TWENTY YEARS OF DOJ "PATTERN OR PRACTICE" INVESTIGATIONS OF LOCAL POLICE: ACHIEVEMENTS, LIMITATIONS, AND QUESTIONS

Samuel Walker

University of Nebraska at Omaha

February 2017

I. INTRODUCTION

The advent of the Trump administration, in the view of many observers, probably spells the end of the Justice Department's "pattern or practice" program of investigating local law enforcement agencies for alleged violations of the constitutional rights of local residents. Both President Donald Trump and the new Attorney General Jeff Sessions have spoken critically of the program, and also of the widespread public criticisms of police abuse since the tragic events in Ferguson, Missouri, in August 2014.[1]

The end of the pattern or practice program is an appropriate occasion for an assessment of the work of the Special Litigation Section of the Civil Rights Division. The Civil Rights Division in January 2017 issued its own report on its efforts since 1994.[2] The program was an unprecedented event in the history of American policing. Never before has the federal government intervened in local policing to the extent

[1]Joe Domanick, "Cops, Trump, and the Threat to Police Reform," *The Crime Report* (November 21, 2016). http://thecrimereport.org/2016/11/21/cops-trump-and-the-threat-to-police-reform/.

[2] U.S. Department of Justice, Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present* (Washington, DC: Department of Justice, January 2017). https://www.justice.gov/crt/file/922421/download. The legislative history of Section 14141 of the 1994 Violent Crime Control Act is discussed in Stephen Rushin, "Federal Enforcement of Police Reform," *Fordham Law Review* (2014), pp. 3207-3215.

the pattern and practice program has. And never has it required such extensive reforms in matters of routine policing for the purpose of reducing if not ending officer misconduct and racial and ethnic bias.

A number of questions about the DOJ pattern or practice program have already been raised in the media[3] and by academic studies. Has the program effectively reduced police misconduct? Has it done so in a cost-effective manner? Are the specific reforms chosen by the Special Litigation Section the best means of achieving systemic police reform? Has the program had stimulated reforms in other departments by posing a threat of investigation if they fail to institute necessary reforms? Have the reforms been sustained once a consent decree is ended? Has the program intruded in matters that are best left to local authorities? Are there alternative means of achieving systemic police reform in seriously troubled law enforcement agencies? (The Justice Department has answered this question, in part, by creating within the Office of Community Oriented Policing Services, the Collaborative Reform process, which involves a voluntary and non- litigation approach to police reform.)[4]

We have at best only partial answers to some of these questions, and some of the questions have not been addressed at all. Additionally, many of the discussions that have occurred have framed particular issues in narrow terms, failing to take into account the full context of the issue under discussion.[5]

This paper undertakes a broad assessment of the Justice Department's "pattern or practice" program. It identifies the major achievements of the program and its limitations, and discusses the

[3] Kimbriell Kelly, Sarah Childress and Steven Rich, "Forced Reforms, Mixed Results," *Washington Post*, November 13, 2015, http://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results/. Shalia Dewan and Richard Oppel, Jr., "Efforts to Curb Police Abuses Have Mixed Record, and Uncertain Future," *New York Times*, January 14, 2017.

[4] Department of Justice, Office of Community Oriented Policing Services, "Technical Assistance" at https://cops.usdoj.gov/technicalassistance.

[5] Any serious effort to address the overall impact of the DOJ program needs to examine Malcolm M. Feelev and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* (Cambridge, UK: Cambridge University Press, 1998).

major questions that need to be addressed by scholars, police officials, news media, and policy makers. The paper argues that the program has made a significant contribution to the achievement of professional, bias-free and constitutional policing. Particularly important, the program has illuminated several important aspects of the challenge of systemic organizational reform in policing, involving issues that are relevant to all public bureaucracies. At the same time, the program has had some significant limitations. There has been some backsliding in some departments. Most important, the question of whether the reforms in question are sustained over the long term remains unanswered at this time.

II. THE PATTERN OR PRACTICE PROGRAM

The January 2017 report by the Civil Rights Division describes the pattern or practice program from its inception in 1994 through early January 2017 (but before the announcement of the Baltimore consent decree and the Chicago findings letter).[6] There is no need to review the details about the program here.[7] One point needs clarification, however. The Civil Rights Division report cites 40 investigations that resulted in "settlements."[8] Over the years, the terminology for the results of investigations has included consent decrees, memorandum of agreement, settlements, and technical assistance letters. This paper covers only those settlements that involved *a judicially enforced court order*.

III. THE ISSUES

A. Court-ordered Settlements Generally Successful

[6] Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present.*
[7] Stephen D. Rushin and Griffin Edwards, "De-Policing," *Cornell Law Review* 102 (forthcoming 2017), p. 31 See also Rushin, "Federal Enforcement of Police Reform." *Fordham Law Review* 82 (2014).
[8] Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present,* p. 3.

It is the judgment of this author that, 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.[9] "Troubled" in this paper is defined as a law enforcement agency that appears incapable of addressing major abuses and reforming itself.[10]

Several sources of evidence support the conclusion regarding the general success of court-enforced reforms. First, consent decrees (for convenience, this term will be used here as a convenient short-hand for all court-enforced settlements) are ended when the court-appointed monitor reports to the district court that the agency has complied with the terms of the decree. Some of the final monitor's reports have been quite laudatory. The final report of the monitor for the Washington, D.C. Metropolitan Police Department, for example, concluded that the department "has substantially transformed itself for the better since the late 1990s."[11] The monitors' conclusions, however, do not take into account any backsliding that might have occurred after the consent decree was lifted. The important issue of the sustainability of court-ordered DOJ reforms is discussed later in this paper.

