successful compliance of consent decrees are enormous … Without financial assistance from either the state or the federal government, municipalities will be unable to implement or maintain the requirements of the Consent Decree" (Ross & Parke, 2009, p. 204). A multi-disciplinary team which includes personnel experienced in grant funding would have the means to explore how to lower the costs of a reform effort for a struggling municipality (see also, Harmon 2012, p. 56 [suggesting that "new energy" be "devote[d] to exploring federal means of lowering the costs and increasing the benefits of reform"]).

The issue of the DOJ assisting in covering costs was also mentioned by numerous Seattle research participants, although it was acknowledged that if a city finds itself in the DOJ's cross hairs as a result of a failure to adequately fund its police, there may be recalcitrance in "bailing out" the jurisdiction of a problem of its own creation:

> *"Fiscal prudence should not be equated to opposition to constitutional policing – poor communities should not have to sacrifice themselves at the altar of police reform."*
> **Seattle Community Member**

It certainly appears clear that many of the agencies that have come under DOJ scrutiny have not availed themselves of some of the funding schemes that could have helped them meet constitutional norms. And, research participants with knowledge of consent decrees in other jurisdictions have advised that the DOJ has assisted agencies in writing requests for grants in that regard. An enhanced Police Reform Section, however, would likely be able to better link up struggling jurisdictions with Body Worn Camera funding, peer-to-peer exchanges, Bureau of Justice Assistance and COPS support programs and identify those resources to departments in need.

9.4.3. Education

Particularly as reflected in its symposium work the Office of Justice Programs (Clark, 2010),[1057] the Police Executive Research Forum (PERF, 2013), and the DOJ's 2017 publications (USDOJ, 2017a; USDOJ, 2017b), the Civil Rights Division has made efforts to learn more about issues and concerns relating to its §14141 enforcement program and educate law enforcement and the pubic on its work.[1058] Certainly, the

[1057] Over the course of the June 2010 Roundtable, "[a] recurring theme [] was the need for DOJ to provide a proactive program of education for law enforcement officials and others involved in local criminal justice systems on issues related to § 14141 litigation, evidence-based policies and practices, and other technical assistance to prevent police misconduct. As one chief suggested, 'DOJ needs to educate us as to what is the right thing to do!' A comment offered by another police chief seemed to further suggest that 'the development and dissemination of guidelines for constitutional policing would be of great assistance to local law enforcement'" (Clark, 2010, p. 10).

[1058] Even before 2010, the DOJ made efforts to publicize their reform work, to include the January 2001 publication: Principles for Promoting Police Integrity. Retrieved on 11/12/2020 at, https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf; and, funding a book by the International Association of Chiefs of Police "highlighting potential departmental deficiencies and recommending the Justice Department core functions as a means of promoting civil rights" (Harmon, 2009, p 56, citing, Int'l Ass'n of Chiefs of Police, Protecting Civil Rights: A Leadership

expectation early-on was that the DOJ's enforcement of §14141 would have a positive impact in articulating and disseminating national best practices in constitutional policing (Miller, 1998; Livingston, 1999). As suggested by Harmon, "research on policing best practices is the foundation for lowering the information costs of reform for police departments, and that research would be improved by the [collection of] §14141 data" (Harmon, 2009, p. 49). As observed by Walker, "[a] major contribution of the [§14141] program has been the development of a relatively short list of 'best practices' related to constitutional policing, which have become a part of the New Conversation and the roadmap for police reform" (Walker, 2018, p. 1823; see also, Walker & Macdonald, 2009; Walker, 2017, p. 30, [concluding that "[p]rior to the DOJ program, there was no equivalent list of accountability-related best practices in policing"]).

A holistic and multi-disciplinary approach to police reform would enhance the DOJ's ability to educate police agencies nationwide in police reform and potentially allow it to "fashion a blueprint for a model police institutional structure" (Miller, 1998, p. 185). And, as recommended by Harmon, the DOJ could then use its resources "to refine and disseminate information about institutional deficiencies that breed police misconduct, remedial measures that will reduce misconduct, and means for effectively implementing those measures" (Harmon, 2009, p.7). In 2017, Harmon suggested the publication of a "best practices guide" for police departments, as well as "a biannual guide describing the institutional conditions [the DOJ] considers most worrying and the reforms it views as most promising for police departments." Harmon also recommended the DOJ "work[] with social scientists to develop and test tools for measuring specific forms of misconduct and the effectiveness of the reforms it promotes" (Harmon, 2017 p. 624). All these recommendations would be much easier to enact with a Police Reform Section that would be armed with a wide variety of tools to achieve systemic police reform.

"If your only tool is a hammer, then every problem looks like a nail."
Attributed to Abraham Moslow, 1966[1059]

Guide for State, Local, and Tribal Law Enforcement, 6-9 (2006). Retrieved from https://www.theiacp.org/resources/document/protecting-civil-rights-a-leadership-guide-for-state-local-and-tribal-law.

[1059] Retrieved 11/12/2020 from, https://quoteinvestigator.com/2014/05/08/hammer-nail/

9.5. Sustaining Reform

As suggested by a number of commentators, the DOJ's litigation approach to police reform tends to ignore issues of "sustainability or durability of reform" except in those few cases where the DOJ has put into place transition agreements (e.g., Los Angeles) and, even then, there is no subsequent evaluation of the success or failure of the reform effort in the long term:

> … the DOJ's legal approach limits the analysis to the timeframe of the settlement agreement itself. Once the department is found to be in compliance, the reform process is terminated and with it all external oversight. In other words, what happens after the oversight process appears to be irrelevant. Substantial compliance, then, is wholly unrelated to the sustainability or durability of the reform. (Chanin, 2014, p. 51)

The literature is replete with recommendations that the DOJ come up with some form of performance monitoring, post-termination audits or follow-up teams to ensure that reforms made during the pendency of a consent decree or MOA are, in fact, sustained (Simmons, 2010, p. 418; Chanin, 2012;[1060] Dukanovic, 2016, p. 927; Alpert et al., 2017, p. 243; Rushin, 2017a[1061]). Although, as noted below, there is also a strong argument for the DOJ putting some form of internal auditing function (Jaio, 2020) or external oversight (Dukanovic, 2016) into place with the belief that sustaining change should be a local matter and not the business of the federal government (Clark, 2010, p. 5).[1062] Arguments have also been made that the DOJ should ensure independent evaluations are conducted by other departments within the DOJ, such as the National Institute of Justice (Walker, 2017, p. 23).

[1060] However, as observed by Chanin (2012), even "[t]hough such a solution [post-termination audits of affected police departments] would have the effect of promoting sustainability, perpetuating DOJ involvement would likely raise federalism concerns and stretch beyond capacity limited [DOJ] resources" (p. 348).

[1061] After recognizing the inherent danger of police agencies reverting to poor practices after a consent decree has been terminated, Rushin (2017a) commented that "[n]evertheless, it appears that federal intervention is neither necessary nor sufficient for constitutional reform. Federal intervention is not a silver bullet. Real, long-lasting police reform requires local cooperation and dedication to succeed" (p. 166).

[1062] See Clark, 2010, p. 5, for a description of the differing positions on how to best sustain reforms upon the conclusion of a consent decree.

"Discussing the results of his qualitative research, Rushin mentioned that the one prominent request DOJ officials had when asked how §14141 reform could be improved was the institution of follow-up teams. These teams would return to departments that underwent federal intervention to ensure reform is maintained by local leaders and front-line officers."
(Dukanovic, 2016, p. 927, citing interview with Professor Rushin)

9.5.1. Sustainability: involvement of stakeholders in settlement negotiations & implementation

In Seattle, the research suggests that involvement of the union as a party may have helped avoid what the Monitor referred to as the "glacial" pace of reform, particularly as it related to police accountability (including the implementation of body-worn cameras and reform of the police discipline system). In addition, even though Seattle's MOA provided a specific framework by which community and the police unions could be involved in the implementation effort, the process ended up being publicly criticized by both members of the Community Police Commission (CPC) and the police unions.

CPC members and SPD officials alike were critical of federal judges who are "removed from the community" taking matters out of local control and leaving local officials and community members without leverage in resolving policing related issues.[1063] And study participants involved in consent decree implementation efforts nation-wide noted that "increasingly both communities and police departments are skeptical of how consent decrees will work."

