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On the Implementation of Pattern or Practice Police Reform

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ABSTRACT AND ARTICLE INFORMATION

Using data drawn from independent monitor reports and stakeholder interviews, this study examines the implementation of the DOJ's pattern or practice police misconduct reform in five jurisdictions: Pittsburgh, PA; Detroit, MI; Washington, D.C.; Cincinnati, OH; and Prince George's County, MD. Each jurisdiction reached "substantial compliance" with the terms of their agreement within five to seven years, despite considerable variation in the length of time needed to implement key settlement agreement components. 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. Despite this unique and successful implementation process, questions remain about the depth of organizational change it produces and thus the substantive value of the pattern or practice initiative.

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A policy's value...must be measured not only in terms of its appeal but also in light of its implementability.

Pressman & Wildavsky, 1984, xv

This paper examines the implementation of police reform efforts in five jurisdictions identified by the U.S. Department of Justice (DOJ) as having engaged in a "pattern or practice" of unlawful activity: Pittsburgh, PA; Washington, DC; Cincinnati, OH; Detroit, MI; and Prince George's County, MD. An analysis of quarterly progress reports and in-depth interviews with several key stakeholders is used to comparatively evaluate

implementation and to identify those factors most salient to the process.

The study begins with a brief introduction to pattern or practice reform and a discussion of literature related to policy implementation. From there, the data and method used to conduct this research are discussed, and the study's findings are presented. An analysis of the results and a suggested research agenda concludes the paper.

Pattern or Practice Police Reform

Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 charges the DOJ with

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identifying and eliminating the pattern or practice of unlawful activity among state and local police departments (42 USC Sec. 14141). On the breadth and depth of this authority, Harvard law professor William Stuntz (2006) has called the Section 14141 reform process “the most important legal initiative of the past twenty years in the sphere of police regulation” (p.798).

Since the law’s inception, the DOJ has investigated allegations of systematic misconduct in no fewer than 65 jurisdictions, finding a pattern or practice of unlawful activity, most involving excessive use of force or racial profiling, in some 27 agencies.¹ In the vast majority of these cases, affected jurisdictions have opted to negotiate settlements with the DOJ rather than face formal litigation.² Though the content of each agreement is tailored to the specific pattern or practice of abuse, the DOJ relies on a core set of reform mechanisms to affect department-wide change. Most agreements stipulate changes to pertinent department policies, officer training protocols, and existing internal and external accountability systems.³ Settlement terms typically include an aggressive timeline and rely on the oversight of both DOJ attorneys and an independent monitor to drive reform.

Despite the importance of pattern or practice reform to police accountability, the enforcement of civil rights and liberties, organizational reform, and, most importantly, public safety, there has been relatively little scholarly attention to the subject. Exceptions do exist, particularly among academic lawyers. Several of these lawyers, including Livingston (1999) and Stuntz (2006), have examined the Section 14141 program as a mechanism for promoting accountability under federal law, while others have recommended ways to enhance the effects of the initiative on police behavior (e.g., Harmon, 2009; Simmons, 2008). The existing criminological research tends to describe the program’s effect on police reform broadly while contextualizing the initiative in terms of earlier reform efforts (Ross & Parke, 2009; Walker, 2005; Walker & MacDonald, 2009).

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). The authors credit the DOJ intervention with improvements in the LAPD’s officer accountability systems, agency transparency, and community relations while emphasizing the importance of then-Chief William Bratton’s leadership in promoting change (Stone et al., 2009).

Leadership was also a salient theme in a pair of monographs describing the City of Pittsburgh’s efforts to implement the terms of a federal consent decree instituted in 1997 to strengthen police accountability and reduce excessive force in the Pittsburgh Bureau of Police (PBP). Davis, Ortiz, Henderson, Miller, and Massie (2002) concluded that successful implementation, finalized in August 2002, was a function of the “determination of the police chief to make the decree part of his own reform agenda,” as well as support for the reform among city officials and the organizational accountability provided by the independent monitor charged with overseeing the process (p.64).

These findings have contributed to a largely positive view of the initiative among DOJ attorneys, civil liberties groups, and police reformers (PERF, 2013). That all but two of the twenty jurisdictions choosing to settle prior to 2008 (it is too early to evaluate those initiated after that date) have been released from DOJ oversight adds to the perception that implementation of pattern or practice reform has been successful (US DOJ, 2011). Given the depth of the mandated reforms and the demanding conditions placed on implementation, this apparent success is noteworthy, particularly in light of the well-established challenges that define such a process, even under the most favorable conditions (Pressman & Wildavsky, 1984). Yet, given the lack of empirical writing on the issue, significant questions remain, including two on which this inquiry is based:

1. To what extent does a detailed descriptive analysis of the implementation process provide insight into the depth of reform and the general value of the DOJ’s pattern or practice initiative?
2. To what extent can environmental, organizational, and policy-related factors explain observed variation between affected jurisdictions?

With the hopes of putting these questions in theoretical context, the next section addresses the literature on policy implementation with an eye toward identifying those factors that tend to promote successful agency-wide reform.

Policy Implementation

Two principles help to define the literature on policy implementation and organizational change. First, implementation is an integral part of the policy process, necessary for linking policy outputs with outcomes (Maguire, 2009; Pressman & Wildavsky,

1984). Second, even under the best of circumstances, policy implementation is an intricate and eminently demanding process (e.g., Santos, 2013). This complexity is reflected in a two-dimensional analytical framework that acknowledges the relevance of both dosage, or the “intensity with which a policy is implemented,” and fidelity, or “the extent to which a reform, as implemented, matches the way it was originally conceived or envisioned” (Maguire, Uchida, & Hassell, 2010, p. 1).

In those instances where a policy fails to achieve expected outcomes, whether owing to low dosage or low fidelity, thorough understanding of the implementation process often lends crucial diagnostic insight. Similarly, recognizing how and why a policy is implemented successfully can provide a useful roadmap for future efforts. This is not to say that scholars have agreed upon a ‘one-sized-fits-all’ set of prescriptions; relevant findings tend to vary by both policy type and context (Long & Franklin, 2004). With that said, there is a general consensus that the presence (or absence) of several factors may encourage (or inhibit) implementation (O’Toole, 2000; Zhao, Thurman, & Lovrich, 1995).