The best post-consent decree assessment of a department is a 2016 report on the Washington, DC, police department, completed seven years after the decree was lifted (and was authorized as part of the lifting of the consent decree). While acknowledging that the assessment did not cover all aspects of

[9] The settlement in Oakland, arising from a private law suit, represents a special case. The police department has not achieved compliance after thirteen years. There is no independent assessment of this failure however. *Allen v. City of Oakland* (2003). http://www2.oaklandnet.com/oakca1/groups/police/documents/agenda/oak060142.pdf.
[10] The conclusion in this paper was originally reached in Samuel Walker and Morgan Macdonald, "An Alternative Remedy for Police Misconduct: A Model State Pattern or Practice Statute," *George Mason University Civil Rights Law Review* 19 (Summer 2009): 479-552.
[11] Michael Bromwich, *Twenty-Third Quarterly Report of the Independent Monitor* (2008), p.4. http://www.policemonitor.org/080131report.pdf.

the required reforms, the report found "much that is positive," including a continuing commitment on the part of top management and reductions in the "use of the most serious types of force, including firearms." Nonetheless, some "significant shortcomings" remained. Some changes in use of force reporting system inhibited effective management of uses of force and created problems in resolving the investigation of fatal shootings by officers. The department's early intervention system, described as "a star-crossed project," remained a serious problem.[12]

An evaluation of the Los Angeles Police Department's consent decree experience by a team from Harvard University reached a very positive conclusion.[13] It found the department "much changed" since before the consent decree, with both the "quality and the quantity of [law] enforcement activity hav[ing] risen substantially. Stops of citizens and arrests had risen and serious crime had fallen. Twice as many local residents saw improvement in department practices as saw deterioration. Although officers complained about the burden of the new reporting requirements, and there was talk of "de-policing" (see the discussion below), the data on officer enforcement activities did not support these stories.

Notably, the evaluation of the LAPD found significant improvements in race relations, one of the longest-standing problems with the department. In a survey of public opinion "the vast majority of residents in every racial and ethnic group" were hopeful that LAPD enforcement practices would in the next three years continue to "respect[ing] their rights and comply[ing] with the law." Not surprisingly, however, teenagers and young adults in focus groups were less positive than older participants. Particularly surprising, over half of detainees (39 of 71) interviewed within three hours after their arrest

[12] The Bromwich Group, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force: 2008-2015* (Washington, DC: Office of the District of Columbia Auditor, January 26, 2016). http://www.dcauditor.org/sites/default/files/Full%20Report_2.pdf.

[13] Christopher Stone, Todd Fogleson and Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD* (Cambridge: Harvard University, 2009), "Executive Summary," pp. i-ii. https://www.hks.harvard.edu/content/download/67474/1242706/version/1/file/Harvard_LAPD_Report.pdf.

said the LAPD was doing a "good" or "excellent" job.[14] Presumptively, persons just arrested would be the group most critical of police conduct.

Rushin undertook a detailed assessment of the impact of the consent decree in Los Angeles and concluded that the overall result was "encouraging." The LAPD improved with respect to "the constitutionality of its police force" without any comprises on its efficiency or effectiveness related to crime control.[15]

Chanin examined three police departments that experienced a consent decree (Pittsburgh, Washington, DC, Cincinnati). He found evidence of the successful impact of the consent decrees during the time of court oversight in all three cases, followed by subsequent backsliding in two. In Pittsburgh, a series of political changes, combined with a budget crisis, caused standards of officer accountability to "erode[d] substantially." Washington, DC, offered a complex pattern of trends, with uses of force following a "volatile" pattern, while civil litigation payouts declined and stayed low. In Cincinnati, there was "little or no backsliding" six years after the end of the consent decree.[16]

We also have the testimony of several chiefs and former chiefs about their experience with consent decrees. Charles Ramsey, former Chief of Police in Washington, DC, during its MOA experience stated that "The end result was very positive. Shootings dropped by 80 percent and have remained low. And it gave us credibility with the public." Tom Streicher, chief of the Cincinnati police department during its consent decree experience, explained that "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

[14] *Ibid.*, pp. 45-46 (Figure 32), 48-49.
[15] Stephen Rushin, "Competing Case Studies of Structured Reform Litigation in American Police Departments," *Ohio State Journal of Criminal Law* 14 (2016), pp. 116-136 (analysis of LAPD reforms), 140 (quotes cited here).
[16] Joshua M. Chanin, "Examining the Sustainability of Pattern or Practice Police Misconduct Reform," *Police Quarterly* 18 (2015), pp. 170-179 (Pittsburgh); 175-179 (Washington, DC); 179-182 (Cincinnati).

sued the Police Department. That is a tremendous savings." To be sure, these are anecdotal observations, but as police chiefs with consent decree experience they are voices to be reckoned with.[17]

At this point in time, however, we do not have a standard for assessing the long-term outcomes of consent decrees. Since it is unreasonable to assume that no backsliding occurs over time, the question becomes, how much backsliding is acceptable. Given the challenges of transforming a large public bureaucracy (discussed later), is it reasonable to call a consent decree experience a "success" if a department is "better" than it was beforehand (and, of course, how do we define "better)? This and related questions the success of consent decrees need more research and discussion.

B. CONSTITUTIONAL STANDARDS FOR POLICING AND A DEFINED SET OF "BEST PRACTICES"

Arguably, the most important contribution of the DOJ pattern or practice program has been the introduction of constitutional policing with respect to the full range of police activities. Feeley and Rubin identified the introduction of constitutional standards into prisons as one of the major contributions of prisoners' rights litigation.[18] To be sure, Supreme Court decisions have always done this, with respect to search and seizures, in-custody interrogations, and many other police activities. The crucial difference, however, is that while court decisions apply to particular police activities, the DOJ program seeks to transform entire police organizations and make constitutional policing an overarching principle.

To achieve constitutional policing, the DOJ program has made a major contribution to police reform by defining a set of "best practices" in police accountability. Several key elements appear in

---

[17] Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned* (Washington, DC: Police Executive Research Forum, 2013), pp. 34-35. http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

[18] Feeley and Rubin, *Judicial Policy Making and the Modern State*, p. 366 ("The first and most obvious [contribution] was the extension of well-recognized constitutional rights to prisoners . . . .").

virtually all consent decrees. They include: (1) a state of the art use of force policy; (2) the requirements that officers file complete and accurate reports about each use of force, and that their supervisors critically review those reports; (3) an early intervention system designed to track office performance for the purpose of identifying officers who are engaged in repeated instances of problematic performance; (4) a citizen complaint process that is open and accessible to potential complainants.[19]

These key elements are now widely recognized as the minimum requirements if a police department is to achieve professional and constitutional policing. Prior to the first DOJ consent decree (Pittsburgh, 1997) there was, to the best of this author's knowledge, no equivalent set of accountability-related best practices.[20]

A Comment on Patterns of "Worst Practices"

In addition to identifying and advancing a set of "best practices," one of the great contributions of the pattern or practice program has been the fine-grained evidence in its findings letters regarding what might be called the "worst practices" in policing. The findings letters provide invaluable detail about the specific police practices that constitute unprofessional and unconstitutional policing. To the best of this author's knowledge, there is no equivalent body of information in social science research on policing (although it can be found in a few investigations, such as the 1991 Christopher Commission report on the Los Angeles Police Department.[21]

In brief, the most important of these "worst practices" include: the nature and underlying causes of officer use of excessive force (these practices include but are not limited to use of force

[19] This point is argued in Walker and Macdonald, "An Alternative Remedy for Police Misconduct." See also Samuel Walker and Carol Archbold*, The New World of Police Accountability*, 2nd ed. (Thousand Oaks CA: Sage, 2014), pp. 21-26.