The question of how to engage the community and rank and file officers in the Consent Decree process has been an area of continuing controversy. Chanin (2012) recommended including "union representatives and key civil rights organizations in the settlement negotiation process" (p. 351; see also, Chanin, 2017a, pp. 264-266) and he recommended the use of "focus groups and outreach with city residents to develop

[1063] One prominent community member was particularly passionate about the problems revolving around the Consent Decree process as a tool of externally mandated reform: "There's a motivation that includes arrogance and money; the Consent Decree process is the creation of a racket of white male lawyers who believe they know everything and think they are critical to success in police oversight. That is why the Consent Decree process is unhelpful and should be at the bottom of any list in police reform in bringing it back."

settlement content." In addition, Chanin argued in favor of including "union and community group representatives in the implementation process by inviting group leaders to regular status meetings" (Chanin, 2012, p. 351).[1064] As early as 2010, policing executives were suggesting that the overall reform process "should involve police officials, subject-matter experts, labor unions and community representatives as well as all other relevant parties" (Clark, 2010, p. 4).

These recommendations were not new. The second evaluation of the Pittsburgh consent decree found that "[m]ore engagement of citizens and greater participation of front-line officers might have made a good process even better" (Davis, et. al, 2005, Executive Summary; see also, Simmons, 2008, pp. 528-531 [arguing that all stakeholders should be given a formal role in negotiating the terms of a consent decree]; and, Simmons, 2010, p. 416, [arguing that "policymakers should craft reforms that restore political legitimacy by encouraging deliberation among stakeholders"]).[1065]

Since the time that the Seattle settlement agreement was first reached, the DOJ and the courts in other cities have taken further steps to incorporate public feedback into the creation of settlement agreements. In the case of Portland, Oregon, in February 2014 "the court conducted a fairness hearing to determine whether the settlement agreement was 'fair, adequate, and reasonable'" (Patel, 2016, p. 842). Patel referred to the Portland fairness hearing as "hailed by some as historic for its inclusion of so many community voices," and identified the hearing as having provided an "opportunity … for a bottom-up approach to police reform." According to Patel: "[t]hrough community input, this process did more than increase the police's legitimacy within the community; it also respected and acknowledged the wisdom of those on the ground, and therefore, further promoted individual self-determination within the policing context" (Patel, 2016, pp. 842-

[1064] The DOJ appeared to partially incorporate this suggestion into its Newark consent decree, where it required the court-appointed "monitor to hold regular meetings with representatives of rank-and-file officers, further ensuring that the monitor remains responsive to a broad range of critical stakeholders in reform" (USDOJ, 2017b, p. 23).

[1065] In Seattle, the DOJ did make efforts to solicit input from community and officers to use during the ensuing Consent Decree negotiations and agreed to the creation of a Community Police Commission (CPC) to provide both community and union input into the implementation process. Even so, the CPC made an effort to intervene as a party and openly criticized the DOJ and the City for minimizing their role in the process. On the other side, rank and file officers and the police unions opposed Consent Decree implementation at various stages in the process (See Chapters 7.3.2 (Seattle Consent Decree Implementation), 7.7.3 (the Community Police Commission & 7.8 (Seattle Consent Decree Implementation – The Police Unions))

844). Patel went on to laud the DOJ for taking "a great step forward by including community engagement as a central component of most consent decrees during President Obama's administration," and supported Portland as providing an example of the "parties agreeing to a non-party, yet enhanced, status for a group representing community interests" (Patel, 2016, pp. 867, 869).

With respect to the inclusion of police unions, however, it has been recognized that the DOJ

> may not be inclined to include police unions in its negotiations [where there is concern] that [the] police unions [will be] more concerned about enhancing working conditions for their members than striking the appropriate balance of accountability measures to ensure constitutionally acceptable policing practices. (Rushin & Edwards, 2017, p. 775)

As also recognized by Rushin and Edwards, "this sort of cooperative rulemaking may [] produce inferior reforms" (Rushin & Edwards, 2017, p. 775). There is also always the danger that a police union may not negotiate in good faith, with the intent of attempting to block any reform that may increase accountability "or otherwise burden frontline police officers" (Rushin, 2017a, pp. 138-139).

Even so, in Cincinnati, as repeatedly recognized by Chanin, the collaborative reform effort, which included "the police union, relevant civil rights organizations, and members of the public more broadly, created minimal delays and only led to a small number of setbacks during either negotiation or implementation." Chanin (2017a) went on to concluded that Cincinnati's "inclusive approach continues to pay dividends in terms of the depth of the reform and the sustainability of change" (p. 266; see also, Chanin, 2014, p. 47).

9.5.2. Sustainability through civilian oversight

Sustainability through the creation of civilian oversight of law enforcement mechanisms has become a key feature of the DOJ's attempts toward ensuring sustainability of reform. In Los Angeles, the Consent Decree left a stronger oversight function in the form of the Police Commission and the Inspector General's Office (Stone et al., 2009). In Seattle, the CPC, OPA and Inspector General have all been part of the attempt to ensure sustainable reform.

And support for civilian oversight in support of long-term sustainability has been supported in the academic literature:

> Given how tenuous these reforms appear to be and how unpopular they remain among the rank-and-file, the goals of the initiative would likely be better served by ongoing external oversight of the affected department. Periodic external checkups designed to promote independent post termination oversight, whether conducted by DOJ attorneys or a public agency similar to the one created by the State of New Jersey, would be a worthwhile investment. (Chanin, 2015, p. 185, citing Megerian, 2009;[1066] see also, Chanin, 2016, p. 111; Walker, 2018)

As such, a DOJ multi-disciplinary team approach should include police oversight professionals who can assess oversight programs, facilitate conversations within the community and assist in identifying the most appropriate form of oversight for that community, depending on its particular needs (DeAngelis, et. al., 2018).

9.6. Research Questions Answered

As mentioned in Chapter 1.1, this research project began with five research questions which formed the basis for my research collection efforts:

The first question asked: what are the potential and limitations of externally-imposed reform efforts on police departments in the United States? The Seattle experience turned out to be an excellent laboratory for evaluating the potential and limitations of Section 14141 reform efforts. It showed that there is, in fact, great potential for the DOJ to assist (and sometimes force) reform to ensure Constitutional policing on the local level. While the data suggest that it might have behooved the DOJ to use a lesser degree of force on the City of Seattle at the outset of the reform effort, it also made clear that there were times when a heavy hand was required to move along reform efforts. Even so, the limitations of externally-imposed reform efforts are many. The SPD (and the Seattle police unions) showed remarkable resilience in their ability to resist reform at various points of time and it is clear that a lack of pro-reform leadership (up and down the chain-of-comment) can constitute an impenetrable barrier to reform. The data also suggest that "consent decree fatique" can have a negative effect on reform

[1066] Chris Megerian (2009, August 27). Gov. Corzine signs racial profiling reforms into law. *NJ.com*. Retrieved 11/12/2020 from, http://www.nj.com/news/index.ssf/2009/08/gov_corzine_signs_racial_profi.html.

efforts over time and that a fundamental principle of economics, the “law of diminishing returns” can be readily applied to police reform efforts.[1067]

The next research question asked: are formal Consent Decrees and Settlement Agreements an effective tool for facilitating significant and sutainable reform in United States police departments? The Seattle experience suggests that these formal agreements, particularly when combined with a court-appointed monitor can be an effective tool in support of sustainable reform. Even though there were criticisms of the Monitor, with respect to his personal approach to the reform effort, his priorities, and the inherent conflict of interest associated with the significant renumeration received by the Monitor for his efforts, overall, the Monitoring reports and the work of the Monitoring Team overall clearly kept the process moving forward over time. The appointment of a new Monitor in 2020 likely provided for a fresh start as it relates to the continuing need for reform in the SPD’s accountability structures.

The third research question asked: to what extent has the Seattle Police Department has been able to achieve desirable reform outcomes as a result of the adoption of the federal Consent Decree, despite a police culture that did not reflect core reform values? The data suggest that desirable reform outcomes were achieved, even in the face of resistance from the command staff, many front-line supervisors and some members of the rank-and-file. Regardless, the culture of the Department (which can be amorphous and often difficult to identify) certainly threw impediments in the way of reform. In the case of Seattle, resistance from the union representing officers and Sergeants (SPOG) continues to this day. It remains to be seen to what extent the City will muster the political will to overcome this resistance while also remaining in compliance with Washington law relating to collective bargaining with public employees.