The first set of these factors centers on the policy problem. In simple terms, some issues are thought more tractable than others, and the “easier” a problem is to solve, the more likely it is that the policy solution will be implemented successfully (Matland, 1995). According to Mazmanian and Sabatier (1989), the greater degree of change required, the more likely the effort is to stall. On the other hand, narrower issues involve fewer actors, require fewer decision points, and are thus less susceptible to competing agendas, coordination challenges, organizational politics, and other prosaic problems that often beset such efforts (Pressman & Wildavsky, 1984).

The nature of the policy instrument has also been shown to affect implementation. The use of clear, succinct goals and specific priorities tend to correlate with faithful implementation (Robichau & Lynn, 2009). Policies that structure bureaucratic behavior by tying employee performance incentives to implementation-related outcomes, whether the expectations are framed positively (Alpert, Flynn, & Piquero, 2001) or negatively (Ewalt & Jennings, 2004), also tend to contribute to successful reform.

Consistent support from political, legal, and financial sovereigns, including legislators, executive officials, and judges at all levels of government, has also been shown to enhance implementation (Wood, 1990). The effects of such support are greatest when external stakeholders use influence over the “amount and direction of oversight [and the] provision of financial resources” to promote policy change (Mazmanian & Sabatier, 1989, p. 33). Bardach

(1978) argues that this influence is magnified when such authority is applied directly to “fix” specific problems that arise during implementation.

Characteristics of the organization tasked with implementation are also critical to the process. Of the several relevant organizational factors, adequate resources are arguably the most important (Elmore, 1979–80). Crafting new policy and developing the organizational infrastructure to support the change requires an investment of both labor and capital. A recent study of one mid-sized Florida police department, for example, found that lack of agency resources stymied efforts to adopt community policing (Chappell, 2009).

Even in cases where sufficient resources exist, the commitment of agency staff, including street-level actors, middle managers, and leadership, is “the variable that affects most directly the policy outputs of implementing agencies” (Mazmanian & Sabatier, 1989, p. 34). Whether framed in terms of organizational culture (Gottschalk & Gudmundsen, 2009) or bureaucratic behavior (Novak, Alarid, & Lucas, 2003), it is critical that those tasked with implementation believe in the new policy.

Support among street-level officers is particularly important in the context of the police (Mastrofski, 2004; Wycoff & Skogan, 1993). It is well established that street-level officers wield significant discretionary authority and thus maintain ultimate control over how a new policy is translated into practice (Lipsky, 1980). What is more, reform-minded policies often target the behavior of front-line staff, with clear implications for pattern or practice reform, where settlement agreements have typically aimed to remedy patrol officers’ unlawful use of force or racial profiling.

Street-level police officers do not operate completely free of oversight or external influence, despite their considerable discretionary authority. In fact, these officers receive policy and managerial guidance through the chain of command, where first line supervisors are the most direct, most influential voices of accountability (Kelling & Bratton, 1993). The presence of strong, supportive leadership that places a high priority on the implementation process has also been shown to be critical to overall success (Fernandez & Rainey, 2006; Santos, 2013). Leaders who are vocally committed to the implementation process and skilled in developing and communicating organizational agendas and priorities are particularly valuable (Bingham & Wise, 1996).

Culture is a significant determinant of an agency’s ability to implement policy reform (Halperin & Clapp, 2007; Klein & Sorra, 1996). The inhibiting effects of organizational resistance to change have been clearly documented by policing

scholars. The default cultural orientation of police departments tends to reflect an opposition to outside influence, skepticism of external accountability, and a hesitancy to accept change (Walker, 1977; Skolnick & Fyfe, 1993). In fact, even some of the country's best departments have institutionalized the notion that regulation of the police is most effectively done by the police themselves; external oversight is viewed as being both inefficient and ineffective (e.g., Timoney, 2013). The extent to which the affected departments embody (and if present, their ability to overcome) this type of cultural dysfunction will no doubt influence settlement implementation.

Case Selection, Data, and Method

The entire population of potential cases is the 27 jurisdictions within which the DOJ had identified a pattern or practice of misconduct.⁴ Thirteen of the 27 jurisdictions were eliminated, as their settlement dates occurred after January 1, 2008; their inclusion would not provide the requisite time to evaluate implementation. Monitor reports were unavailable for seven of the remaining 14 jurisdictions, narrowing the possible sample to seven. Time and resource shortages required the exclusion of two cases, the State of New Jersey and Los Angeles, CA.

The same legal issue drove reform in the five included jurisdictions: a pattern or practice of unlawful use of force. As a result, each settlement agreement mandated many of the same organizational changes, established comparable implementation timeframes, and relied on very similar oversight conditions. Data are drawn from three sources: (1) quarterly independent monitor reports; (2) structured interviews with key participants; and (3) settlement agreements, court pleadings, newspaper accounts, and other secondary sources.

Independent monitors hired to manage the implementation process are required to publish quarterly status reports. These reports, which use both quantitative and qualitative data to develop a rich account of the reform process, formed the backbone of this study's descriptive analysis.

These reports are supplemented by in-depth interviews with 28 key stakeholders, including Department of Justice's Special Litigation Section staff, independent monitors, police department leadership, and relevant political and community leaders involved in the pattern or practice reform process. Though several of the interviews were conducted face-to-face, the majority occurred online via Skype. Of the 28 subjects interviewed, 24 were identified through monitor reports, court documents, and media coverage; four subjects were identified by

referral. In total, 37 interviewees were contacted⁵ resulting in a response rate of 75.7 percent.