[20] Feeley and Rubin, *Judicial Policy Making and the Modern State*, p 368 found that "Prison litigation enhanced and accelerated the process of professionalization" in American corrections.

[21] Christopher Commission, *Report of the Independent Commission on the Los Angeles Police Department* (Los Angeles: Christopher Commission, 1991).

against persons who pose no threat; striking individuals with weapons, flashlights, or other objects; reckless officer behavior that creates situations where force is necessary); the failure of officers to complete use of force reports and/or the failure to complete reports that accurately reflect the details of the incident; the failure of supervisors to critically review officer use of force reports; and the failure of departments to systematically collect and analyze patterns of improper uses of force and to take corrective action.

Consistently, the DOJ findings letters identify the underlying causes of these improper actions as management failures and not individual officers (see the discussion in the next section). This is a major contribution to our understanding of day-to-day unprofessional and unconstitutional policing.

C. A NEW MODEL FOR SYSTEMIC POLICE REFORM

The DOJ pattern or practice program also made a significant contribution to policing by consolidating a line of thinking about police reform that had been emerging among police experts. The new view is that meaningful police reform requires *institutional change*.[22] We are now long past the old view that police misconduct is the result of a few "bad apples" (although that view does persist in certain circles). We are also long past the view that a single reform measure (e.g., a major Supreme Court decision or a new department policy on, for example, stops and frisks) will effectively transform a police department and set it *as an organization* on the path to professional and constitutional policing.

[22] Civil Rights Division, *The Civil Rights Division's Pattern and Practice Reform Work*, pp. 1, 2. Michael J. Gennaco, et al., *First Report* (Los Angeles: Los Angeles County Office of Independent Review, 2002), p. 32. (The OIR in the Los Angeles Sheriffs' Department has since been abolished. The OIR Group continues police accountability work as a private consulting organization. http://www.oirgroup.com/. Walker and Archbold, *The New World of Police Accountability*, pp. 21-22.

D. THE CHALLENGE OF COMPREHENSIVE CHANGE IN A LAW ENFORCEMENT AGENCY

Committed to institutional reform, the DOJ pattern or practice program encountered the challenge of effecting comprehensive change in entire police departments. This is an extremely daunting challenge, and it is one not unique to the police. Similar challenges arise in efforts to transform both large public bureaucracies and private corporations. The study of institutional reform in policing undoubtedly has much to learn from the prisoners' rights movement that challenged existing institutional practices beginning in the 1970s.[23] Efforts to transform public school systems probably offer similar insights. The challenge of transforming private corporations has been the subject of a vast body of literature since the 1980s, and there may well be valuable lessons to be learned from that experience.

In one respect, there is a conundrum built into the DOJ effort to effect comprehensive change in police departments. Many of the required reforms are extremely complex administrative procedures: data collection on all uses of force; systematic analysis of use of force patterns; an early intervention system. Yet, by definition in many if not most of the cases, the department in question is poorly managed, lacking the necessary technological infrastructure, and perhaps most important lacking an accountability mindset that understands how and why the required reforms are to be used. There has been insufficient discussion of the challenge of asking a large public bureaucracy to undertake changes it does not understand and lacks the technical capacity to carry out.

In response to this challenge, the Special Litigation Section adjusted certain parts of its settlement agreements. These changes are discussed below in the section on the DOJ's "learning curve." Police experts and policy makers should devote more attention to the challenge of institutional reform

[23] Feelev and Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons.*

in order to gain a broader perspective on the issue and to identify relevant lessons for future police reform.

Observations on Reporting Requirements, the Rank and File, and the Police Culture

Another valuable and as yet unrecognized contribution of the DOJ pattern or practice programs involves the insight it provides regarding the much discussed issue of the police culture. Comprehensive change in a police department involves changing the internal culture of that organization. There is much discussion of the police culture, but there is a lack of substantial research on the subject, particularly with respect to how it might be changed. The DOJ findings letters, however, offer useful insights into this issue.

Particularly useful are the complaints of rank and file officers, reported in the evaluations of consent decrees in Pittsburgh and Los Angeles. Officers in those departments complained about what they regarded as the "burdensome" "paperwork" (which in modern departments is largely electronic work), particularly use of force reporting requirements. Sergeants in Pittsburgh, meanwhile, complained about how the new requirements took them off the street and away from what they saw as their "important" duties.[24] Los Angeles officers in focus groups "commonly said they sometimes avoid contact with citizens and 'look the other way'." But as noted earlier, the data on enforcement activities did not support these assertions.[25]

[24] Robert C. Davis, Nicole J. Henderson and Christopher Ortiz, *Can Federal Intervention Bring Lasting Improvement in Local Policing? The Pittsburgh Consent Decree, Executive Summary* (New York: Vera Institute, (2005) available at http://www.vera.org/sites/default/files/resources/downloads/277_530.pdf. Summary. See also Robert C. Davis, Christopher Ortiz, Nicole J. Henderson, and Michelle K. Massie, *Turning Necessity into Virtue: Pittsburgh's Experience with a Federal Consent Decree (*New York: Vera Institute (2002), p.11, available at http://www.vera.org/publication/pdf_180_326.pdf.

[25] Stone, et al., *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, p. 19.

The allegedly burdensome reporting and supervision requirements are in fact the heart and soul of a system of police accountability. As noted earlier, the various DOJ findings letters have found inadequate reporting of force incidents and the failure of sergeants to critically review force reports. These practices represent the traditional police culture, which involves a systemic lack of officer accountability. The new requirements force officers to make a major change in their routine work habits (completing the "paperwork") on one of the most important aspects of police work, use of force. Combined with the new requirement that sergeants critically review force reports, officers for the first time in their careers are expected to account fully for their conduct.