The fourth research question asked: does it appear that substantive, sustainable reform has been achieved as the result of the adoption of the federal Consent Decree between the City of Seattle, Washington and the United States Department of Justice and at what cost? As indicated above, it does appear that substantive, sustainable

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[1067] The law of diminishing returns states that there will be a diminishing effect where each input contributes less in proportion to the overall production output (See, Samuelson, Paul A.; Nordhaus, William D. (2001). Microeconomics (17th ed.). McGraw-Hill, p. 110. ISBN 0071180664).

reform has been achieved in Seattle, but as shown by the much-criticized response of the SPD to the 2020 police protests, the reforms are fragile and the need for a strong Mayor and a strong Chief, who are committed to the reform effort, is required to ensure sustainability in the long-term. As previously discussed, the cost of the reform effort has been substantial in terms of financial, reputational and emotional costs. At the same time, however, the costs of a department engaging in unconstitutional policing practices and providing policing services contrary to the expectations of its community, involve extraordinary costs that oftentimes cannot be quantified. As such, it is hard to suggest that the costs associated with the Seattle police reform effort were, in fact, overly excessive, even if some of the costs may not have been absolutely necessary.

Finally, the last research question asked: to what extent have the views of police stakeholders and the perceptions of community stakeholders changed over the course of the Seattle Consent decree? This question ended up being difficult to answer due to the wide-ranging personalities and agendas of the various participants. While overall, police stakeholders appeared to be initially resistive and mocking of the DOJ's findings and early reform efforts, there was a time when a critical mass of the SPD leadership accepted and endorsed the reform effort. However, as previously discussed, "consent decree fatigue" does appear to have set in and police stakeholders appear to be currently exhausted and frustrated by the SPD's inability to get out from under the federal court's supervision. On the community side, while community activists welcomed federal intervention at the start, many were frustrated by the DOJ's failure to positively find that the SPD had engaged in a pattern of biased policing. In addition, community activists were originally suspicious of the ability of the CPC to have an impact on the reform effort, but overtime became empowered and then subsequently became disenchanted with the City's (and sometimes the DOJ and Monitor's) reactions and responses to CPC initiatives. At the current time, there appears to be a "wait and see" attitude that has developed among police and community stakeholders with respect to the accountability issues that remain outstanding.

As discussed in Chapter 2.7, however, there are limitations to these findings. Although there was a wide variety of stakeholders who participated in this research project, there were additional stakeholders, mostly current City officials, who declined to participate given that the Consent Decree was still in effect at the time of the data collection. In addition, there were other stakeholders (particularly with respect to

currently serving elected and appointed officials) who may have been hesitatant to provide their honest appraisals of the process, given that it was still ongoing. Finally, my inability to publicly identify participants and their potential interests or biases when presenting their perceptions or points-of-view further limits the ability of the reader to objectively assess some of the conclusions I have reached.

9.7. Final Thoughts

By the end of the Obama administration, the DOJ had moved towards what could be most aptly described as Version 2.0 of the “Pattern or Practice” investigation program with a high level of attention being given to stakeholder engagement (on the part of the community and the police). And, in fact, the DOJ had already adopted a more holistic approach to all parts of the process, to include the conduct of their investigations, negotiations and even the implementation of reform. The recommendation here, however, is that under the incoming Biden administration, the DOJ move even more in the direction of holistic and multi-disciplinary approaches to police reform and implement a new “Version 3.0” of the §12601 program to support police reform efforts in a more systemic way throughout the country and in accord with public expectations as a result of the murder of George Floyd.

One of the most important lessons learned from Seattle is that litigation-based police reform strategies will invariably result in a high level of suspicion from both police and community members, who will be concerned with the resulting loss of local control over policing in their jurisdiction and the potential for their voices not to be heard by DOJ lawyers and an appointed federal judge and monitor. To the extent that the DOJ can move away from a litigation-based approach to police reform, by applying some of the solutions suggested herein, the ability of the federal government to engage local stakeholders in a sustainable reform effort should be enhanced.

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Appendix A.

Consent Decrees

- Pittsburgh Police Department (1997)
- Steubenville Police Department (1997)
- New Jersey State Police (1999)
- Los Angeles Police Department (2001),
- Detroit Police Department (2003),
- Prince George's County Police Department (2004),
- Virgin Islands Police Department (2009),
- Warren OH Police Department (2012),
- Seattle Police Department (2012),
- East Haven CT Police Department (2012),
- New Orleans Police Department (2013),
- Puerto Rico Police Department (2013),
- Portland Police Bureau (2014),
- Los Angeles County Sheriff's Department – Antelope Valley (2015),
- Albuquerque Police Department (2015),
- Cleveland Division of Police (2015)
- Maricopa County AZ Sheriff's Department (2015)
- Ferguson MO Police Department (2016)
- Newark Police Department (2016)
- Baltimore City Police Department (2017)

Appendix B.

Memorandum of Understandings & Agreements

- Montgomery County Police Department (2000)
- Highland Park Police Department (2001)
- District of Columbia Metropolitan Police Department (2001)
- Buffalo Police Department (2002)
- Cincinnati Police Department (2002)
- Columbus OH Police Department (2002)
- Mt Prospect IL Police Department (2003)
- Villa Rica GA Police Department (2003)
- Cleveland Division of Police (2004)
- Easton PA Police Department (2010)
- Orange County FL Sheriff's Department (2010)
- Beacon NY Police Department (2010)
- University of Montana Office of Public Safety (2013)
- Missoula MT Police Department (2013)
- Suffolk County NY Police Department (2014)
- City of Meridian, County of Lauderdale, MS (2015)
- Miami Police Department (2016)
- Alamance County NC Sheriff's Department (2016)
- Yonkers NY Police Department (2016)
- Ville Platte Police Department and Evangeline Parish Sheriff's Office, LA (2018)

Appendix C.

Participant Interview Protocol Questions

1) Please explain your involvement in the Seattle Consent Decree process.
2) How well or poorly do you believe the process played out? Did it change over time?
3) What do you think went well and why?
4) What do you think went poorly and why?
5) Do you believe the SPD was in need of reform at the time of the DOJ investigation?
    a) If so, do you believe the CD process was the most promising means to implement such reform?
    b) If so, how do you think the SPD ended up in a position to need reform?
    c) If not, what impact did the implementation of the CD have on the Department?
6) To what extent do you believe the process appropriately or inappropriately engaged community input and was such effort successful or unsuccessful?
7) Similarly, to what extent do you believe the process appropriately or inappropriately engaged police union and rank and file input and was such effort successful or unsuccessful?
8) Policy writing and implementation: To what extent do you believe “best practices” were followed?
    a) To what extent do you believe CD imposed policy changes have or will improve the SPD?
    b) Discuss any weaknesses you saw in policy writing/content and implementation.
9) To what extent did the leadership of the Police Department or the City have an impact on the success or challenges faced during the implementation of the Consent Decree?
10) To what extent did the existence or lack of resources impact the implementation of the Consent Decree?
11) To what extent did the culture of the SPD or the City of Seattle impact the implementation of the Consent Decree?
12) Do you believe the CD had an impact on the culture of the Department? If so, how?
13) What do you think were the most significant challenges faced?
14) Where there were successes – what do you think were the causes of those successes?

15) Do you believe that the changes implemented by the Consent Decree are sustainable?
    a) If not, why not?
    b) If yes, why do you believe that and what was done to ensure sustainability of the reforms?
    c) If not, what could be done (or needs to be done) to ensure sustainability of the reforms?
16) How would you evaluate the importance of the various stakeholders in achieving full compliance?
    a) The Monitor?
    b) Police Leadership?
    c) City Leadership?
    d) The DOJ?
    e) The Court?
    f) The Union/Rank & File?
    g) The Community?
17) What was the most significant success associated with the Consent Decree?
18) What was the most significant failure associated with the Consent Decree?
19) To what extent do you believe there were alternative ways to approach the Seattle reform effort either through less expensive or less intrusive means?
20) Are there any comments you would like to add?
21) Are there any other stakeholders that you believe it would be important to contact?
22) Are there any documents you believe should be reviewed to effectively evaluate the successes and/or failures of the Consent Decree Process?