Following the analytical protocol established by Ritchie and Lewis (2013), all of the interviews were recorded and transcribed. Notes made both during and after interviews describing the surroundings, the subject's body language, voice intonations, and other non-verbal cues provided a contextual supplement to transcripts. The monitor reports, interview transcripts, and contextual notes were open coded in order to generate coding frames (Charmaz, 2006). ATLAS.ti v6.0, a leading qualitative data analysis software tool, was used to manage these empirical data. In the final step, a grounded coding frame was developed and applied to the raw data.

Before presenting the findings, there are several methodological weaknesses worth noting. First, the use of data availability as a means of case selection raises the possibility of selection bias. Similarly, the study's small sample size has the potential to limit the generalizability of the results, both to the omitted cases and beyond. The significance of variation between cases, including the nature of the misconduct at issue (e.g., racial profiling in some, excessive force in others), features of the affected organization (e.g., variations in agency size), and characteristics of the implementation system (e.g., the presence of an independent monitor in some jurisdictions and not in others) should not be overlooked.

These concerns are allayed somewhat by the universality of certain key substantive and procedural elements. Every pattern or practice reform effort to date, regardless of the implementation context or the misconduct at issue, has been built around a nearly identical set of substantive elements, including mandated changes to department policy, officer training, and the installation of an early intervention system. The various unifying features of the intervention and implementation processes, most significantly the role of the DOJ, also contribute to the study's external validity.

Third, the use of the snowball technique to acquire interviewees also raises some question of selection bias. Yet, the relatively low number of interviewees identified in this manner (17 %), and the high overall response rate tend to minimize concerns that a certain perspective is overrepresented.

Fourth, the process of coding qualitative data is inherently subjective. Unfortunately, because there was only one researcher involved in the process, it was not possible to either triangulate decisions made during coding of raw data or the development of the coding frame. In order to address this weakness, coding decisions were continually revisited in an attempt to ensure consistency across all sources.

Descriptive Findings

What follows is a comparative description of the implementation of pattern or practice reform with a focus on the time needed to reach substantial compliance with three key settlement components: (1) institution of mandated policy changes, (2) early intervention system development, and (3) revision of complaint investigation protocol. Table 1 describes the various sub-components required by each of the three components. In addition to this micro level, component-based analysis, implementation is also considered from the perspective of macro success, or the ability of each department to implement the terms of the entire settlement agreement.

Use of Force Policy Change

To implement the use of force-related components, each department was required to bring their existing policy into compliance with federal law and establish standard operating procedures in response to a use of force incident. As is documented in Table 2, this portion of the settlement presented a moderate challenge to the five affected departments. No jurisdiction was able to adhere to the established deadlines, which ranged from three to six months, though implementation occurred much more quickly in Pittsburgh than it did in either Washington, DC, Cincinnati, or Prince George's County. Detroit has

yet to satisfy this section of their agreement. In general, changes related to incident response were more difficult than the revision of use of force language. Cincinnati's experience is illustrative. The Cincinnati Police Department's (CPD) use of force policy was formally approved in the second reporting period, six months after the monitor's initial review (Cincinnati Independent Monitor, Second Quarterly Report, 2003, Jul., p. 15). Though there was some initial semantic disagreement between the DOJ and CPD leadership, those issues were overcome rather quickly.

The same cannot be said of incident reporting. A dispute developed over the comparative length and level of detail required by an officer's report following incidents that involved a 'take-down without injury' versus that required in the case of a take-down causing injury. CPD insisted that requiring officers to expend the same time and energy filing reports for non-injury takedowns, which are much more common than injury-producing incidents, would force officers to spend inordinate amounts of time on paperwork and ultimately detract from the CPD's ability to do its job properly. After nearly two years of negotiation, the DOJ relented, albeit on a trial basis, and CPD instituted a new policy permitting fewer reporting requirements for non-injury incidents (Cincinnati Independent Monitor, 10th Quarterly Report, 2005, Jul.).

Table 1: Pattern or practice settlement "micro" components under review

	<i>Sub-Component 1</i>	<i>Sub-Component 2</i>	<i>Sub-Component 3</i>	<i>Sub-Component 4</i>
<i>Micro Component 1: Use of Force Protocol</i>	Policy on officer use of force	Policy on street-level incident reporting	Policy on incident investigation by mid-level supervisor	Policy on supervision of mid-level staff
<i>Micro Component 2: Early Warning System</i>	System creation and development	Render system operational	Full system utilization	NA
<i>Micro Component 3: Citizen Complaint Protocol</i>	Expand means of complaint receipt	Internal investigation parameters	External agency investigation parameters	Compliance with 90-day limit on complaint resolution

Table 2: Pattern or Practice Reform Implementation – Descriptive Results

	<i>Pittsburgh, PA</i>	<i>Washington, D.C.</i>	<i>Cincinnati, OH</i>	<i>Detroit, MI</i>	<i>Prince George's County, MD</i>
Micro Component 1:					
Use of Force Protocol					
Deadline	4 months	6 months	3 months	3 months	4 months
Substantial compliance reached	14 months	84 months	NA	NA	54 months
Micro Component 2:					
Early Intervention System					
Deadline	12 months	21 months	19 months	30 months	25 months
Substantial compliance reached	29 months	84 months	43 months	97 months	60 months
Micro Component 3:					
Citizen Complaint Protocol					
Deadline	3 months	6 months	4 months	3 months	4 months
Substantial compliance reached	96 months	84 months	45 months	99 months	60 months
Macro Settlement Agreement					
Total components	83	194	120	154	120
Agreement length	60 months	60 months	60 months	60 months	36 months
Substantial compliance reached	64 months (497 – 8102)	84 months (601 – 606)	60 months (402 – 407)	NA	60 months (104 – 109)

Early Intervention System

The second set of micro components required the implementation of an early intervention personnel management system. These systems are designed to provide departments with a means of tracking individual-level officer behavior across several settlement-related metrics, including use of force incidents and citizen complaints against. Early intervention systems are not only complicated and expensive to develop, but to function properly, require a substantial change in department culture and individual officer behavior. As such, they represented a sizable implementation challenge.