We should see the transformation described above as a fundamental shift in the police culture, defined here as the accepted work norms of the job. The "burdensome" reporting requirements that officers complain about represent the essential features of a new police culture committed to accountability. Police reformers wrestle with the problem of how to change the traditional police culture. This paper argues that the reporting and review requirements go to "the heart of the matter," and force changes that have ramifications throughout a police organization and in particular with regard to the work norms of routine policing.[26]

A Brief Word on "De-Policing"

Rank and fil officer complaints that reporting requirements take time away from crime-fighting is related in part to the controversy over "de-policing." The de-policing argument is two-fold: first, that officers no longer have time for crime-fighting responsibilities; second, that close scrutiny of their enforcement actions and fear of discipline cause them to reduce their self-initiated crime-fighting activities. (De-policing is not to be confused with the so-called "Ferguson Effect," which holds that

[26] Samuel Walker, " 'The Heart of the Matter,' Officer Use of Force Reports as the Core of Police Accountability." Presentation, University of California at Irvine Law School, October 7, 2016.

officers reduce enforcement activities because of intense *public* scrutiny of their conduct [e.g., video recordings, protests].)[27]

The de-policing issue was investigated by both the Pittsburgh and Los Angeles evaluations and found to be without merit. In both cases, it was not supported by the statistical evidence on officer enforcement activity.[28] Two factors explain the de-policing argument among officers. On the one hand, it arises from the common and understandable grousing among front-line workers about change in their work requirements. For most officers, the changes are indeed difficult to master. At the same time, the de-policing argument is one form the 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".[29]

Rushin and Edwards studied 31 jurisdictions where there was a formal settlement with the local police department to determine whether court-mandated reforms were associated with "de-policing," defined as a reduction in police officer enforcement efforts, and whether de-policing was associated changes in the crime rate. The study found a statistically significant "uptick" in crime rates immediately following federal intervention, followed a decline over time.[30] This pattern could involve a change in criminal activity accompanying a significant change in police practices followed by a decline as new police practices become routine.

---

[27] The distinction is discussed in Rushin and Edwards, "De-Policing," pp. 15-18.
[28] United States v. City of Pittsburgh, *Consent Decree* (1997). https://www.justice.gov/crt/united-states-district-court-western-district-pennsylvania-united-states-america-plaintiff-v-0. Stone, et al., *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD,* pp. 19-32.
[29] Samuel Walker, quoted in James Surowiecki, "Why Are Police Unions Blocking Reform?," *The New Yorker* (September 16, 2016).
[30] Rushin and Edwards, "De-Policing."

E. DOJ'S "LEARNING CURVE"

As the Civil Rights Division's 2017 explains, its pattern or practice settlements changed significantly in several different ways over the course of the past twenty years.[31] The following section argues that these changes should be seen as part of a "learning curve," as Special Litigation Section staff adjusted their list of required reforms in response to a better understanding of the challenge they faced in transforming police organizations.

1. More Detailed Force Reporting Requirements

The first consent decree, involving Pittsburgh in 1997, was quite short when compared with the Los Angeles consent decree, which was negotiated only four years later. The Pittsburgh decree has only three short paragraphs related to use of force policy, documenting force incidents, and the review of force incidents.[32] The Los Angeles consent decree, by contrast, has twenty-two paragraphs devoted to force, including fourteen paragraphs devoted to use of force policy, four to the investigation of force incidents, and another four to the adjudication of force investigations.[33]

The greater detail in force reporting reflected a deeper understanding on the part of Justice Department lawyers and their consultants on what is required to bring officer use of force fully under control. Merely revising the formal policy on use of force (referring to the dos and don'ts) is not sufficient. Experts in the field now recognize that to get officers to comply with a new policy it is

[31] Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work*, p. 20.
[32] United States v. City of Pittsburgh, *Consent Decree* (1997). https://www.justice.gov/crt/united-states-district-court-western-district-pennsylvania-united-states-america-plaintiff-v-0
[33] United States v. City of Los Angeles, *Consent Decr*ee, (June 15, 2001), Paras. 55-69, 79-83, 84-87. https://www.justice.gov/crt/file/826956/download. See also Rushin's valuable analysis of the reforms in the LAPD related to use of force and the investigation of force incidents: Rushin, "Competing Case Studies of Structural Reform Litigation in American Police Departments," pp. 123-126.

necessary to establish detailed reporting requirements.[34] Additionally, procedures must be developed to ensure that officers' their immediate supervisors critically review each report, without delay, for missing detail, ambiguities, contradictions, and "canned" language.[35] This represents one of the major challenges in changing the work habits of front-line workers in large public bureaucracies.

2. More Professional Investigation and Review of Force Incidents

Other relatively new procedures have emerged as "best practices" to provide more thorough investigation and review of officer use of force incidents. It needs to be said, however, that the DOJ pattern or practice program did not originate these new practices, but played a major role in establishing them as key elements in a comprehensive approach to the control of officer uses of force.

The first involves the creation of a special unit, often called a Force Investigation Team (FIT), to investigate officer involved shootings and serious physical force cases.[36] A FIT is likely to improve the quality of investigations in two ways. First, it provides for the investigation of force incidents by officers who have experience and expertise related to the task. Second, it involves officers who are less likely to have personal ties with the officer or officers under investigation than is the immediate supervisor.[37]

---

[34] The emerging standard is the officers will complete a report before the end of the shift, and also answer any questions posed by supervisors about the incident. See, for example, United States v. City of Cleveland, *Settlement Agreement* (2016), pp. 20-27 (including supervisors' responsibilities). https://www.justice.gov/crt/case-document/file/908536/download. This requirement directly challenges the provisions of some police union contracts which require a delay before an officer can be questioned. The most common provision involves the so-called "48-hour" rule.

[35] Regarding "canned language, one of the major controversies in the challenge to the stop and frisk practices of the New York City Police Department was the number of stops that officers justified because of alleged "furtive movement." *Floyd v. New York City* (2013).

[36] United States v. City of Cleveland, *Settlement Agreement* (2015), Paragraph 111, p. 27. https://www.justice.gov/sites/default/files/crt/legacy/2015/05/27/cleveland_agreement_5-26-15.pdf.

[37] Robin Sheppard Engel, *How Police Supervisory Styles Influence Patrol Officer Behavior* (Washington, DC: Department of Justice, 2003). https://www.ncjrs.gov/pdffiles1/nij/194078.pdf.

A second innovation is a Use of Force Review Board (UFRB), which does not investigate force incidents for the purpose of discipline, but for the purpose of identifying recurring problems that need correcting. The board can then formulate recommendations for change regarding the relevant departmental, training, and supervision practices. When it functions properly, a UFRB has the potential for transforming a police department into what William A. Geller years ago envisioned a "learning organization," which learns from its own problems and makes the necessary corrections.[38]

The third institutional practice providing for the systemic review of force incidents is an early intervention system. EIS were developing before pattern or practice program was authorized in 1994, but by including them in virtually every settlement, the DOJ has given them a enormous boost.[39]

The three programs described here represent a systematic approach to the control, reporting, and review of force incidents. By incorporating all three in a consent decree, the DOJ has established a new best practice regarding use of force.