Appendix D.

Research Project Review Nodes

Consent Decree Literature Review Nodes

- 14141 Legislation & Leg History
- 14141 References to Actual Litigation Against Lawsuit
- Alamance County Sheriff
- Albuquerque CD
- Alternative Reform Tools
- Amendments Proposed to 14141
- Arguments Against 14141
- Arguments For 14141
- Baltimore CD
- Best Practices
- Biased Policing – Racial Profiling
- Case Law
- Causes of Police Misconduct
- Challenges in Police Reform
- Chicago CD
- Cincinnati RAND Corp Study
- Cincinnati CD
- Citizen Complaints
- City & Police Leadership
- Civil Liability
- Cleveland CD
- Code of Silence
- COLE Issues
- Columbus CD
- Commission Reports
- Community Engagement – Outreach
- Community Policing Theory

- Community-Constituency Involvement in SRL
- Consequences of Police Misconduct
- Costs
- Criminal Prosecutions of Police
- Criticism of Application of 14141
- Data Issues
- DC Bromwich UOF Study
- DC Consent Decree
- Definitions – CD, MOU
- De-Policing
- Deterrence Theory
- Detroit CD
- DOJ collaboration with Police
- DOJ resource allocation
- DOJ statements
- Early Intervention System
- Evaluation Studies
- Evaluation Metrics
- Federal enforcement of civil rights and police reform
- Ferguson CD
- Future Research
- Hiring & Retention Issues
- History of Police Misconduct – Reform
- History of SRL
- History of Use of 14141
- History of 14141 investigations & CD's
- Implementation of 14141 & challenges
- Importance of Police Reform
- Judicial Reform Theory
- LA-Harvard Study
- LAPD – LASD
- Legal Issue re SRL
- Limits to SRL & 14141

- Solutions for Police Misconduct
- Special Litigation Section – Best Practices
- Steubenville CD
- Success Stories
- Survey Data
- Sustainability of Reform
- Systemic Nature of Police Misconduct
- Theory
- Training
- Trump Administration
- US police officer population – statistics
- Use of force policy & excessive force

Organizational Change Literature (Nodes)

- 14141 Legislation & Leg History
- 14141 References to Actual Litigation Against Lawsuit
- Amendments Proposed to 14141
- Arguments Against 14141
- Arguments For 14141
- Case law
- Causes of Police Misconduct
- Challenges in Police Reform
- Challenges to 14141 Implementation
- Citizen Complaints
- Civil Remedies
- Code of Silence
- COLE issues
- Columbus CD
- Commission Reports
- Community Confidence Surveys
- Community Involvement in SRL's
- Community Policing Theory

- Consequences of Police Misconduct
- Criminal Prosecutions of Police
- Criticism of Application of 14141
- Data Needs
- DC Consent Decree
- DOJ Resource Allocation
- DOJ Statements
- Federal enforcement of civil rights & police reform
- Future Research
- Hiring issues
- History of Police Corruption
- History of SRL
- Importance of Police Reform
- Judicial Reform Theory
- LAPD- LASD
- Legal Issues re: SRL
- Limits to SRL
- Los Angeles CD
- Negotiated Justice
- Organizational Change – Sustainable Change
- Organizational Justice
- Pittsburgh CD
- Police culture
- Police discipline
- Police Reform Theory
- Police Training Issues
- Police Unions
- Politics
- Predications as to success of SRL
- Risk Management
- Solutions for Police Misconduct
- Steubenville CD
- Success Stories

- Systemic Nature of Police Misconduct

Seattle Court Documents Referenced to Consent Decree (Nodes)

- City Leadership
- City Position on Findings
- City-SPD Cooperation & Collaboration
- Community Engagement
- Compliance Bureau
- Costs
- Court Comments
- Culture Change
- Deadlines
- De-Policing
- Discipline
- DOJ Comments
- FIT
- Full & Effective Compliance
- Garrity Issues
- In Car Video & BWC
- IT & Data Needs
- Monitoring Team Roles & Responsibilities
- MOU para 12-14 CPC Community Engagement
- MOU para 15 CPC Review of OPA - OPA Structure
- MOU para 16 OPA reduction of inv timelines
- MOU para 17-18 Public Education
- MOU para 19 Investigatory Stops & Data Collection
- MOU para 20 Officer Assistance & Support
- MOU para 21-22 Transparency & Public Reporting
- MOU para 23-25 Crisis Intervention Committee
- MOU para 3-10 CPC
- Para 100-106 UOF Reporting & Investigation

- Para 107-111 Type II Report Review by Chain of Command
- Para 112-118 FIT Investigations
- Para 119-125 UOF Committees
- Para 1-2 Structure of Agreements
- Para 127-129 UOF Training
- Para 130-137 Crisis Intervention
- Para 140-141 Stop & Detention Policy
- Para 142-143 Stop & Detention Training
- Para 144 Stop & Detention Supervision
- Para 146 Bias-Free Policing Policies
- Para 147-149 Bias Free Policing Training
- Para 150-152 Bias Free Policing Supervision
- Para 153-156 Supervision Generally
- Para 157-163 Early Intervention System
- Para 164 OPA
- Para 165-166 Reporting Misconduct & Retaliation
- Para 167 OPA Manual
- Para 168 OPA Liaison Officers
- Para 190 Annual Community Survey
- Para 3-12 CPC
- Para 69-73 UOF Policy – Principles
- Para 78 Firearm Policies
- Para 79-83 CED Policies
- Para 84-87 OC Spray Policies
- Para 88-90 Impact Weapon policies
- Para 91-99 Use of Force Reporting & Investigation
- Police Leadership
- Police Union – Rank & File
- Policy Work
- Surveys
- Sustainability of Reform
- Training
- Use of Force in Practice

Seattle News Articles (Nodes)

- 2017 Police Accountability Statute
- Chief Statements
- City Counselor Statements
- City Leadership Opinions
- Command Staff
- Community Police Commission
- Community Quotations
- Compliance
- Criticism of application of 14141
- Criticism of DOJ
- Criticism of Mayor
- Criticism of Monitor
- De-Policing
- History of SPD
- Mayor Statements
- Monitor Selection
- Police Morale
- Police Union
- Quotes – ACLU
- Quotes – Bailey Interim Chief
- Quotes-Best Chief
- Quotes – Bobb Monitor
- Quotes – Burgess, Council
- Quotes – City Council
- Quotes – Consejo Counseling
- Quotes – CPC
- Quotes – Daugaard – CPC
- Quotes – Diaz Chief
- Quotes – DOJ
- Quotes – Durkan
- Quotes – Harrell, Bruce – Council

- Quotes – Holmes, City Attorney
- Quotes – Levinson, Auditor
- Quotes – Licata – Council
- Quotes – Loren Miller Bar Association
- Quotes – McGinn, Mayor's Office
- Quotes – Monitor Reports
- Quotes – Monitoring Team
- Quotes – Murray, Ed, Mayor
- Quotes – NAACP
- Quotes – Narasaki, Diane CPC
- Quotes – Officers
- Quotes – Ortega, Estela CPC
- Quotes – O'Toole, Chief
- Quotes – Perez, Tom DOJ
- Quotes – Pugel Interim Chief
- Quotes – Robart, Judge
- Quotes – Seattle Human Rights Commission
- Quotes – SPD Command
- Quotes – SPOG
- Quotes – Walden, Rev. CPC
- Quotes – Walker, Sam Prof.
- Quotes – NAACP
- SPD Guild Contract
- SPD Police Discipline – Accountability Ordinance
- SPD Reports
- SPMA
- Survey Results
- Training Issues

National News Articles (Nodes)

- Academics Critical of 14141
- Academic Quotes for 14141

- Challenges to Police Reform
- City Official Quotes Against 14141
- City Official Quotes Supporting 14141
- Collaborative Reform
- Community Quotes Critical of 14141
- Community Quotes Supportive of 14141
- Costs
- Criticisms of application of 14141
- De-policing
- DOJ Quotations
- DOJ Resource Allocation
- History of Use of 14141
- Independent Monitors
- Legislative History of 14141
- Police Chief quotes supporting 14141
- Police Chief quotes opposing 14141
- Police Morale
- Police Union Statements
- Politics and statements of Politicians
- Success Stories
- Survey Results
- Sustainability of Police Reform