Once again, Pittsburgh was fastest to reach substantial compliance. After 29 months, the PBP had developed the physical infrastructure and demonstrated the capacity for full system utilization. The Cincinnati Police Department (CPD) also reached substantial compliance comparatively quickly, requiring 43 months to develop its version of the early intervention system. By contrast, departments in Prince George's County, Washington, DC, and Detroit required 60, 84, and 97 months, respectively.

Citizen Complaint Receipt and Investigation

Third, each department was required to reform their system for receiving and investigating citizen complaints. In most cases, those with little more than a formal change in policy (i.e., redefining eligibility and available avenues for filing complaints or re-establishing investigative parameters) were met with little resistance in any of the five departments. These changes demanded little in terms of resources and required minimal levels of organizational movement. Low hanging fruit, as it were.

Implementation of these policy changes was also quite smooth, though there were instances where departments struggled for brief periods to get investigators to adhere strictly to the revised protocols. In Cincinnati, for example, monitors noted several instances where investigators failed to reconcile evidentiary inconsistencies between officer statements and those given by witnesses (Cincinnati Independent Monitor, 14th Quarterly Report, 2006, Sept., p. 32–33). Though serious enough to undermine the legitimacy of an investigation, these types of setbacks, in Cincinnati and other jurisdictions, tended to be both sporadic and temporary.

Perhaps the area that presented the most substantial challenge was the stipulation that no citizen complaint investigation last longer than 90 days. As the monitor reports describe in detail, no jurisdiction proved consistently able to meet this

requirement. Three years into the settlement implementation, none of the five jurisdictions could consistently adjudicate citizen complaints within the requisite 90-day period more than 56 % of the time. And of the five jurisdictions, only Cincinnati satisfied this mandate without a two-year extension from the DOJ.

Macro Compliance

Four of the five jurisdictions achieved macro-level compliance and were released from federal oversight. Yet, as Table 2 highlights, only Cincinnati was able to meet the DOJ's five-year implementation deadline. Pittsburgh, which also agreed to a five-year reform, was bound by their agreement for 5 years and four months. For nearly three additional years, however, the DOJ continued to oversee the implementation of provisions related to Pittsburgh's Office of Municipal Investigations until April, 2005, owing to that agency's inability to investigate citizen complaints in a timely fashion (Ove, 2005).

Neither Washington, DC nor Prince George's County were able to meet their original settlement deadlines, and thus they were each required to accept an additional two years of federal oversight. The DOJ's agreement with Prince George's County, scheduled to terminate after three years, lasted a total of five; the agreement in DC was in place for seven years, from June 2001 through June 2008. Detroit remains under federal oversight, well past the five-year term agreed to in June 2003.

These findings raise at least three important questions. First, what explains the considerable variation in terms of the five jurisdictions' pace of implementation? Second, to what extent can we explain Detroit's failure to reach substantial compliance with the terms of its settlement agreement? And finally, what do these results say about the value of pattern or practice reform as a policy instrument?

Analytical Results

Several theoretically relevant factors help to provide insight into implementation successes and failures observed. This section begins with a discussion of those factors related to the problem driving reform and the particularities of the settlement developed to address it.

Problem- and Policy-related Factors

Though each settlement agreement was drafted to address a pattern or practice of excessive force, the specific nature of the organizational pathology varied from jurisdiction to jurisdiction. And in general, the agencies tended to experience more difficulty

implementing components central to the DOJ's investigation than those on the periphery. In Pittsburgh, for example, the DOJ was primarily concerned with what it saw as an absence of timely and independent investigations of officer misconduct, many of which were based on allegations of excessive use of force (US DOJ, n.d.). Implementation of settlement components designed to build capacity in this area proved tougher than did those addressing other areas. This is unsurprising, given the close connection between problem depth and the relative size of implementation challenges presented by related policy solutions.

A defining characteristic of most pattern or practice settlement agreements is the use of aggressive termination deadlines by which affected agencies are required to reach substantial compliance with all settlement terms. In Pittsburgh, Washington, Detroit, and Cincinnati, this termination date was set at five years; Prince George's County was given three years to reach macro compliance. A settlement agreement's macro deadline appears to be reflective of the DOJ's view of the depth of the organizational dysfunction and the jurisdiction's capacity to implement the mandated reforms, with those in need of more extensive changes given an extended implementation period.⁶

These macro deadlines appear to have had an effect on implementation, though the specific nature of that effect is somewhat ambiguous. In Washington, DC, for example, the drive to rid themselves of external oversight accelerated as the termination date approached, with Department leaders working to rectify problems that may have been allowed to languish in earlier stages of the implementation process (C. Lanier, personal communication, January 18, 2010). On the other hand, in Prince George's County, 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.

Pattern or practice settlements are also defined by their use of component-specific deadlines. Every micro component is linked to an implementation deadline, typically ranging from 3 months to 25 months, depending on the nature of the required reform. By contrast, departments consistently missed micro deadlines, some by months and even years. In certain instances, they appeared to have been ignored entirely. Somewhat surprisingly, this never appeared to matter, either to monitor teams or the Justice Department. The component-specific deadlines seemed to be purely aspirational, as if they exist not

as a means of levying sanctions or forcing compliance, but as a way to define the best case scenario and imbue the process with some sense of urgency. Given what in retrospect looks to have been the unrealistically aggressive nature of the deadlines, their value, either as a motivational tool or as a measuring stick for progress, appears to have been limited.

Organizational Factors

Micro and macro implementation were affected by several organizational factors, beginning with the role of the police chief. In cases where leaders made compliance a priority, addressed problems swiftly and assertively, and took a personal interest in seeing implementation through, the effect on implementation was both tangible and positive. The view of Washington, DC independent monitor Michael Bromwich is emblematic. When Cathy Lanier replaced Charles Ramsey as chief,

she mobilized the department's resources internally ...[and] personally oversaw [implementation] more closely and intensely than Ramsey had....And [successful compliance] became very clearly a priority for Chief Lanier[;]...she very clearly communicated that to her people and they realized that there would be consequences if they failed. (M. Bromwich, personal communication, February 23, 2010).