3. Focus on Particular Areas of Police Misconduct

Several consent decrees in the Obama/Holder era have been targeted to particular areas of law enforcement practice where patterns of abuse were discovered. As the Civil Rights Division acknowledges in its 2017 report, with 18,000 local law enforcement agencies, it is impossible for the Justice Department to investigate all departments with patterns of misconduct. 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 issue[s]." [40] The settlements with several

[38] William A. Geller, "Suppose We Were Really Serious About Police Departments Becoming Learning Organizations?," *National Institute Journal* (December 1997), pp. 2-8..
[39] Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide* (Washington, DC: Department of Justice, 2003).
[40] Described in Civil Rights Division, *The Civil Rights Division's Pattern or Practice Police Reform Work: 1994-Present,* pp. 6-8 (quote on p. 6).

agencies in Missoula, Montana, for example, address sex discrimination related to the investigation of sexual assaults.[41] The New Orleans settlement also had a special focus in gender discrimination issues related to the police department's handling of both sexual assaults and domestic violence incidents.[42] The Portland, Oregon, settlement addresses the police department's handling of mental health-related cases (although both the findings report and the settlement quickly focus on uses of force in those cases).[43] The Ferguson, Missouri, settlement has a special focus on the city's use of the police department as source of revenue to support the budget of city government.[44]

It is appropriate to think of the focus on specific areas of misconduct in terms of "problem-oriented police reform." Problem-oriented policing involves a police approach to addressing crime and disorder by not attempting to "fight crime" in a global sense but instead by identifying particular crime or disorder problems (open-air drug markets, graffiti, etc.), and then working with key stakeholders to develop a strategy and tactics that address a selected problem.[45] As the Portland, Oregon, case illustrates, however, the initial focus on a particular department and social problem (handling people experiencing mental health crises) can quickly lead to broader issues with a department (use of force, disciplinary practices, etc.).

---

[41] *Memorandum of Understanding Between the United States Department of Justice and the City of Missoula Regarding the Missoula Police Department's Response to Sexual Assault* (2013). https://www.justice.gov/sites/default/files/crt/legacy/2013/05/15/missoulapdsettle_5-15-13.pdf. The Justice Department reached companion settlements with the County Attorney's office and the University of Montana Police Department.

[42] United States v. City of New Orleans, *Consent Decree Regarding the New Orleans Police Department*, (January 11, 2013), Paras. IX(A) (sexual assault), IX(B)(domestic violence). https://www.justice.gov/sites/default/files/crt/legacy/2013/01/11/nopd_agreement_1-11-13.pdf.

[43] United States v. City of Portland, *Settlement Agreement* (2012). https://www.justice.gov/sites/default/files/crt/legacy/2013/11/13/ppb_proposedsettle_12-17-12.pdf.

[44] U.S. Department of Justice, *Investigation of the Ferguson Police Department* (2015). https://www.justice.gov/sites/default/files/crt/legacy/2015/03/04/ferguson_findings_3-4-15.pdf.

[45] David Weisburd, et al., "Is Problem-Oriented Policing Effective in Reducing Crime and Disorder? Findings from a Campbell Systematic Review," *Criminology and Public Policy* 9 (no.1, 2010), pp. 139172.

4. Greater Community Input

Settlements in the Obama/Holder era increasingly included formal procedures for giving community residents a direct voice both the investigation stage of the DOJ's pattern or practice program and in the implementation of the settlement.[46] This includes the settlements in Seattle (2012), Portland, Oregon (2012), and Cleveland (2015), and others. The Seattle Settlement Agreement, for example, mandated the creation of a broadly representative Community Police Commission (CPC).[47]

Providing greater community involvement in both the investigation stage of DOJ intervention and in the implementation reflect a growing recognition among police reform experts that the early settlements had largely excluded community groups most concerned with police misconduct, and that their exclusion undermined the legitimacy of settlements among a crucial local constituency.[48] Recent DOJ Findings letters and consent decrees have gone to great lengths to describe how its investigators met with a wide range of community stakeholders in both private and public settings to gather information about the department under investigation.[49] In some recent cases the DOJ specifically mentioned the valuable input from rank and file officer and police union officials regarding both

[46] Described in Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work*, pp. 29-30.
[47] Samuel Walker, "The Community Voice in Policing: Old Issues, New Evidence," *Criminal Justice Policy Review* 27 (July 2015), pp. 537-552. See also the related discussion in Samuel Walker, "Governing the American Police: Wrestling with the Problems of Democracy," *University of Chicago Legal Forum* (2016), pp. 652-659.
[48] The problem of ignoring and thereby alienating community groups was identified in the Pittsburgh Group, *Report to the U.S. Attorney General of the Working Group on Police Pattern or Practice Litigation* (April 2009). Pittsburgh Group was an informal gathering of knowledgeable individuals, with a variety of experiences related to the DOJ program. It met in at the University of Pittsburgh Law School in the early months of the Obama administration, discussed this and other issues related to Section 14141 litigation, and then submitted a report with recommendations to the Civil Rights Division.
[49] Department of Justice, *Investigation of the Cleveland Police Department* (2014), p. 2. https://www.justice.gov/sites/default/files/crt/legacy/2014/12/04/cleveland_findings_12-4-14.pdf.

departmental management problems and officer wellness issues.[50] (The role of police unions in DOJ settlements is also discussed below.)

Providing greater public involvement in DOJ investigations and settlements reflected the growing recognition of the importance of legitimacy in policing. Legitimacy is arguably the most important rethinking of policing in some years. The President's Task Force on 21st Century Policing in 2015 placed legitimacy at the center of its vision of the future of policing, and made a number of recommendations designed to enhance legitimacy. Several involved greater community input into policing policy.[51]

The model for greater community input into the implementation of a consent decree originated with the Collaborative Agreement (CA) in Cincinnati, a settlement of private law suits alleging race discrimination against the Cincinnati police department, which paralleled the settlement of the Justice Department investigation.[52] Whereas Justice Department settlement focused on internal police department policies and practices, the Collaborative Agreement directed the police department to change its policing strategy ("shall adopt problem solving as the principal strategy for addressing crime and disorder problems").[53] The Agreement also provided for ongoing community involvement in the implementation of the new style of policing.