Evaluation Studies (Nodes)

- Challenges Faced
- City Opposition to DOJ
- Community Engagement
- Community Policing
- Costs
- De-Policing
- DOJ Statements
- EWS Implementation

- Factors for Success
- History of Use of 14141
- Impact of CD
- Leadership
- Legislative History
- Lessons Learned
- Literature Status
- Methodology
- Police Chief Involvement Perspective
- Police Culture
- Police Morale
- Reasons for Settlement by City
- Selection of Monitor
- Suggestions for Improvement
- Survey Results
- Sustainability of Reform
- Systemic Nature of Misconduct
- Theory
- Union Participation – Opposition

Seattle Participant Interviews (Nodes):

- Arguments Against CD
- Arguments for CD
- Challenges to CD implementation
- CIT
- City Attorney
- City Compliance
- City Council
- City Leadership
- Civilian Oversight
- Collaborative Reform
- Community Engagement

- COPS Programs
- Costs-Benefits
- CPC
- Criticism of DOJ
- Data Systems Issues
- De-policing
- DOJ Investigation
- Failures of CD
- Force Review
- Inspector General
- Judge Robart
- Mayoral Leadership
- Media
- Monitor – Bobb
- Monitoring Team
- Negotiated Justice
- Organizational Change
- Police Accountability
- Police Culture
- Police Leadership
- Police Misconduct – SPD
- Policy Change
- Politics
- Resistance to CD
- Successes of CD
- Suggestions for Improvement
- Sustainable Change
- Systemic Nature of Misconduct
- Training
- Trauma
- Unions – Rank & File
- Video Cameras

Appendix E.

Seattle City Archive Police Accountability Timeline (1995-2020)

Date	Event
1955-1966	Mayor's Advisory Committee on Police Practices meets and formulates recommendations.
November 16, 1964	ACLU files petition requesting police review panel because of allegations of police brutality.
January 22, 1965	City Council holds hearing regarding ACLU request for police review panel.
February 19, 1965	Second hearing regarding ACLU request.
February 20, 1965	Council committee votes not to recommend police review panel.
March 15, 1965	Full Council votes unanimously not to establish police review board.
June 20, 1965	Robert Reese (40) killed by an off-duty policeman in Seattle's International District as he was fleeing as a passenger in a car. His death was found to be an "excusable homicide."
August 25, 1965	Mayor Braman meets with the Central Area Youth Action Council (CAYAC) after they sat outside his for several days requesting a meeting. The mayor denied their requests for a trial for the police officers involved in Reese's death and for a police review board to be established.
November 30, 1966	Eddie Ray Lincoln (19) fatally shot while fleeing Seattle police.
January 1967	Freshman State Representative Edward Heavey introduces legislation in the House to establish a Police Commission in Seattle to oversee operations of the police force. It does not pass.
January 1967	Mayor Braman appoints a three-person committee to investigate reports of payoffs in SPD and recommend any needed changes in police procedures.
April 1967	The Urban League assessed race relations for the previous year at their annual meeting, stating "tensions in the community will continue to grow toward explosive proportions unless genuine progress is made to improve police-community relations and provide fair housing, employment and educational opportunities for the nonwhite citizens of the community."
August 14, 1967	Five members of WE of the Grass Roots Committee meet with Mayor Braman on August 14, 1967, to ask for an information center in the Central Area, upgrading of Garfield playground and a police review board.
1968	Central Area Mothers for Peace and Integration (CAMPI) is founded with 275 members.
February 15, 1968	Councilmember Sam Smith writes to Chief of Police Frank Ramon and Mayor Braman with a suggestion of creating Dialog Sessions which he stated would be "...to improve relationship [sic] with the Police Department of our City, Civil Rights Activists, Militants, Black Power Advocates and the General Community...[and] to open Communication Channels between the Police who serve in the Minority or Disadvantaged Area and representatives of the Groups mentioned above."

Date	Event
April 19, 1968	Seattle City Council passes legislation prohibiting discrimination in the sale, rental and financing of houses. The legislation was amended in 1975 to include prohibitions against discrimination based on sex, marital status, sexual orientation, and political ideology; and in 1979 to include age and parental status. In 1986, creed and disability were added as prohibitions on discrimination, and in 1999 gender identity was added. Seattle did not pass legislation regarding employment discrimination based on age, sex, race, creed, color or national origin until 1972.
June 1968	The International Association of Chiefs of Police completes its report on the Seattle Police Department after a six-month study.
July 1968	Police Liaison Committee is formed. Its purpose was to improve relations between the Police Department and area residents as well as receive complaints about police actions.
July 29, 1968	Protest rally at Garfield Playfield on behalf of the arrest of two Black Panther members in Seattle marked by fire bombs and tear gas.
July 30, 1968	About 30 people come to the police chief's office to protest police action in the Central District on the previous day, including use of tear gas.
January 14, 1969	Seattle Crime Prevention Advisory Commission is established.
June 19, 1969	Concerned Central Area Citizens meet with City officials at Mount Zion Baptist Church. They make ten demands, including an external review system that could handle complaints against the Police Department. The City was represented by Deputy Mayor Ed Devine, City Councilmembers Don Wright, Tim Hill, Phyllis Lamphere and Charles Carroll and three assistant police chiefs, including Tony Gustin.
1969	Seize the Time for Oppressed People (STOP) forms.
January 1970	The Seattle Police Officers Guild charges the Human Rights Commission with attempting to set itself up as a police review board.
February 17, 1970	Violence breaks out at a demonstration led by the Seattle Liberation Front at the Federal Courthouse in Seattle protesting citations against the "Chicago Seven" who were charged with conspiring to plan a riot during the August 1968 Democratic Party in Chicago.
May 5, 1970	A protest of the Vietnam War including over 6,000 University of Washington students march onto the freeway and head to the federal courthouse after four students were shot by National Guard troops at Kent State University.
May 15, 1970	Larry Ward (22) shot by police after fleeing Hardcastle Real Estate Co. (24th Ave and E Union) where he attempted to set off a bomb.
May 29, 1970 May	Silent Majority demonstration at Public Safety Building in support of Seattle police.
March 21, 1971	Leslie Allen Black (21) killed by police after he was stopped for a missing front license plate.
March 29, 1971	Black United Clergy for Action write Police Chief Tielsch about the shooting of Leslie Allen Black. "It appears that no crime was committed by Mr. Black. However, if there was a crime perpetrated, the punishment was far more extreme than the crime and the officers involved should not only be dismissed, but charges filed against them as well."
April 16, 1971	Louis Alton Jones (27) killed by police after he ran a stop sign.

Date	Event
April 20, 197	Demonstrators march from Garfield High School to the Municipal Building to occupy City Council chambers.
April 1971l	Seattle Human Rights Commission recommends City Council establish a Citizens Review Board; the Central Seattle Community Council writes in support of their recommendation.
1973	Seize the Time for Oppressed People (STOP) circulates a petition to establish a civilian review board to investigate complaints against police.
March 1974	Jon Bisha accuses an officer of beating him in the police garage and files a $100,000 damage suit against the City. The president of the Police Guild stated that the police backed the officer and that if he was disciplined, the officers were prepared to "walk out." The officer was fired, rehired on the recommendation of the Police Disciplinary Review Board, and then successfully defended himself against Bisha's allegations. The episode led indirectly to the departure of Police Chief Tielsch.
October 1974	Police Department policy changes to allow citizen observers on the Disciplinary Hearing Panel (later the Complaint Advisory Board).
February 15, 1975	Joseph L Hebert, Jr. (23) shot by police officer after being stopped for a suspected stolen car and fleeing on foot in the Central Area.
1975	Group "Justice for Joe" forms, represented by Larry Gossett.
August 12, 1975	John Newell Baker (25) shot and killed by the same officer who shot Joseph Hebert after robbing a Black Angus Restaurant on Aurora and 12th.
November 1975	Seize the Time for Oppressed People (STOP) requests creation of civilian police review unit and cessation of intelligence files on those who had not committed a crime.
November 1975	Chief Hanson appoints a committee to review police intelligence activities.
August 22, 1977	Manual Medina (26) shot and killed after he robbed a Rainier Valley Safeway store. He had been hiding in blackberry bushes for almost an hour after the robbery; he was shot at least twelve times.
August 30, 1977	Protests outside City Hall include Roberto Maestas and members of the ACLU and the Coalition to Stop Police Abuses.
September 25, 1977	Gary Krueger (29) shot and killed by police on Queen Anne Hill; holding a knife, he was questioned as a suspected prowler.
August 19, 1978	John Alfred Rodney (26) shot as he was fleeing over a fence from a burglary, unarmed.
November 1978	Initiative 15 passes, sponsored by the Seattle Police Officers Guild. Its passage overturned City Council policy regarding use of force.
July 19, 1981	William Jonathan Bensen (25) shot and killed on 3400 block of Beach Dr SW; he was armed with a gun and suffered from mental illness.
October 26, 1981	Martin William McCune (28) shot and killed by police at 2410 Third Avenue. McCune had a history of mental illness and was holding a knife, having wounded his mother with the knife hours earlier. An inquest jury ruled the shooting was justified.
January 1984	Allen LeRoy Raymond (40) shot and killed by police while robbing a Georgetown restaurant; he was armed.