Lanier's ability to push her agency through the final stages of implementation is consistent with earlier research, both in the context of pattern or practice reform (Davis et al., 2002; Stone et al., 2009) and organizational change more generally (Fernandez & Rainey, 2006). Leadership is a key factor in explaining the relative success of implementation efforts. In cases where department leadership was either hostile to the reform effort (as was temporarily the case in Cincinnati), allowed the process to fade from view (which some claim former Metropolitan Police Department (MPD) Chief Charles Ramsey did toward the end of his tenure), or was overwhelmed by the complexity of the reform effort (as data suggest was the case in Prince George's County), progress stalled. In Detroit, the ongoing reform has come to reflect the Detroit Police Department's (DPD) inconsistent and scandal-ridden leadership. The city has seen 7 police chiefs since signing the consent decree in 2003, many of whom were sidelined by personal and professional impropriety (e.g., Clinton, 2013; Muskal, 2012).

Data also indicate that even brief lapses in focus or the loss of attention to the issue by organizational

leadership can have detrimental and lasting effects on the reform process. In DC, for example, the monitor concluded that “MPD’s roll-out of the Use of Force General Order was not as effective as it could have been primarily because MPD’s initial efforts to train its officers were poorly coordinated and executed” (Washington, DC Independent Monitor, Third Quarterly Report, 2003, Jan., p. 5). MPD struggled to overcome these initial implementation problems with tangible effects. Five years into the reform process, only 36% of necessary use of force reports had been filed and of those, less than 60% reached the requisite level of quality (Washington, DC Independent Monitor, 17th Quarterly Report, 2003, Jan., p. 15). Ultimately, it took MPD seven years to implement successfully components related to use of force reporting (Washington, DC Independent Monitor, Final Report, 2008, Jun., p. 25–31).

While strategic focus is set in the chief’s office, evidence suggests that day-to-day implementation is in many ways a function of an agency’s mid-level supervisors. Sergeants and lieutenants were typically charged with overseeing the compliance efforts of street-level officers across various aspects of the reform effort, including use of force reporting, citizen complaint investigation, and the use of early intervention system data. In this position, these managers acted as a conduit between agency leadership and patrol officers and, as such, occupied a key position of accountability within each organization.

Results highlight not only import of mid-level staff but also mixed compliance with the required behavioral change. Monitor reports provide several examples where implementation progress was slowed by non-compliance among mid-level agency staff. In Prince George’s County, for example, supervisors failed to perform mandated oversight of use of force incident reports filed by street-level officers (Prince George’s County Independent Monitor, Sixth Quarterly Report, 2005, Dec.). In Cincinnati, mid-level supervisors appeared unwilling to perform the necessary staff intervention or take the appropriate disciplinary measures against those officers identified by the Department’s early intervention systems (Cincinnati Independent Monitor, 13th Quarterly Report, 2005, May).

Other jurisdictions experienced similar delays as a result of mid-level supervisor recalcitrance. Monitors in Prince George’s County attributed delays in implementing use of force reforms directly to the refusal of supervisors charged with reviewing incident reports to evaluate the appropriateness of force used, as was required by the settlement agreement (Prince George’s County Independent Monitor, Third Quarterly Report, 2005, p. 5).

Consistent with the hierarchical structure of most police departments, street-level officers are often influenced by the attitudes and behavior of their supervisors. In most instances, this influence manifested positively. Patrol officers were largely praised for their support of and compliance with the terms of the settlement: They submitted to interviews with citizen complaint investigators, attended mandatory training sessions, and, perhaps most importantly, shifted their approach to the use of force. There was also some evidence of resistance. Officers in all five jurisdictions, for example, took considerable time to implement new use of force reporting requirements, and in some cases openly refused to comply with certain changes in policy. But these conflicts occurred on the margins and tended to present only temporary problems. When measured in terms of strict compliance with settlement agreements, the abuse of discretion that concerned Lipsky (1980), and has preoccupied police leadership and scholars from several academic fields, failed to materialize. This pattern of compliance occurred in spite of what some saw as inadequate resources.

Monitor teams from all five jurisdictions charted with frustration the difficulties associated with meeting the requirement that citizen complaint investigations were to be completed within 90 days. In every case, investigative delays and resultant case backlogs were attributed at least in part to an inability among jurisdictions to find money in the budget for officers and civilians willing and able to perform the job with speed and accuracy. Similar financial challenges plagued the development of early intervention systems in Washington, DC, Prince George’s County, Cincinnati, and Detroit. In the absence of resources needed to fund development of these expensive technological systems, implementation of related settlement protocols was delayed in each jurisdiction.

Resource shortages also help to explain Detroit’s ongoing macro compliance problems. The City’s financial trouble runs much deeper than in other jurisdictions (Davey & Walsh, 2012). Since 2003, DPD has lost one third of its police officers. Longstanding budgetary shortfalls have prevented city and Department leaders from hiring replacements, despite rising violent crime rates (Hunter, 2012). Basic repairs remain unaddressed while officers go without essential equipment (Cohen, 2014). On top of this, DPD officers were recently forced to take a ten percent cut in salary (Helms, 2013), a move that capped a decade long decline in officer morale (Lue, 2013). Implementation of wholesale organizational changes is a notorious challenge; in this context, it has proved to be near impossible.

Contextual Variables

Four environmental factors stand out as affecting both micro and macro implementation: (1) the role of constituency groups, and (2) the nature of political support for the reform effort, (3) judicial oversight of the process, and (4) the influence of independent monitoring.

In nearly every case, pattern or practice agreements are negotiated and implemented by a small group of key stakeholders, including DOJ lawyers, representatives from the mayor's office, and police department leadership. Affected constituent groups, from the department rank and file and organized labor to minority community interests and others, are typically excluded from the policy development phase along with members of a jurisdiction's legislative branch. In addition to raising serious questions about the democratic legitimacy of the process – and its product – the settlement negotiation necessarily generates a correspondingly centralized, top-down implementation process. All five jurisdictions under review reflect this dynamic to one degree or another.⁷

Results indicate that blocking constituency group access to the settlement negotiation and implementation processes may on some level make getting the reform effort off the ground much less complicated. In Washington, DC, for example, Police Chief Charles Ramsey's decision to request the DOJ investigation was made and carried out without participation or approval from the rank and file, something Ramsey believes was a practical necessity despite presenting minor, short-term costs in the form of internal opposition (C. Ramsey, personal communication, May 20, 2010).