---

[50] Department of Justice, *Investigation of the Baltimore City Police Department* (2016). https://www.justice.gov/crt/file/883296/download. Civil Rights Division, *The Civil Rights Division's Pattern or Practice Police Reform Work: 1994-Present*, p. 12.

[51] President's Task Force on 21st Century Policing, *Final Report* (Washington, DC: Department of Justice, 2015), pp. 7-18 ("Pillar One: Building Trust and Legitimacy"). http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[52] The linkage between the *Collaborative Agreement* and the Justice Department *Memorandum of Agreement* is in Paragraphs 48 and 113 of the *Collaborative Agreement*.
See *In re Cincinnati Policing*, C-1-99-317, 2002 U.S. Dist. LEXIS 15928 (S.D. Ohio 2002).

[53] *In re Cincinnati Policing*, Para. 16. Chanin, "Examining the Sustainability of Pattern or Practice Police Misconduct Reform," p. 179 (finding the reforms in Cinncinnati "broader and deeper" than in other consent decree jurisdictions).

The Cincinnati Collaborative Agreement proved to be extremely influential. It provided a model for new community involvement requirements in the most recent Justice Department settlements, mentioned above, and also for the Joint Remedial Process in the settlement of the highly-publicized New York City "stop and frisk" case in 2013.[54]

A Comment on "Internal" and "External" Police Reform

The Cincinnati experience of two related settlements, one devoted to "internal" police department policies and practices, and the other devoted to "external" policing strategy, raises a provocative question about systemic police reform efforts. Put simply, is it possible to achieve lasting reforms in internal police accountability procedures without at the same time changing a department's crime fighting strategies, particularly when they involve aggressive tactics that result in high rates of use of force and antagonize communities of color in a variety of other ways? The Kerner Commission in 1968 concluded that aggressive crime-fighting strategies damage community relations, and the President's Task Force on 21st Century Policing in 2015 reached a similar conclusion ("Law enforcement agencies should consider the potential damage to public trust when implementing crime fighting strategies").[55] This is a question that needs further exploration.

5. Involving Rank and File Officers and Police Unions in Reform Efforts

Settlements in the Obama/Holder era also began to include police union representatives in the reform process in two important respects. First, in recent cases, the initial investigators of departments have actively solicited the views of both rank and file officers and union leaders during investigations of

---

[54] *Floyd v. New York City* (2013). Monitor's documents: Peter L. Zimroth, Monitor, *Second Report of the Independent Monitor* (February 16, 2016). http://nypdmonitor.org/wp-content/uploads/2016/02/2016-02-16FloydvCityofNY-MonitorsSecondStatusReport.pdf.

[55] National Advisory Commission on Civil Disorders, *Report* (New York: Bantam Books, 1968), pp. 304-305. President's Task Force on 21st Century Policing, *Final Report*, Recommendation 1.6, p. 15.

departments.[56] Second, recent settlements have given police unions formal roles in the implementation process.

The inclusion of officers and unions represents a major new development in the history of police reform. Union leaders have been almost entirely excluded from reform efforts. Police scholars, moreover, have almost completely neglected the subject of police unions.[57] As a consequence, since the 1960s unions have played an almost entirely oppositional role, opposing virtually all reforms designed to improve police-community relations and to hold individual officers accountable for their actions.[58] The DOJ initiative in this regard represents a bold venture, and the immediate future of these efforts bear close watching.

The DOJ settlements in Seattle and Cleveland gave police union officials designated positions on the community police commissions REVISE in Seattle[59] and Cleveland.[60] This step acknowledges the fact, known to everyone involved in police reform, that police unions have considerable power and influence over the operations of their departments. That power includes both formal union contract provisions that inhibit accountability, and other informal actions that limit police management. In particular, there has been a long and insidious history of unions threatening officers who are whistleblowers regarding police misconduct.[61]

---

[56] Department of Justice, *Investigation of the Chicago Police Department* (January 13, 2017), pp. 2 ("All told, we heard from 340 individual members [of the police department), p. 4.

[57] Samuel Walker, "The Neglect of Police Unions: Exploring one of the Most Important Areas of Policing," *Police Practice and Research*, 9 (May 2008), No. 2): 95-111.

[58] Police unions have not played a significant role in opposing community policing or problem-oriented policing programs. Undoubtedly, the reason for this non-opposition is that neither of those two reform efforts directly impinge on the conduct (and alleged misconduct) of individual officers. On the role of police union in the police-community relations crisis of the 1960s: Samuel Walker, *Popular Justice*: A History of American Criminal Justice, 2nd ed. (New York: Oxford University Press, 1998), pp. 193-201.

[59] Seattle Community Police Commission: https://www.seattle.gov/community-police-commission.

[60] United States v. City of Cleveland, *Settlement Agreement* (2015), pp. 4-7.

[61] San Francisco District Attorney, *Report of the Blue Ribbon Commission on Transparency, Accountability, and Fairness in Law Enforcement* (2016), pp. 143-146. http://sfdistrictattorney.org/sites/default/files/Document/BRP_report.pdf.

Interestingly, the early history of the Seattle Community Police Commission took a surprising turn when, in a conflict over the role of the commission, the two union representatives found common ground with community representatives who had been the leading critics of the Seattle police regarding the development of a new use of force policy for the department.[62] The episode suggests that integrating police unions into police reform procedures has the potential making then a positive rather than a negative force in reform.

6. Assessments of the Impact of Consent Decrees

The Justice Department pattern or practice program has been criticized for failing to provide for assessments of the impact of the various required reforms. The Special Litigation Section responded by requiring assessments in recent settlements.[63] The Cleveland consent decree, for example, requires "qualitative and quantitative assessments to measure whether implementing the Agreement has resulted in constitutional policing."[64] The issues to be measured include officer uses of force, stops, searches, and arrests, and other police activities affected by the consent decree.[65]

The expectation that the Special Litigation Section should evaluate the impact of its own work is simply inappropriate. Evaluations, if they are to have any credibility, must be independent, and it is completely unreasonable to think that the Special Litigation Section should evaluate its own work. After all, it would not accept self-evaluations by police departments. There is also a question of technical expertise. As part of the Civil Rights Division, the Special Litigation Section is an *enforcement* and not a

---

Chicago. B https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf. Baltimore. The most famous case involved New York City police officer Frank Serpico who was shot and injured in a drug raid following his public testimony regarding corruption in the NYPD. Many observers believed that he was deliberately set up by other officers in retaliation for his testimony. See Peter Maas, *Serpico* (New York: HarperTorch, 1997).