Date	Event
March 28, 1984	Robert Baldwin (42) kills a King County officer who served him an eviction notice for being $110 overdue on his rent. After a 17-hour stand-off with the Seattle police, he is shot 21 times in the back at his Yesler Terrace housing project apartment.
January 5, 1985	Roland B. Clayton killed by a Seattle police officer after robbing mini-mart on Aurora in North Seattle.
February 2, 1988	William M. Tucker (44) shot and killed when an officer serving a search warrant at his Central Area house on 23rd Avenue tripped and his gun went off accidentally.
February 16, 1988	Johnny Lee McElroy (41) shot in the Wedgwood neighborhood after an attempted bank robbery. An inquest jury ruled the police acted properly and the King County prosecutor did not file charges against the officer.
February 17, 1988	Erdman Bascomb (41) shot during a drug raid on his apartment in Rainier Valley on 36th Ave South. He pointed a remote control at police after they opened his door with a battering ram. The inquest jury ruled in April that the police were justified.
July 10, 1988	Shawn Robert McDowell (29) shot at a grocery store at 15th Ave NE and NE 145th St after an attempted robbery. An inquest jury ruled the shooting was justified.
November 21, 1988	Lynn Brooks (34) shot in Ballard by a police officer issuing a traffic citation to the woman driving the vehicle in which he was a passenger. Brooks pulled a weapon after the vehicle was stopped. He died the next day.
1990	Mothers Against Police Harassment is formed by Rev. Harriett Walden.
March 28, 1991	After the beating of Rodney King in Los Angeles was videotaped and shown on national television, public focus on the police intensified. Over 250 people attended a hearing on police accountability. The mayor was reluctant to endorse any kind of civilian review.
1991	Puget Sound Coalition for Police Accountability is formed.
1991	Human Rights Commission study finds "a deep and disturbing lack of trust of the police," particularly among minority groups.
December 17, 1991	Internal Investigations Auditor position authorized with Ordinance 115975.
January 1992	Coalition to Demand Civil Justice forms.
January 25, 1992	400-person protest march against fascism, racism and sexism results in confrontation by police.
February 21, 1992	Two police officers stake out a frequently robbed mini-mart at 1701 E. Madison in the Central Area and shoot Anthony Miggale Lyons (24) when he attempted to rob the store. Lyons had a pistol which he pointed at the officers; each shot him once.
February 25, 1992	100 protesters at the Public Safety Building ask for an investigation into police actions at the January 25th protest march.
February 28, 1992	John Bernard McDonald (70) shot and killed by police at his Seattle Housing Authority apartment located at 4544 Seventh Ave NE after confronting police with a knife.

Date	Event
March 16, 1992	Terrence Carroll, a former King County Judge, is confirmed by City Council as Police Auditor to review the way Seattle police handle individual complaints of excessive force against officers. The Auditor had the authority to recommend further investigations.
March 20, 1992	75 people rally on the anniversary of the beating of Rodney King.
July 1992	ACLU urges creation of civilian review board for police conduct.
December 14, 1992	City Council approves (6-3) federal Weed and Seed program to finance law enforcement and social programs in Central Area.
April 22, 1995	Antonio Dunsmore (31) shot and killed at Garfield Community Center after police respond to calls about a man with threatening behavior; what police thought was a gun was a clear plastic squirt gun. Dunsmore had more than 19 bullets fired at him; his mother filed a wrongful death lawsuit in 1998 in the U.S. District Court in Seattle.
January 15, 1996	Edward Anderson shot by police responding to a domestic violence call.
October 1, 1996	Bodegard Mitchell (84) shot and killed by police after barricading himself in his South Seattle apartment. One of the police officers on the scene was later accused of stealing $10,000 from Mitchell's apartment.
February 3, 1997	Citizen Observer ordinance passes, allowing a Citizen Observer to observe and make recommendations regarding the Firearms Review Board.
December 29, 1998	Michael Ealy (35) dies while being restrained by Seattle police and paramedics.
April 1999	200 people attend a National Day of Protest Against Police Violence in Denny Park.
1999	Citizens Review Panel convened by Mayor Paul Schell to study SPD's policies and procedures relating to accountability and the reporting of police misconduct.
April 12, 2000	David John Walker (40) shot in lower Queen Anne after he shoplifted from a local supermarket and left with a gun and a knife. He had a history of mental illness. His family files a $5 million claim for damages with the City.
May 31, 2001	Aaron Roberts (36) stopped and killed by the police after he drove away from a traffic stop at 23rd Avenue and East Union Street in the Central District. The SPD Firearms Review Board and the internal review board found the shooting justified. The King County prosecutor did not pursue charges against the police officers.
June 1, 2001	Protesters march from 23rd Avenue and East Union to Westlake Center to protest Roberts' death.
August 14, 2001	Devon Jackson (20) killed by police after he fatally shot a friend in South Seattle and beat a 2-year-old boy to death.
November 28, 2001	Anthony James Shuster (23) shot and killed in Lake City after police responded to a call that he was attempting suicide with a knife.
2002	Office of Professional Accountability (OPA) is formed within the Police Department to receive and review complaints of misconduct by Seattle Police Department personnel.
2002	Three-member OPA Review Board is created to review quality of complaint-handling process and advise on policies and practices.
2007	OPA Review Board membership expands to seven; OPA Auditor role expanded.
2007	The Mayor and City Council each convene police accountability review panels.

Date	Event
January 29, 2008	Police Accountability Review Panel Final Report submitted.
July 7, 2008	City Council Police Accountability Panel Final Report submitted.
August 30, 2010	John T. Williams (50), Native American wood carver, shot four times by a police officer because he was carrying a penknife. The shooting was ruled "unjustified" by the Firearms Review Board. No charges were filed against the officer.
December 3, 2010	35 civil rights and community-based organizations request the Civil Rights Division of the U.S. Department of Justice (DOJ) and the U.S. Attorney to investigate whether SPD had engaged in a pattern or practice of violations of civil rights.
December 16, 2011	DOJ completes investigation finding a pattern and practice of excessive force and concerns about biased policing; based on its findings DOJ initiates a lawsuit against the City of Seattle.
July 27, 2012	City of Seattle enters settlement agreement or "consent decree" with DOJ that includes federal court oversight.
October 29, 2012	Community Police Commission is created.
February 21, 2016	Che Taylor (47) shot and killed in Wedgwood when Seattle police were conducting an undercover drug operation. A wrongful death lawsuit was filed.
June 1, 2017	New legislation passes overhauling Seattle's police accountability system. It implements a new Office of Inspector General for Public Safety and a permanent Community Police Commission.
June 18, 2017	Charleena Lyles (30) shot and killed by Seattle police at her transitional housing apartment in Sand Point after she called to report a burglary. She had a knife and suffered from mental health issues.
January 31, 2018	Iosia Falteogo (36) shot near Aurora and Northgate after a traffic stop. The police internal investigation section concluded that the officer involved acted reasonably and within training and policy.
May 7, 2020	City files motion to terminate all independent monitoring of compliance with the consent decree.
May 19, 2020	Terry J. Caver (57) shot by police at the intersection of West Harrison Street and Elliott Avenue West after 911 calls stated he was carrying a knife. Caver suffered from mental health issues.
May 29, 2020	Killing of George Floyd in Minneapolis triggers national movement for accountability and restructuring of police departments.
June 3, 2020	City withdraws motion to terminate independent monitoring of compliance with the consent decree.