In Pittsburgh, however, the decision to exclude the police labor union, and with it the voice of the rank-and-file officer, helped to engender a very contentious, almost hostile, implementation environment with long-run ramifications. The union opposed the process from the outset and to the extent possible, fought the implementation of reforms throughout (R. McNeilly, personal communication, March 1, 2010).

On the other hand, in Cincinnati, a private settlement between the CPD and several community groups, known as the Collaborative Agreement (CA), was implemented alongside of the DOJ's Memorandum of Agreement and helped to create a different set of contextual circumstances. As a direct result of their involvement in negotiating the terms of the CA, organizations like the ACLU and the Black United Front, as well as the City's Fraternal Order of Police, were placed at the center of the pattern or

practice reform effort, rather than being left out (Cincinnati Collaborative Agreement, 2002).

Of course, a more inclusive process may present certain short-run costs. Negotiating the terms of the settlement can be much more contentious and may ultimately take longer. Cincinnati's decision to adopt a more democratic process did lead to a few relatively minor implementation delays and may have contributed to the temporary revolt by CPD leadership. But if there is a way to reach consensus – and Cincinnati shows us that it is possible – then there may be hope that a more inclusive negotiation process could produce a more legitimate end-result. In fact, according to former Cincinnati monitor Richard Jerome, this inclusivity, particularly in the case of the city's police union, yielded direct benefits: “having [the union] at the table, as opposed to kind of outside and criticizing – I remember Pittsburgh very well – helped tremendously.” (R. Jerome, personal communication, March 24, 2010).

This study's findings are also consistent with the notion that support from political principals may facilitate—or hinder—the policy implementation process. Belief among executive branch leadership in the wholesale changes that come with a DOJ settlement is correlated with successful implementation. This confidence is most critical at the earliest stages of the reform. In describing early meetings with Mayor Anthony Williams, Washington DC's former Chief Charles Ramsey alluded to the fact that opposition from the mayor could have severely complicated Ramsey's decision to pursue DOJ-led reform: “The mayor was very supportive.... I explained the situation to him. I explained what I thought needed to be done. And it was risky” (C. Ramsey, personal communication, May 20, 2010).

Though such tacit support (i.e., the absence of overt opposition) for the process among political principals is a necessary component of successful pattern or practice implementation, it may not be sufficient. Proactive, public support among political officeholders can also imbue the process with a certain institutional legitimacy. For example, after a high-profile conflict between CPD leadership and the monitors, the Cincinnati City Council passed a resolution “expressing the continued commitment of the City to achieve the goals as stated in the MOA with the DOJ...and to continue to work with the Parties to [that] agreement to accomplish the mutually agreed objectives” (City of Cincinnati Independent Monitor Quarterly Reports, Ninth Quarterly Report, 2005, p. 4). This symbolic gesture had the effect of galvanizing public support for the process and putting increased pressure on the CPD leadership to reorient itself toward full compliance.

Evidence from Cincinnati also emphasizes the potential value of not just supportive but capable, proactive political leadership. Cincinnati monitor Richard Jerome was one of many key stakeholders who praised the efforts of City Manager Milt Dohoney:

Probably the biggest reason why Cincinnati was successful was a change in the city management. And when Milt Dohoney came in... he recognized the advantages to bringing change to the police department in terms of a different approach to policing, a different approach to police/community relations....[Dohoney] basically told the chief, you know, we need to change (R. Jerome, personal communication, March 24, 2010).

The strength of Cincinnati's political class helps to highlight the significance of Detroit's failure along these lines. 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 (Yaccino, 2013). 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 (Elrick, Swickard, Schmitt, & Patton, 2009). Wood was immediately removed from her position, leaving questions about the legitimacy of her six years on the job (Guthrie, 2009). 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 (Wattrick, 2011).

The importance of the independent oversight these monitor teams provide cannot be overstated. In all five jurisdictions, 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.

To varying degrees, the presence of a team of outside experts overseeing the process focused the departments' energy on compliance and minimizing

the likelihood that other organizational priorities interfered with implementation. Regular status meetings, which took place in each jurisdiction, were designed to promote a steady, incremental approach to implementation. When functioning properly, these meetings allowed the monitor to bring issues of concern to the attention of department leadership and to ensure that certain issues remained on the agency's agenda. Washington, DC monitor Michael Bromwich's description of his experience with former MPD Chief Charles Ramsey is illustrative:

I went to him a very small number of times with what struck me as important enough problems that I needed a special meeting with him. And I said, this is broken. You need to fix this. And he did, almost immediately (M. Bromwich, personal communication, February 23, 2010).

The value of the monitor seems to square with existing theory on the import of actors capable of working entrepreneurially to help bridge implementation challenges (Bardach, 1978) and those who provide external accountability (Cooper, 1988). What is more, these results further emphasize the values of flexibility and adaptability (Majone & Wildavsky, 1979), as well as an understanding between both monitor and agency leadership that collaboration is a key to successful implementation. In cases where the presence of an outside monitor was not enough to elicit compliance, the enforcement authority that rests with members of the federal judiciary proved invaluable.

A high-profile incident from Cincinnati illustrates the point clearly. Two years into the reform effort there, a dispute erupted between the CPD and the independent monitor team. After a weeks-long standoff, which many insiders believed threatened to derail the entire reform, the monitors approached federal district court judge Susan Dlott seeking a resolution (Report to the Conciliator, 2004). Dlott threatened to hold then-Chief Thomas Streicher in contempt of court for noncompliance, which, if levied, would have resulted in jail time. Monitor reports and several interviews confirm that judicial intervention led not only to a settlement between CPD leaders and the monitor but also prevented any negative effects of the disagreement from metastasizing (Cincinnati Independent Monitor, Final Report, 2008, Dec.).