[62] Walker, "The Community Voice in Policing: Old Issues, New Evidence." Walker, "Governing the American Police."

[63] Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work*, pp. 23-25.

[64] United States v. City of Cleveland, Settlement Agreement (2015), pp. 84-88. https://www.justice.gov/sites/default/files/crt/legacy/2015/05/27/cleveland_agreement_5-26-15.pdf.

[65] Kimbriell Kelly, Sarah Childress and Steven Rich, "Forced Reforms, Mixed Results."

research agency. The staff are not trained social scientists. A fairer criticism is that the Civil Rights Division should have foreseen the need for independent evaluations and arranged with the National Institute of Justice, the Justice Department's research unit, for evaluations.

It also must be said that because DOJ settlements attempt systemic reforms in a police department comprehensive evaluations are necessarily complex. This list of reform "best practices,' discussed earlier involves several operations, each of which is extremely complex. And that list does not include public perceptions of a police department. On one point alone, Rushin put it well when he observed that "there is no universally accepted way to measure the prevalence of police misconduct," if only because "Police misconduct is varied."[66] Police scholars need to devote some effort to developing a model for comprehensive evaluations of the impact of systemic police reform efforts.

F. THE 'COSTS" OF PATTERN OR PRACTICE REFORMS

There have been recurring comments about the financial costs of consent decrees. City officials have complained about the burden of these costs on their already financially strapped cities. Some recent media stories have raised questions about the cost-benefit aspects of consent decrees in the context of, in their judgment, the failure of DOJ to clearly demonstrate tangible improvements in policing as a result of consent decrees.[67]

The discussions over the alleged costs of consent decrees has been deeply flawed in two fundamental respects. First, with respect to the financial costs, these discussions typically take into account only the direct costs of a consent decree, failing to take into account the broader context of the

[66] Rushin, "Competing Case Studies of Structural Reform Litigation in American Police Departments," p. 119.
[67] Kimbriell Kelly, Sarah Childress and Steven Rich, "Forced Reforms, Mixed Results," *Washington Post*, November 13, 2015, http://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results/.

financial costs of both police misconduct and necessary police reform. Second, the discussions almost completely fail to take into account the human and social costs of a pattern or practice of police misconduct.

With 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.[68] 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.[69]

The financial costs of consent decrees should also be placed in the context of the enormous payouts that a number of major cities have been routinely paying to settle police misconduct suits. The reported payouts in New York City, Chicago, and Baltimore are simply staggering. New York City paid out $54.4 million in police-related cases in 2013, and Chicago paid out $50 million in 2014.[70] Consent decrees are designed to reduce if not end police serious misconduct, along with the litigation that arises from such cases. As discussed earlier, several major city police chiefs have stated that their consent decree reduced civil litigation against the department.[71] Chanin, meanwhile, found that pay outs arising

---

[68] Department of Justice, *Investigation of the Cleveland Division of Police* (2014), pp. 54-56. https://www.justice.gov/sites/default/files/crt/legacy/2014/12/04/cleveland_findings_12-4-14.pdf.

[69] Feeley and Rubin found that the professionalization of correctional systems was one of the positive outcomes of federal litigation: Feeley and Rubin, *Judicial Policy Making and the Modern State*, p. 368.

[70] City of New York. Office of the Comptroller*, Claims Report Fiscal Year 2013* (New York: Office of the Comptroller, 2013), p. 32. "Chicago Police Misconduct Payouts Topped $50 Million in 2014," *The Chicago Reporter* (February 25, 2015).

[71] Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned,* pp. 34-35.

from police use of force cases in Washington, DC, "continued to trend downward" following the end of the consent decree.[72] Rushin, in his analysis of the LAPD consent decree, is alone in noting the "cost savings" from reduced civil litigation.[73] Thus, a full accounting of the financial cost of a consent decree should involve the direct financial costs discounted by the savings in reduced misconduct and civil litigation. The misconduct litigation savings, moreover, are a continuing benefit, whereas the financial cost of the consent decree is a one-time cost.

Discussions of the costs of consent decrees have also completely failed to take into account the 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.[74] Finally, human costs of unjustified fatal shootings by police are immeasurable, although in recent high profile cases the "going rate" in court settlements to be between $4 and $6 million for unjustified fatal shootings.[75]

---

[72] Chanin, "Examining the Sustainability of Pattern or Practice Police Misconduct Reform," p. 178. The data in Figure 6 on "open cases," however, suggests a disturbing rise in suits filed.

[73] Rushin, "Competing Case Studies of Structural Reform Litigation in American Police Departments," p. 131.

[74] Tom R. Tyler, Jeffrey Fagan and Amanda Geller, "Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization," *Journal of Empirical Legal Studies* 11 (December 2014): 751-785. Charles R. Epp, Steven Maynard-Moody, Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* (Chicago: University of Chicago Press, 2014).

[75] Tamir Rice shooting: "Cleveland Will Pay $6 million to Family of Boy Killed by Police," *New York Times*, April 26, 2016. University of Cincinnati shooting: "University of Cincinnati to Pay $5 million to Family in Killing by Police," *New York Times*, January 19, 2016.

There are additional social costs to the community from police misconduct. To the extent that African American residents of a city perceive a pattern of systematic abuse, the result is a sense of profound alienation from society. In a powerful study of traffic stops in the Kansas City metropolitan area, Charles Epp and colleagues found that there is an important distinction between traffic enforcement stops, where the issue is driving behavior, and investigatory stops, where the issue is a police officer's suspicion about the driver (and/or passenger[s]). The study found that African Americans experience a higher rate of investigatory stops than whites, and in interviews express a deep sense of alienation as a result. The alienation, Epp and colleague argue, is not just from local communities and their police but from a sense of full citizenship in America.[76]

G. THE ISSUE OF SUSTAINABILITY

The question of whether consent decree reforms are sustained over time is a crucial but inadequately studied subject. If reforms soon evaporate following the end of a consent decree, then their entire issue of systemic police reform needs to be re-examined. The history of police reform, moreover, is filled with examples of exciting and promising reforms that simply evaporated.[77]

This paper discussed the evidence on this issue earlier, but it is an issue of sufficient importance that it is worth mentioning it again in a separate section. As noted earlier, there does not appear to be a pattern of the complete collapse of reforms following the end of a consent decree. Chanin found evidence of sustained reforms in one department but backsliding in the two other departments in his study. Similarly, the subsequent assessment of Washington, DC, found that after seven years the

[76] Epp, Maynard-Moody, and Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship.*
[77] Samuel Walker, "Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure," *St. Louis University Public Law Review* XXXII (2012), pp. 57-92. Perhaps the most famous example involves the celebrated anti-corruption reforms instituted by Commissioner Patrick V. Murphy in the New York City Police Department in the early 1970s. By the 1990s, however, the reforms had collapsed and the department was engulfed in a new corruption scandal. Mollen Commission.

department remained much improved, but with some backsliding in certain areas. We do not have a standard for how much backsliding would be acceptable to permit a consent decree experience to still be judged a success. This is another issue meriting further research and discussion.