Appendix F.

Seattle Police Reform Timeline

Date	Event	Reference/Author(s)
August 19, 1999	Citizens Review Panel Final Report	Johnson, C.; Durkan, J.; McKay, M.; Pasenelli, B (FBI).
January 29, 2008	Final Report of Police Accountability Review Panel	Chair, Judge Terrence Carroll; Boruchowitz, B.; Durkan, J.; Gonzalez, M.L.; Jayapal, P.; Locke, G.; Krebs, J.; McKay, M.; Rice, N.; Shaw, J.
January 1, 2010	Mayor McGinn and City Attorney Holmes take office	
December 3, 2010	ACLU Letter requesting federal investigation	Taylor, K. & 35 other signatories.
March 31, 2011	DOJ Announcement of "full-scale civil-rights investigation of the SPD.	USDOJ Civil Rights Division, USAO, Western District of Washington
November 23, 2011	DOJ Technical Assistance Letter regarding officer "Garrity" Protections	J. Smith, Chief, Special Litigation Section DOJ, J. Durkan, U.S. Attorney, Western District WA
December 16, 2011	DOJ Report: "Investigation of the Seattle Police Department"	USDOJ Civil Rights Division; USAO, Western District of Washington
July 27, 2012	Settlement Agreement & Memorandum of Understanding between City of Seattle and USDOJ	Signed by Thomas Perez, Assistant AG, Civil Rights Division; Jenny Durkan, US Attorney, Western District of Washington; Mayor Michael McGinn & City Attorney Peter Holmes
August 30, 2012	Court Order Provisionally Approving Consent Decree	Judge James Robart
September 21, 2012	Court Order Entering Preliminary Approval of Consent Decree	Judge James Robart
October 30, 2012	Independent Monitor appointed by the Court	Monitor: Merrick Bobb, Police Assessment Resource Center
December 2012	Analysis of DOJ investigation: "Police Use of Force in Seattle, January 2009-March 2011"	Professor Matthew Hickman, Seattle University
March 5, 2013	Monitoring Plan for the First Year	Seattle Monitoring Team
March 12, 2013	Court Hearing ("Federal Judge ok's blueprint). (Bobb present).	Court Video (1/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
March 18, 2013	Appointment and Confirmation of CPC by City Council	Seattle City Council (per Monitor's 1st Semi-annual Report, at 4).
April 8, 2013	Jim Pugel named as Interim Chief of SPD.	Appointed by Mayor Mike McGinn

Date	Event	Reference/Author(s)
April 26, 2013	First Semi-Annual Report	Seattle Police Monitor
August 20, 2013	CPC Letter requesting extension of time for Monitor to approve SPD use-of-force policy.	Betsy Graef, Acting Director
November 26, 2013	Court denies CPC motion to interview – CPC granted amicus curiae status	Judge James Robart
December 13, 2013	Second Semi-Annual Report	Seattle Police Monitor
December 17, 2013	Court approves SPD Use of Force policies	Judge James Robart
January 1, 2014	Term of Mayor Ed Murray begins	
January 8, 2014	Harry Bailey appointed as Interim Chief	
January 17, 2014	Court approves SPD policies on "Terry Stops" and Bias Free Policing	Judge James Robart
February 10, 2014	Court approves SPD Crisis Intervention Policy	Judge James Robart
March 24, 2014	Court approves Second Year Monitoring Plan	Seattle Police Monitor; Judge James Robart
May 28, 2014	Filing of Civil Rights Complaint by 126 Seattle Police Officers regarding proposed Seattle PD UOF policy.	126 Seattle Police Officers – Pro Se
June 10, 2014	Court approves Crisis Intervention Training & Instructional System Design Model for Use of Force Training	Judge James Robart
June 13, 2014	Court approves Force Investigation Team Training Curriculum	Judge James Robart
June 16, 2014	Third Semi-Annual Report	Seattle Police Monitor
June 23, 2014	Kathleen O'Toole confirmed as Chief of Police	Appointed by Mayor Ed Murray
June 30, 2014	Filing of Office of Professional Accountability Internal Operations & Training Manual & related SPD policies.	OPS
July 10, 2014	Court approves OPS Internal Operations & Training Manual; Court incorporates span-of-control milestones into Second Year Monitoring Plan.	City of Seattle; Judge James Robart
August 14, 2014	Court approves Use-of-Force Training Curriculum	Judge James Robart

Date	Event	Reference/Author(s)
August 19, 2014	Court Hearing (Judge "scolds" SPD) (Chief O'Toole attends; Bobb & Barge & Ehrlicman & Ward attend)	Court Video (2/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
September 21, 2014	Court approves Advanced Crisis Intervention Training Curriculum & Strategy	Judge James Robart
September 22, 2014	Court approves Instructional System Design Model for Search & Seizure and Bias-Free policing training	Judge James Robart
December 15, 2014	Fourth Semi-Annual Report	Seattle Police Monitor
February 10, 2015	Court approves SPD 2015 Training Program	SPD; Judge James Robart
March 19, 2015	Court approves Third Year Monitoring Plan	Seattle Police Monitor; Judge James Robart
April 15, 2015	Court approves SPD 2015 Tactical De-escalation & Individual Firearms Training	SPD; Judge James Robart
May 11, 2015	Court approves SPD revised Early Intervention System Policy	SPD; Judge James Robart
June 15, 2015	Fifth Semi-Annual Report	Seattle Police Monitor
June 4, 2015	Court approves revised Crisis Intervention Policy	SPD; Judge James Robart
June 11, 2015	Court approves revised Bias-Free policing policy & Voluntary Contacts Terry Stops and Detention policy	SPD; Judge James Robart
June 30, 2015	Court hearing (judge critical of CPC "attempt to grab power") (Bobb & Barge present) (O'Toole present + command staff).	Court Video (3/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
July 27, 2015	Court Order approving updated SPD Use-of-Force policies	SPD; Judge James Robart
August 26, 2015	Court hearing (Bobb and other MT members present).	Court Video (4/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
August 27, 2015	Scheduled Date for SPD to establish "Full & Effective Compliance"	Per SPD Monitor Timeline (as of 11/30/12)
September 24, 2015	First Systemic Assessment: Force Investigation & Reporting	Seattle Police Monitor
October 1, 2015	Court approves Updates to Third Year Monitoring Plan	Seattle Police Monitor; Judge James Robart
November 24, 2015	Second Systemic Assessment: Force Review Board	Seattle Police Monitor
December 15, 2015	Sixth Semi-Annual Report	Seattle Police Monitor

Date	Event	Reference/Author(s)
January 20, 2016	Court Order Seeking Input into proposed revisions to OPS Policy Manual	Judge James Robart
January 22, 2016	Fourth Systemic Assessment: Office of Professional Accountability (OPA)	Seattle Police Monitor
January 27, 2016	Third Systemic Assessment: Community Confidence	Seattle Police Monitor
January 2016	CPC Report: "An Assessment of the Seattle Police Department's Community Engagement"	Community Police Commission (CPC)
February 16, 2016	Fifth Systemic Assessment: Crisis Intervention	Seattle Police Monitor
February 25, 2016	Court Order approving Plan for Assessment of SPD Accountability Processes	Judge James Robart
March 16, 2016	Order approving Revisions to OPS Manual "With One Exception"	Judge James Robart
June 6, 2016	Minute Order Scheduling Status Conference Re: SPD Accountability Systems Review	Judge James Robart
July 14, 2016	Court Order approving Fourth Year Monitoring Plan	Seattle Police Monitor; Judge James Robart
July 21, 2016	SPOG reported as "overwhelmingly" rejecting proposed police contract.	Seattle Times, 7/21/2016.
August 9, 2016	Court Order Authorizing City to Draft Legislation concerning SPD's Accountability Systems	Judge James Robart
August 15, 2016	Court Hearing (Comments re: SPOG "holding city hostage") (Bobb present – per Judge: "part of the court team")	Court Video (5/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
September 26, 2016	Compliance Status & Seventh Semi-Annual Report	Seattle Police Monitor
October 20, 2016	Unfair Labor Practice Complaint filed by Seattle Police Management Association (SPMA) alleging Police Accountability reforms in violation of contract	Seattle Police Management Association (SPMA)
December 13, 2016	Court order approving SPD Force Investigation Unit Procedural Manual	SPD FIT; Judge James Robart
December 31, 2016	Sixth Systemic Assessment - Supervision	Seattle Police Monitor
January 3, 2017	Court approves 2017 SPD Training Plan	Judge James Robart