As in Cincinnati, the federal judge overseeing the reform in Detroit, Julian Cook, has been instrumental in helping to address major problems. He was instrumental in the removal of former monitor Sheryl Wood. Cook's formal authority,

together with his ongoing attention to the reform effort, has helped to keep alive a process threatened by scandal, leadership uncertainty, and financial calamity (Damron, 2013). Though there was no direct interaction with presiding judges in any of the other three jurisdictions, interview data indicate that the specter of judicial enforcement served to deter noncompliance.

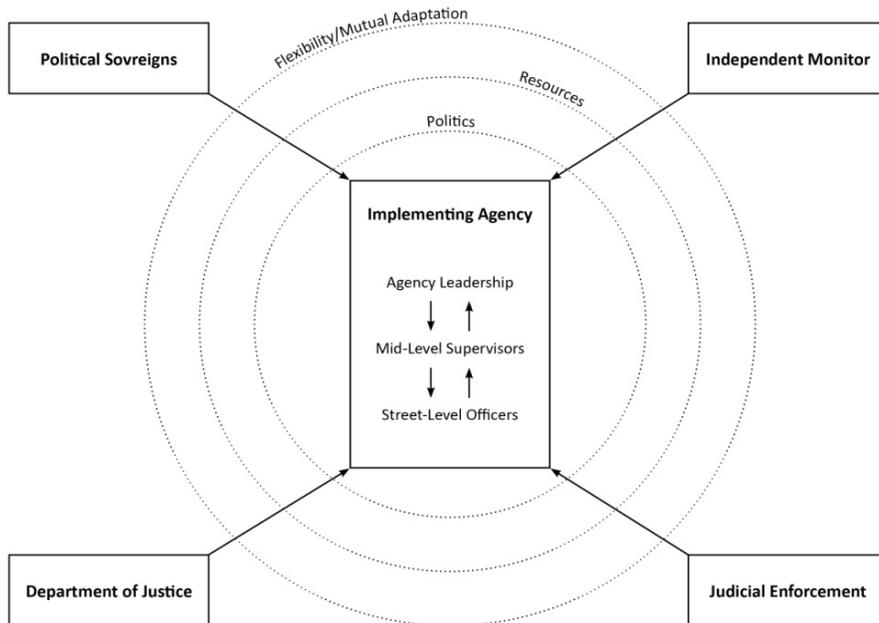
For its part, the DOJ maintains the right of final approval over all departmental changes made pursuant to the settlement. This unique leverage delayed the process in each of the five jurisdictions but ultimately helped promote outputs reflective of both the letter and the spirit of the original agreement. In the case of Washington, DC, for example, implementation of the use of force policy component lasted 84 months, far longer than the other jurisdictions with the exception of Detroit. According to the DC monitor and several other actors involved in the negotiation, these delays occurred largely as the result of a dispute between the DOJ and the MPD over how to manage use of force incident reporting (C. Lanier, personal communication

January 18, 2010; M. O’Connell, personal communication, 2010). A similar semantic disagreement extended the Cincinnati Police Department’s implementation of the use of force policy component as well. Cincinnati’s delayed approval was largely owing to an extended negotiation between the CPD and the DOJ over reporting requirements following incidents in which an officer engaged in a “take down” without injuring the suspect compared with incidents in which the suspect was injured (City of Cincinnati Independent Monitor, Final Report, 2008, Dec.).

Discussion

Despite considerable challenges and unique differences between each, four of the five jurisdictions considered in this study reached substantial compliance within five to seven years of settling with the DOJ. These results derive from the interaction (or absence) of several variables, which together produce a complex “implementation system” that serves to promote (or inhibit) reform.

Figure 1: The Pattern or Practice Implementation System



At the heart of this system is capable organization staffed with officers supportive of the process. This begins with a strong, capable, and assertive leader. The most successful leaders, including McNeilly (Pittsburgh), Ramsey and Lanier (DC), and Streicher (Cincinnati) were actively involved in the reform, which allowed them to set the agenda and tone for implementation, driving compliance down through the chain of command. In part owing to the quasi-militaristic nature of these departments, the centralized process worked quite well. In most cases, patrol officers and mid-level supervisors were compliant; the few instances of opposition tended to be short-lived and relatively minor in scope.

Though a necessary component, support among agency staff alone is insufficient. In each jurisdiction, a willingness and ability among implementation system actors to mutually adapt to changing conditions (i.e., make adjustments to both the content of the settlement reform and the implementing agency's approach to reform) helped to promote substantial compliance. In several instances, flexibility on the part of DOJ attorneys, independent monitors, and police leadership was critical for either avoiding altogether or minimizing potential problems that may have led to implementation delays.

In some instances, key actors from each participant group (the police, the monitor team, and the DOJ) served as acute problem-solvers, or fixers (Bardach, 1978). Compromises reached over disputed terms of Washington, DC's settlement agreement and confusion over the proper role of the monitor in Cincinnati are examples that further highlight the importance of a flexible approach, a shared understanding of the broad goal of the process, and a willingness to place agency reform over individual preferences.

Quite logically, the availability of resources affects the interaction between both internal and external actors, in the process further defining the implementation system. Sufficient financial resources – money to pay for the technology needed to develop and utilize the early intervention system, to provide additional officer training, to hire additional complaint investigation staff, and so on – are imperative. Of course, without the necessary finances, the kinds of wholesale change mandated by pattern or practice reform is much more difficult to accomplish. Similar challenges are created by the absence of qualified and committed labor resources. These findings are consistent with existing theory. Few if any implementation efforts occur without a willing and capable set of actors or adequate resources. These results also highlight the value of two less common elements: external oversight

provided by independent monitors and the constant presence of the Department of Justice. Implementation and reform efforts in other contexts would surely benefit from the managerial expertise and external accountability provided by the pattern or practice monitors. Several examples from all five jurisdictions highlight the import of a well-informed, well-connected, yet objective voice managing the process. That the monitor teams have the weight of the federal court and the DOJ behind them adds to their legitimacy and effectiveness.