A comprehensive evaluation of a consent decree is a daunting challenge. In their analysis of prison reform litigation, Feeley and Rubin essentially said that a comprehensive evaluation cannot be done.[78] In policing, it would require taking into account all of the reforms mandated by a consent decree, along with a detailed survey of public perceptions. The general question of the impact of the DOJ pattern or practice program, moreover, would require the evaluation more than a few departments. That, obviously, would be an extremely costly enterprise. More discussion is needed on how to undertake a meaningful and cost-effective evaluation of the DOJ program.

H. THE VAGARIES OF NATIONAL AND LOCAL POLITICS

The 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.[79] The program was authorized and launched under the administration of President Bill Clinton, and the first settlement was reached in 1997. The George W. Bush administration, however, driven by its ideological disinterest in vigorous federal civil rights enforcement, substantially reduced its enforcement activity.[80] The Obama administration, with a strong commitment to federal civil rights enforcement, revived and expanded the program (with important changes discussed later). The Trump administration appears likely to revert to the practice of the Bush administration. In short, an aggressive Justice Department program to

[78] Feeley and Rubin, *Judicial Policy Making and the Modern State*, p. __.
[79] This issue is discussed at length in Walker, "Governing the American Police."
[80] Argued in Walker and Macdonald, "An Alternative Remedy for Police Misconduct."But see the discussion in Rushin, "Federal Enforcement of Police Reform," pp. 3232-3235.

investigate civil rights violations by local law enforcement agencies is dependent upon the winds of national politics, and cannot be counted on to be a consistent effort over the long term.[81]

At the local level, the commitment to police reform does not follow any consistent pattern. The documented events in Pittsburgh offers an instructive case study. As Chanin found, the lifting of the consent decree was soon followed by municipal elections which brought to power a mayor with close ties with the local police union who fired the police chief and regarded police reform a low priority. A long tradition of anecdotal evidence has asserted that local politics has a major influence over the management and policies of police departments. At this point, however, it is not possible to identify any clear patterns.

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. In their study of prison reform, Feeley and Rubin found that reform efforts were heavily impacted by the explosion in the national prison population and also by changes in federal laws and the posture of the federal courts, which were themselves the product of political changes.[82]

I. SUMMING UP

The Justice Department "pattern or practice" program to investigate local police departments for violations of constitutional rights is twenty years old this year. It has been an extraordinary and unprecedented intervention by the Justice Department with the goal of reducing systemic police misconduct, including patterns of racial and ethnic discrimination. To that end, the DOJ program has

[81] See the trends in DOJ settlements in Civil Rights Division, *The Civil Rights Division's Pattern and Practice Police Reform Work*, pp. 20, 36.
[82] Feeley and Rubin, *Judicial Policy Making and the Modern State*, pp. 378-379, 382-384.

sought to transform entire police organizations. What have we learned from this experience, with respect to the effectiveness of the program, its limitations, and the challenges involved in attempting systemic police reforms through court-enforced consent decrees? The following section offers ten conclusions that can be drawn from the experience.

First, the pattern and practice program has been an unprecedented event in American police history. Never before has the Justice Department undertaken such an intense scrutiny of local departments for the purpose of ending systemic abuses and reducing if not eliminating racial and ethnic disparities.

Second, the evidence from several evaluations indicate that consent decrees other settlements have, for the most part, been successful in achieving their goals. There has been some backsliding in some departments, but in no case has a DOJ settlement completely failed. Two assessments of the LAPD consent decree found it was successful in making positive changes.

Third, serious questions remain about the long-term sustainability of the court-ordered reforms in DOJ settlements. More research on this key issue is definitely needed. Assuming that some backsliding will probably occur, how much is acceptable before we pronounce a consent decree a failure?

Fourth, the DOJ 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.

Fifth, in the pursuit of constitutional policing, the DOJ program has defined a specific set of “best practices.” These include: state of the art polices on officer use of force, including strict force reporting and review requirements; an early intervention system (EIS) to track officer performance and identify

officers with persistent performance problems; and an open and accessible citizen complaint procedure. Prior to the DOJ program, no equivalent list of best practices related to accountability in policing existed.

Sixth, the DOJ program has been a major learning experience, illuminating the details of on-the-street officer misconduct (with respect to use of force, for example, and also the enormous challenge of attempting to transform a large public bureaucracy. There are important lessons here that need more study.

Seventh, the program has provided new insights into the much-discussed "police culture. In particular, the evidence indicates that the new use of force reporting requirements challenge the traditional work norms of that culture (that officers do not have to account in detail for their conduct) and impose new standards of accountability.

Eighth, the program has provided a broader perspective on the issue of the "cost" of police reform. Critics who object to the financial costs of consent decrees have ignored the fact that the decrees require reforms that a police department should have adopted years before. Additionally, the reforms have succeeded in reducing misconduct and payouts from civil litigation, which represent a long-term cost saving. A full accounting also needs to take into account the human and social costs that reforms in most departments have reduced.

Ninth, the DOJ program has highlighted the enormous challenge of evaluating systemic organizational reform in police departments. The reforms affect the many moving parts of a department: uses of force; the treatment of racial and ethnic minorities; disciplinary procedures; citizen complaints and public perceptions of the department, among others.

Tenth, the history of the program highlights the impact of politics and police reform. Two Democratic Party presidents (Bill Clinton and Barak Obama) aggressively pursued the pattern or practice

program, while one Republican Party president (George W. Bush) backed away from it, and the new Republican Party president appears hostile to it.

In the end, the DOJ pattern or practice program has achieved significant reforms in most of the departments where consent decrees or other settlements were achieved. At the same time, there is evidence of some backsliding, and questions remain about the long-term sustainability of court-ordered reforms. Most important, the program has defined the basic requirements for constitutional and bias-free policing, including a set of "best practices." Finally, the program has raised significant questions about the processes of police reform and the challenge of transforming large public bureaucracies, questions that demand the attention of police experts.