Date	Event	Reference/Author(s)
January 4, 2017	Status Conference Re: SPMA Unfair Labor Practice Complaint (Bobb not present)	Court Video (6/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
January 6, 2017	Court Order Regarding Accountability Legislation	Judge James Robart
January 27, 2017	Seventh Systemic Assessment: Type II Force Investigation & Review Re-Assessment.	Seattle Police Monitor
February 7, 2017	Court order approving SPD Crowd Management Policy	Judge James Robart
March 23, 2017	Eighth Systemic Assessment: Early Intervention System (EIS)	Seattle Police Monitor
March 24, 2017	Declaration of Chief of Police in Support of SPD Body-Worn Camera Policy	Chief Kathleen O'Toole
April 6, 2017	Ninth Systemic Assessment: Use of Force	Seattle Police Monitor
May 3, 2017	Court Order approving SPD Draft Body Worn Video Policy	SPD; Judge James Robart
May 21, 2017	City Council approves Police Accountability Ordinance	Seattle City Council
June 18, 2017	Tenth Systemic Assessment: Stops, Search, & Seizure	Seattle Police Monitor
June 23, 2017	Court Order Directing Briefing and Scheduling a Status Conference Regarding Court Review of Accountability Ordinance	Judge James Robart
July 17, 2017	Seattle Executive Order 2017-03: Implementing Body-Worn Camera Program	Mayor Ed Murray
July 18, 2017	Court Hearing (Judge declines to approve PA legislation) (Bobb not present)	Court Video (7/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
August 1, 2017	Memorandum to Chief of Police: "Analysis re: 'Full & Effective' Compliance with the Consent Decree	Rebecca Boatright, Chief Legal Officer, SPD Brian Maxey, Chief Operating Officer, SPD
September 7, 2017	Court Order Approving Portions of Accountability Ordinance	Judge James Robart
September 12, 2017	Mayor Ed Murray Resigns	By City Council
September 13, 2017	Burce Harrell appointed Interim Mayor	By City Council
September 18, 2017	Tim Burgess appointed Interim Mayor	By City Council after resignation of Bruce Harrell
November 28, 2017	Term of Mayor Jenny Durkan begins	

Date	Event	Reference/Author(s)
December 31, 2017	Chief O'Toole resigns	
January 1, 2018	Carmen Best appointed as Interim Chief	
January 10, 2018	Order Finding Initial Compliance with Consent Decree	US District Judge James Robart
March 13, 2018	Court Order Approving Phase II Sustainment Period Plan	Seattle Police Monitor; Judge James Robart
June 18, 2018	Court approval of Revisions to SPD Bias-Free Policing & Crisis Intervention Policies	SPD; Judge James Robart
July 9, 2018	Court Hearing (Mayor Durkan appears/Bobb present)	Court Video (8/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
August 13, 2018	Carmen Best confirmed as SPD Chief	Appointed by Mayor Durkan
August 14, 2018	Court approval of SPD Revisions to Use-of-Force Policy	SPD; Judge James Robart
October 23, 2018 October 26, 2018	Orders Scheduling a Status Conference regarding Police Union (SPOG) Contract	Judge James Robart
November 5, 2018	Court Hearing (Police Union contract) (Bobb appears)	Court Video (9/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
November 19, 2018	Court Order approving revisions to SPD Voluntary Contacts, Terry Stops and Voluntary Detention policies	SPD; Judge James Robart
December 3, 2018	Order to Show Cause Whether the Court Should Find that the City has Failed to Maintain Full and Effective Compliance with the Consent Decree	US District Judge James Robart
December 12, 2018	Order approving revisions to SPD Use-of-Force policy	US District Judge James Robart
December 17, 2018	Order approving revisions to SPD Early Intervention System policy	SPD; Judge James Robart
January 2, 2019	Order Holding Case in Abeyance and Modifying Deadlines Until USDOJ Appropriations are Restored	USDOJ; Judge James Robart
January 29, 2019	Order Lifting Stay and Extending Deadlines	Judge James Robart
April 19, 2019	Order Scheduling Status Conference Re: OSC	Judge James Robart

Date	Event	Reference/Author(s)
May 15, 2019	Court Hearing – Court finds City Partially Out of Compliance (Bobb not present)	Court Video (10/10) https://www.uscourts.gov/cameras-courts/united-states-america-v-city-seattle
May 21, 2019	Order Finding City of Seattle Partially Out of Compliance with the Consent Decree; Order to Parties to Formulate a Methodology for Assessing Accountability Regime to Achieve Consent Decree Compliance	US District Judge James Robart
May 23, 2019	Court Order approving revisions to SPD Crisis Intervention, Bias-Free Policing & Employee Conduct Policies	SPD; Judge James Robart
July 2019	City retains 21CP Consultants to review Accountability Systems	Seattle Mayor's Office
August 16, 2019	Court Order approving revisions to SPD Use-of-Force policy.	Judge James Robart
October 15, 2019	Order Regarding City's Motion to Approve its Accountability Methodology [including order to parties to submit joint proposal regarding Monitor's role in assessing compliance on Accountability]	Judge James Robart
November 15, 2019	Order approving revisions to SPD Voluntary Contacts, Terry Stops and Detention policies	SPD; Judge James Robart
December 13, 2019	"An Assessment of the City of Seattle's Police Accountability System"	21CP Consultants
January 21, 2020	Court Order approving revisions to SPD Early Intervention System policy	SPD; Judge James Robart
May 7, 2020	Parties Stipulated Joint Motion to Terminate Paragraphs 68-168 of the Consent Decree	DOJ; City of Seattle
May 11, 2020	NAACP Opposition Declaration to Motion to Dismiss Consent Decree	NAACP King County President Carolyn Riley-Payne
May 25, 2020	Murder of George Floyd by Minneapolis Police Department officers	
May 29, 2020	Seattle Police Accountability Protests Begin	Bush, E. (2020, June 6). Timeline of demonstrations over the police killing of George Floyd. *Seattle Times.*

Date	Event	Reference/Author(s)
June 1, 2020	OPA announces processing of "12,000 individual complaints concerning the Seattle Police Department's (SPD) response to this weekend's demonstrations" and identifying 10 specific incidents "which received the most complaints."	Office of Professional Accountability Press Release (6/1/2020).
June 4, 2020	Motion to Withdrawal City of Seattle's Pending Motion to Dismiss Consent Decree	City of Seattle
June 4, 2020	King County Labor Council Motion on SPOG to acknowledge systemic racism in SPD and negotiate police accountability.	King County Labor Council
June 9, 2020	Motion by CPC for Order to Show Cause why City should not be found "further out of compliance" with Consent Decree	CPC
August 31, 2020	Monitor Bobb Resigns	Merrick Bobb
September 2, 2020	Chief Best retires.	*Crosscut.com*, 8/10/2020.
September 3, 2020	SPD Deputy Chief Adrian Diaz takes office as Interim Chief	*Seattle Times*, 8/11/2020.[1068]
September 9, 2020	New Monitor appointed	Dr. Antonio M. Oftelie
September 21, 2020	Monitor Report on Crowd Control	Merrick Bobb
December 7, 2020	Mayor Durkan announces she will not run for re-election.	*Seattle Times,* 12/20/2020
February 4, 2021	First Status Conference since appointment of New Monitor, Dr. Antonio Oftelie & Hearing on 2021 Monitoring Plan.	Dr. Antonio M. Oftelie ; United States of America v. City of Seattle | United States Courts (uscourts.gov)

[1068] Derrick, A. (2020, August 11). Chief of Police Carmen Best Announces her Decision to Retire, Mayor Durkan Appoints Adrian Diaz as Chief of Police. Seattle Times. Retrieved from Chief of Police Carmen Best Announces Her Decision to Retire, Mayor Durkan Appoints Adrian Diaz as Interim Chief - Office of the Mayor (seattle.gov).