The interaction of these several variables and the role they play in moving an affected department toward substantial compliance is an important finding and one that no doubt has the potential to facilitate forthcoming reform initiatives. Future research should work to explicate the relationship between each element and work to further clarify the effect that the presence or absence of individual elements has on the implementation process. A closer look at the results also suggests that declaring pattern or practice reform a success based on macro compliance alone undermines the complexity of the process and the true value of a reform effort of this size and scope.

The DOJ relies 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. 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 or 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. As evidence of this exclusive focus on contractual compliance, the

discussion of key substantive issues – e.g., actual incidence of officer use of force, citizen complaints, or civil litigation – is largely omitted from monitor reports. Perhaps this is because the parties involved assume that such measures are incorporated into the imprimatur of “substantial compliance,” which obviates the need to report on anything other than the time needed to achieve such ends.

What is more, 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. Again, the assumption, both on the part of the DOJ and affected jurisdictions, seems to be that if and when a department successfully installs the pattern or practice reform template, then that department has automatically become a model of constitutional, accountable policing. And further, that this model is self-sustaining.

Several additional observations highlight the point. The wide disparity in time needed to implement various micro components, both within and between jurisdictions, suggests a complexity to the process that is obviated by an exclusive focus on macro compliance. Certain tasks appear to have presented a challenge, while others seem to have been relatively simple to implement. Not surprisingly, many of those causing difficulty were directly related to the substantive issue driving the initial DOJ investigation.

There are examples from four jurisdictions where reaching compliance for these components took the entire duration of the reform period. By granting substantial compliance so near to the date when the agreement was terminated necessarily meant that monitor teams were not able to observe the department as it worked to maintain this high level of performance. What is more, such an approach seems to minimize the importance of each micro component as a stand-alone policy instrument, favoring instead the view that their value was largely as a piece of the broader reform template. This overlooks the considerable time, money, and effort expended by each department to implement specific settlement components. Evidence that both the DOJ and independent monitors stressed the value of macro deadlines but paid little attention to micro deadlines strengthens the point.

From this one must draw at least two conclusions. First, the pattern or practice initiative is designed and managed to create a standardized version of a “lawful, accountable” police department,

not necessarily to remedy each organization’s specific operational problems. And second, the implementation process heavily favors fidelity to the language of the settlement agreement over the depth of organizational change. Clearly, there is significant demand for future research that evaluates the propriety of the DOJ’s assumptions about the pattern or practice reform process and the substantive value of the initiative.

Conclusion

The DOJ’s pattern or practice initiative requires affected jurisdictions to implement a series of complex, protracted reforms in order to reach compliance with the federal law. The weight of both theory and practical experience suggest that such an undertaking will be fraught with challenges and likely to end in failure. Such has not been the case in the vast majority of jurisdictions that have come under federal oversight, including four of the five examined here. The implementation system—defined by the legal authority under which the implementation proceeds; independent oversight; and well-resourced, highly motivated organizations that are typically led by reform-minded chiefs—is indeed both unique and effective.

Yet, there are reasons for caution. This system emphasizes fidelity to the terms of the settlement almost exclusively over other important values. The success documented here is on some level a reflection of the DOJ’s narrow definition of implementation; dosage, or depth of change in each organization, is of secondary concern. The DOJ appears to treat pattern or practice settlements as a general contract between parties, not a policy instrument crafted to achieve specific, substantive ends.

Despite the utility of the legal construction, it is also possible – and valuable – to view pattern or practice settlement agreements through a policy lens. Though not entirely severable from the legal goals of the process, the policy manifestations of accountability-driven reform, including a shift in a department’s view of citizen rights, changes to organizational culture, reduced levels of undesirable outcomes like use of force incidence, and department civil liability, must also be considered, both by participants and scholars alike. Implementation of systemic and organizational reforms is an important end in itself, but such changes are more appropriately thought of as means to other ends, the likes of which are only understood when the process is framed in terms of policy rather than law.

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Endnotes

- ¹ Several of the police departments found to exhibit a pattern or practice of misconduct were in violation of more than one law/right/principle. Data on DOJ investigations and settlements are on file with the author.
- ² The Department of Justice has failed to negotiate settlements with two jurisdictions: Columbus, OH and Maricopa County, AZ. In October 1999, the DOJ initiated the first suit under the authority of Section 14141. The complaint filed against the City of Columbus, OH, alleged a “pattern or practice of unconstitutional excessive force, false arrests, false reports, and illegal searches by Columbus Division of Police (CoDP) officers” (*U.S. v. City of Columbus*, 1999). In September 2002, the parties resolved the dispute with an informal agreement that granted the DOJ authority “to review CoPD procedures through December 2003. If the Justice Department determines that a pattern or practice of misconduct exists, it has the authority to re-file the lawsuit” (U.S. Department of Justice, 2002, para. 2). On December 15, 2011, the DOJ announced that a lengthy investigation into the Maricopa County Sheriff’s Office had uncovered a pattern or practice of discriminatory policing (*U.S. v. Maricopa County*, 2012). In May, 2012, following months of unsuccessful negotiation, Justice Department attorneys filed suit against Maricopa County, AZ. Litigation is ongoing (*U.S. v. Maricopa County*, 2012).
- ³ This is true whether the settlement is memorialized in the form of a consent decree or memorandum of agreement.
- ⁴ The full list of possible cases, including those eliminated for time or data-related reasons, is on file with the author.
- ⁵ Full list of interviewees on file with author.
- ⁶ Unfortunately, the Special Litigation Section has not commented formally on this issue, so this is, at best, informed speculation.
- ⁷ For example, former Pittsburgh City Solicitor Susan Malie describes the DOJ’s approach: “They never spoke to a single police officer in their investigation of the ACLU’s allegations. So we sort of had this image of the Justice Department interviewing this list of complainants without really getting the other side” (S. Malie, personal communication, April 1, 2010).